

To the Prosecutor of the International Criminal Court

Statute, Art. 15.1 and 53.1

I - FACTS

1. As has been stated by the United Nations Secretary-General, current events “did not happen in a vacuum”¹.

A - Past events

1/ In the time of Palestine

2. The Arab national movement in the Middle East has ancient roots in Palestine, that came under Ottoman administration after conquest by Cairo in 1517 and Baghdad in 1533.
3. Palestine was a province of the Ottoman Empire, with a clearly defined territory, centered around Jerusalem, with a population composed of Muslims, Christians and Jews. However, Jews then represented a small minority, as in October 1922 were counted : 589 177 Muslims, 71 464 Christians, 83 790 Jews, and 7 617 others².
4. The reality of this Arab society was legally established through the League of Nations, that adopted a Class “A” Mandate for the former Ottoman Empire provinces, noting these populations’ development and their right to independence :

¹ UN, “Secretary-General’s remarks to the Security Council - on the Middle East [as delivered]”, 24 October 2023, online : <<https://www.un.org/sg/en/content/sg/statement/2023-10-24/secretary-generals-remarks-the-security-council-the-middle-east-delivered>>.

² Jihane Sfeir-Khayat, « Historiographie palestinienne - La construction d’une identité nationale », Annales Histoire, Sciences Sociales, janvier-février 2004, Éditions de l’EHESS, p. 35 ; Eliezer Tauber, The Emergence of the Arab Movements, Londres, Routledge, 1993 ; Nadine PICAUDOU, Le mouvement national palestinien, genèse et structures, L’Harmattan, Paris, 1989, p. 34 ; Albert HOURANI, Arabic Thought in the Liberal Age, Oxford, Oxford University Press, 1970, traduction par Sylvie BESSE-RICORD, Beyrouth, Naufal, 1983.

“Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory”.³

5. Ultimately, the national Arab movement won out, and the Ottoman provinces became independent States : Iraq on the 3rd of October 1932, Lebanon on the 22nd of November 1943, Syria on the 1st of January 1944, and the Kingdom of Jordan on the 22nd of March 1946⁴. In the case of Palestine, the process failed because of the project of establishing a Jewish State there.
6. Following the 1897 Zionist Congress⁵, Jerusalem Mayor, Youssouf Al-Khalidi, questioned the idea of establishing a Jewish State given the political and social organization in there⁶.
7. The then imperialist Powers, France and the United Kingdom⁷, chose to give full effect to the Zionist project, undermining the future of the Palestinian people. In 1917, the Balfour Declaration approved the project⁸.

³ Voir : « Les mandats au Proche-Orient : des évolutions très contrastées », Pierre BROCHEUX, Samya El MECHAT, Marc FREY, Karl HACK, Arnaud NANTA, Solofo RANDRIANJA, Jean-Marc REGNAULT, *Les décolonisations au XX^e siècle*, 2012, p. 12 ».

⁴ After having concluded a treaty of alliance with Great Britain.

⁵ Fausto GIUDICE et Michèle MIALANE, « Premier congrès sioniste (Bâle, 29-31 août 1897) - Protocole officiel », Workshop 19, 2013, 212 p. ; https://mfa.gov.il/MFA_Graphics/MFA%20Gallery/Documents%20languages/herzl-fr.pdf

⁶ Henry LAURENS, *La question de Palestine*, T. I, L'invention de la terre sainte, 1999, Paris, Fayard, p. 88 et 204

⁷ Ran AARONSOHN et Dominique TRIMBUR, (dir.), *De Balfour à Ben-Gourion. Les puissances européennes et la Palestine, 1917-1948*, Paris, CNRS éditions, 2008 ; Michael J. COHEN, *Palestine : Retreat from the Mandate: The Making of British Policy 1936-1948*, Londres, Paul Elek, 1978 ; Olivier CARRE, *Proche-Orient, entre la guerre et la paix*, Paris, Epi Editeurs, 1974 ; Dominique PERRIN, *Palestine, une terre pour deux peuples*, Paris, Presses Universitaires du Septentrion, 2000 ; Vincent CLOREC et Henry LAURENS, *Le Moyen-Orient au 20^e siècle*, Paris, Armand Colin, 2005.

⁸ Document UNISPAL ; Leonard STEIN, , New York, Simon and Schuster, 1961, p. 64 ; Sahar HUNEIDI, *The Hidden History of the Balfour Declaration*, New York, OR books, 2019 ; David CRONIN, *Balfour's Shadow: A Century of support for Zionism and Israel*, London, Pluto Press ; Jonathan SCHNEER, *The Balfour Declaration: The Origins of the Arab-Israeli Conflict*, London, Bloomsbury Publishing, 2011.

8. In 1921, Palestine became a Mandated State, with a full internal organization of powers, and an international presence, including the ratification of numerous treaties.
9. Between 1922 and 1948, the year the United Kingdom withdrew, and like all former Arab provinces of the Ottoman Empire, Palestine was treated internationally as a State, equal to others: a Mandated State—but a State⁹. Borders were established by international deeds: with Transjordan in the east, which instituted for its inhabitants a nationality distinct from that of Palestine¹⁰, Lebanon and Syria¹¹ in the north, and Egypt¹² in the south. These borders were never contested.
10. The 1921 League of Nations Mandate included the pledge of the Balfour Declaration. The report of the United States Commissioners King and Crane described the reality of the Palestinian society, and recommended that the pledge of the Balfour Declaration be disavowed, for fear that it should provoke a century of warfare¹³.
11. The United Kingdom, the Mandatory power did all it could to ease Jewish immigration and enable its control of the territory of Mandate Palestine, creating great political, economic and social difficulties. Realizing that the true aim was the establishment of a Jewish State, the Arab opposition went into opposition, with large scale social movements and great turmoil¹⁴.
12. The British Mandatory did not achieve the partition in two States, which was its original plan.

⁹ Albert M. Hyamson, *Palestine under Mandate, 1920-1948*, London, Methuerm & Co., 1950 ; Abraham Baumkoller, *Le mandat sur la Palestine*, Paris, Librairie Arthur Rousseau, 1931.

¹⁰ Mutaz M. QAFISHEH, « Genèse de la citoyenneté en Palestine et en Israël », *Bulletin du Centre de recherche français à Jérusalem* [Online], 21 | 2010 URL : <http://journals.openedition.org/bcrfj/6407>.

¹¹ League of Nations Treaty Series, 1924, Vol. 22, p. 355.

¹² Clive PARRY, *The Consolidated Treaty Series*, New York, Oceana Publications, 1906, Vol. 201, p. 190 et Vol. 203, p. 19.

¹³ Harry N. HOWARD, *The King-Crane Commission. An American Inquiry in the Middle East*, Beyrouth, Khayats, 1963; Philippe DAUMAS, « La Commission King-Crane, une occasion perdue », *Revue d'études palestiniennes*, Vol. 96, p. 78.

¹⁴ Ghassan El KHAZEN, *La grande révolte arabe de 1936 en Palestine*, Beyrouth, Dar An-Nahar, 2005 ; Nora TOGNI, « La grande révolte arabe en Palestine (1936-1939) », 22 février 2021 », *Orient XXI* <https://orientxxi.info/va-comprendre/la-grande-revolte-arabe-en-palestine-1936-1939,4546> ; Lisa ROMEO, « Révolte arabe de 1936-1938 », 6 avril 2011, *Les clés du Moyen Orient*, <https://www.lesdesdumoyenorient.com/Revolte-arabe-de-1936-1938.html> ; Elias SANBAR, *Palestine 1948 - L'expulsion*, Les livres de la Revue d'études palestiniennes, Paris, 1985 ; Martin KOLINSKY, *Law, order, and riots in mandatory Palestine, 1928-1935*, London, St. Martin's Press, 1993.

13. In November 1947, the United Nations General Assembly recommended a partition plan as well as an international status for Jerusalem. This proposition was rejected by the Arab countries¹⁵.

2/ The creation of the State of Israel as a Jewish State

14. The United Kingdom announced the termination of its mandate in May 1948. On that same day, Zionist leaders, under Ben-Gurion's leadership, proclaimed the State of Israel on the territory recommended by the UN¹⁶. They immediately entered into armed hostilities, which enabled the new State to expand its territory. After a cease-fire, a border called the Green line was provisionally drawn, which remains relevant today.
15. With the willingness of creating a Jewish State on an Arab land, Israel's leaders proceeded to the ethnic cleansing of 90% of the Arab population of the territory they took hold of. 750 000 Palestinians victims of the Nakba have a right to return, that has yet to be exercised¹⁷. As early as June 1948, David Ben-Gurion, then Prime Minister, stated to his cabinet that "no Arab refugee must be authorized to return"¹⁸[translation].
16. Internationally, the State of Israel established itself as a subject of international law without ratifying new treaties, asserting itself as a successor State of the treaties that were ratified by the State of Palestine on its new territory.

¹⁵ Jean SALMON, « La qualité d'État de la Palestine », *Revue belge de droit international*, 2012, n° 45, p 13 ; James CRAWFORD, *The Creation of States in International Law*, Oxford, OUP, 2^e éd., 2006 ; Ilan PAPPE, « Israël - Palestine ; Mahmoud AZMI, « La question palestinienne devant l'assemblée des Nations Unies », *Politique étrangère*, 1948, p. 403 ; Michel ABITBOL, « Le 29 novembre 1947 et après », in *Histoire d'Israël*, Paris, Perrin, 2018, p. 204 ; Sandrine MANSOUR, « L'ONU et les Palestiniens : de l'ambiguïté à l'impuissance », *Cahiers d'histoire. Revue d'histoire critique*, n° 142, 2019, p. 19.

¹⁶ Michel ABITBOL, *Histoire d'Israël*, Paris, Perrin, 2018, 880 p ; Élie BARNAVI, *Une histoire moderne d'Israël*, Paris, Flammarion, 1988, 388 p. ; Jacob TALMON, *Destin d'Israël. L'Unique et l'Universel*, Paris, Calmann Lévy, 1967, 312 p.

¹⁷ Benny MORRIS, *The Birth of the Palestinian Refugee Problem, 1947-1949*, Cambridge University Press, Cambridge, 1987 ; Ilan PAPPE, *Les Démons de la Nakba*, La Fabrique, Paris, 2004.

¹⁸ Vincent LEGRAND, « Le conflit Israélo-Palestinien au prisme Jordanien », *Confluences Méditerranée*, n° 110, 2019, p. 169

17. Palestinian refugees were grouped under the status of UNRWA refugees.
18. The years that followed were marked by great tensions, sometimes with serious incidents. However, the Palestinian people, gathered under the PLO¹⁹, were ignored by the UN.

3/ Since 1967, military occupation and colonization

19. In June 1967, Israel conducted a military operation that led it to take control over all the territory of former Mandate Palestine, under military occupation regime for the West Bank, Gaza and East Jerusalem.
20. Israel annexed the Eastern part of the territory of Jerusalem and 38 neighboring municipalities, in violation of the prohibition of territorial acquisition by armed force.
21. Since 1967, and to this day, Israel has the status of an occupying military power over the whole of the Palestinian occupied territory, including Gaza.
22. In the Occupied territories, Israel took advantage of this situation and of international indulgence to construct many settlements, that to date contain 700 000 persons. The UN has always condemned the illegal character of these settlements, but no measure was taken regarding either the settlements or Jerusalem²⁰.

¹⁹ Helena COBBAN, *The Palestinian Liberation Organization ; People, Power and Politics*, Cambridge University Press, New York, 1984, 286 p. ; Cheryl A. RUDENBERG, « The civilian infrastructure of the PLO », *Journal of Palestine Studies*, 1983, n° 3/47, p. 54 ; Bassma KODMANI-DARWISH « L'OLP, de l'incarnation du peuple au gouvernement de l'État », *Revue des mondes musulmans et de la Méditerranée*, 1993, n° 68-69, p. 107.

²⁰ HRC, Report of the independent fact-finding mission to investigate the implications of the Israeli settlements, www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf, p. 26 ; UN HUMAN RIGHTS COUNCIL, Report of the independent fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/HRC/22/63, 7 February 2013 www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf, p. 24 .

23. As an outcome of the armed struggle, the right to self-determination of the Palestinian people was recognized by the UN²¹, and the State of Palestine was proclaimed in Algiers²².
24. Thereafter, peace negotiations were entered into according to the Oslo process, that is to say, on a flawed basis. A bilateral relationship was established between, on the one hand, an actor under the unclear status of “Palestinian Authority”, acknowledging a State of Israel that holds all sovereign rights, and that could accept transferring them to this “Palestinian Authority”. Nothing was done to dismantle the settlements ; quite the contrary, an “Area C” was created in the West Bank, ensuring continuous Israeli control over the Palestinian territory²³.
25. In 2006, general elections, of undisputed democratic standing were held in Palestine, and were won by Hamas (the “Islamic Resistance Movement”) with nearly 60% of the votes, with voters expressing their opposition to the Oslo process.
26. Subsequently, driven by the international context, Israel imposed a blockade, thus arbitrarily and drastically restricting its own obligation to protect the civilian population according to the IVth Geneva Convention.
27. With limited resources, armed resistance developed within the territory, facing an army with the world’s most powerful weaponry.
28. In 2008, 2012, 2014 and 2021, Israel launched military operations causing great human casualties and destruction. These operations have been thoroughly documented by the UN. However, despite many efforts, no legal proceedings were undertaken.

B - The recent events

²¹ Résolution n° 2535 du 10 décembre 1969 ; résolution 2672 C (XXV) du 8 décembre 1970 ; résolution 3210 (XXIX) du 14 octobre 1974.

²² Jean SALMON, « La proclamation de l'Etat palestinien », *Annuaire Français de Droit International*, 1988, n° 34, p. 37 .

²³ Alain BOCKEL, « Le pari perdu d'Oslo : le règlement du conflit israélo-palestinien dans l'impasse », *Annuaire Français de Droit International*, 2000, n° 46, p. 13 ; Isabelle AVRAN, « Oslo : retour sur un échec », *Orient XXI*, 12 septembre 2013, <https://orientxxi.info/magazine/oslo-retour-sur-un-echec,0343> ; Gilbert ACHCAR, « Les accords d'Oslo ont accéléré la colonisation israélienne », *L'Orient-Le Jour*, propos recueillis par David NASSAR, 15 septembre 2018.

1/ The attack by Hamas

29. On October 7, 2023, Hamas launched a large-scale attack against Israel through its military wing, the Al Qassam brigade. It fired missiles and its fighters entered Israeli territory by land, air and sea. The crossings took place all along the border line, neutralising Israeli defences. Fighting was fierce, but the Palestinians advanced rapidly.
30. The government of Israel announced a figure of 1,400 victims.
31. The Palestinian groups have taken more than two hundred people hostage, including women, children and the elderly.
32. The Israeli army regained control of the site on October 9, 2023. Israeli officials have reported "atrocities" committed against the victims, but the evidence alleged remains confidential to the ongoing Israeli investigation.

2/ The Israeli response

a/ An « unprecedented price »

33. On October 7, 2023, Israeli Prime Minister Benjamin Netanyahu declared war in a televised speech: « Citizens of Israel, we are at war. Not in an operation or in rounds but at war ». He announced that he had « ordered an extensive mobilisation of reserves and that [Israel] return fire of a magnitude that the enemy has not known », adding that « The enemy will pay an unprecedented price ». He ordered the inhabitants of Gaza to « get out now », and proclaimed that « [Israel] will be everywhere and with all our might »²⁴.
34. The Minister of Energy, Israel Katz, ordered the cutting off of all electricity throughout the Gaza Strip, commenting: « What was will not be »²⁵.

²⁴ « Israeli Prime Minister Declares War on Palestinian Militants Hamas », WSJ Wall Street Journal, 7 octobre 2023 ; <https://www.youtube.com/watch?v=1PsOw7hxiXs>

²⁵ Israel KATZ, Israel Energy Minister, Twitter (Oct. 7, 2023), https://twitter.com/Israel_katz/status/1710695021769265450.

35. Knesset member Ariel Kallner declared: « Right now, one goal: Nakba! A Nakba that will overshadow the Nakba of 1948 »²⁶.
36. In fact, Israel has suspended the supply of fuel and electricity, condemning the Gaza power station, which provides 90% of the electricity consumed, to a standstill, leaving only the generators that are also condemned by the deprivation of fuel.
37. The UN immediately lamented these decisions²⁷.
38. On this first day, 232 people have already been killed and 1700 injured.

b/ A complete siege

39. On 9 October 2023, Defence Minister Yoav Gallant ordered a complete siege of the Gaza Strip, through dehumanising language: « There will be no electricity, no food, no fuel, everything is closed. We are fighting human animals and we act accordingly »²⁸. He threatened « to bomb those attempting to provide aid to the Gaza Strip » and ordered the unprecedented recall of 300,000 reservists. The Israeli army also bombed the Rafah crossing, imposing a total closure.

²⁶ 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 exodus, PBS NewsHour, 13 octobre 2023): <https://www.pbs.org/newshour/world/in-israels-call-for-mass-evacuationpalestinians-hear-echoes-of-their-original-catastrophic-exodus>.

²⁷ 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-deploreattacks-civilians>.

²⁸ Yoav GALLANT, Twitter (Oct. 9 2023), <https://twitter.com/yoavgallant/status/1711335592942875097>. Voir aussi : Human Rights Watch, Twitter (Oct. 9, 2022), <https://twitter.com/hrw/status/1711424885908791505/>

40. On October 10, 2023, army spokesman Daniel Hagari announced the dropping of « hundreds of tons of bombs », adding that « the emphasis is on damage and not accuracy »²⁹.
41. The chief coordinator of the *Coordination of Government Activities in the Territories* (COGAT), General Ghassan Alian, declared: « 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 »³⁰.
42. Reservist General Giora Eiland wrote in Yedioth Ahronoth: « Creating a severe humanitarian crisis in Gaza is a necessary means to achieve the goal. Gaza will become a place where no human being can exist »³¹.

c/ The forced displacement of more than a million people

43. The Israeli army ordered the entire population of northern Gaza - more than a million people, including UN staff and civilians housed in UN facilities - to relocate to southern Gaza within 24 hours, despite strong protests from the UN³².
44. The UN Secretary-General stressed that "even wars have rules", adding that "moving more than a million people through a densely populated war zone to a place without food, water or shelter, when the entire territory is under siege, is extremely dangerous". He warned that the situation was "on the brink of an abyss" and called on Israel to allow humanitarian aid

²⁹ Bethan MCKERNANON & 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-itis-one-day-at-a-time-life-on-israels-frontline-with-gaza>.

³⁰ 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-youwill-get-hell/.

³¹ 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>).

³² 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-northerngaza-and-comply-with-international-law/>.

into the Gaza Strip. The UN Secretary-General warned that the Middle East was "on the brink of an abyss" and called on Israel to allow humanitarian aid into the Gaza Strip.³³

45. The Office of the United Nations High Commissioner for Human Rights called for the measure to be revoked and denounced the complete siege of Gaza as a collective punishment of civilians, which is strictly prohibited under international law.³⁴
46. The World Health Organisation (WHO) has described the evacuation ordered by Israel for more than a million Palestinians in the south of the Gaza Strip as "a death sentence", through its spokesman, Tarik Jasarevic³⁵.
47. On 15 October, Unrwa Commissioner General Philippe Lazzarini, speaking from the agency's offices in East Jerusalem, warned of an imminent "unprecedented humanitarian catastrophe": the UNRWA agency in Gaza "is no longer able to provide humanitarian aid. In fact, Gaza is being strangled and it seems that the world has lost its humanity »³⁶.

d/The blockade on energy resources

48. Energy Minister Israel Katz declared: « 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 »³⁷.

³³ « Israël et Hamas : 'Même les guerres ont des règles', affirme le chef de l'ONU », ONU Info, 13 octobre 2023.

³⁴ « Israël et Hamas : 'Même les guerres ont des règles', affirme le chef de l'ONU », ONU Info, 13 octobre 2023.

³⁵ « Les ordres d'évacuation adressés par Israël aux hôpitaux du nord de Gaza sont une condamnation à mort pour les malades et les blessés », OMS, communiqué, 14 octobre 2023.

³⁶ « Gaza est étranglée et il semble que le monde ait perdu son humanité : l'Unrwa tire la sonnette d'alarme », L'Orient Le Jour, 16 octobre 2023 ; « Philippe Lazzarini, commissaire général de l'UNRWA : Malgré toutes les images insoutenables en provenance de Gaza, il n'y a pas de réaction », Propos recueillis par Laure Stephan (Le Monde, Amman, Jordanie, envoyée spéciale) et Françoise Joly (TV5 Monde), 28 octobre 2023.

³⁷ 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-gazauntil-hostages-freed->

israelsays#:~:text=Israel%20Katz%2C%20Israel's%20energy%20minister,one%20will%20preach%20us%20morality.%E2%80%9D.

49. On 13 October 2023, President Isaac Herzog said: « 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 »³⁸.
50. Prime Minister Netanyahu said: « We are striking our enemies with unprecedented might... I emphasise that this is only the beginning »³⁹.
51. Energy Minister Israel Katz added: « All the civilian population in Gaza 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 »⁴⁰.
52. UN experts have warned of the inevitable disaster linked to these population transfers in this social and health disarray.⁴¹
53. The United Nations Children's Fund (UNICEF) stated that "blocking electricity and preventing food, fuel and water from entering Gaza will put children's lives at risk".⁴²

e/ A hateful and morbid propaganda

54. The Israeli army solicited statements by Ezra Yachin, an infamous 95-year-old veteran, former member of the Lehi militia which was responsible for the Deir Yassin massacre⁴³, for

³⁸ 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.

³⁹ 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=T4HXaZ2oM6Q>

⁴⁰ Israel KATZ, Twitter (Oct. 13, 2023), https://twitter.com/Israel_katz/status/1712876230762967222.

⁴¹ 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-northerngaza-and-comply-with-international-law/>.

⁴² « Informations sur la situation humanitaire à Gaza de la directrice générale de l'UNICEF, Catherine Russell au Conseil de sécurité de l'ONU », 30 octobre 2023, Portail de l'UNICEF.

⁴³ 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-deiryassin/2020/05/21/>.

a video which rapidly gathered over 2 million views: “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 witness things we’ve never dreamed of. Let them drop bombs on them and erase them”⁴⁴.

55. Tzipi Navon, a close advisor to the Prime Minister, declared: “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 ». She continued by stating 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”⁴⁵.
56. On October 16, 2023, the Prime Minister declared: “This is a struggle between the children of light and the children of darkness, between humanity and the law of the jungle”⁴⁶.
57. On October 22, 2023, the speaker for the Israeli army declared: “Anyone who chooses not to leave from the north of the Gaza Strip to south of Wadi Gaza may be determined an accomplice in a terrorist organization”⁴⁷.

f/ The plan to expel the Gazan population to Sinai

⁴⁴ Middle East Eye, “These animals can no longer live,” Twitter (Oct. 13, 2023), at 00:00-00:33, <https://twitter.com/MiddleEastEye/status/1712918166437806294>.

⁴⁵ 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-advisortorture-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 »).

⁴⁶ 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-pmnetanyahu-s-remarks-at-the-opening-of-the-knesset-s-winter-assembly-16-oct-2023>.

⁴⁷ « Israel tells Gazans to move south or risk being seen as 'terrorist' partner », *Reuters*, October 22, 2023.

58. For the Israeli Intelligence Ministry, according to a paper from October 13 published on the Mekomit website⁴⁸, the transfer of the Palestinians from the Gaza Strip to Sinai is the preferred option. The Ministry encourages measures to ensure the evacuation of the population to the south since the north of the Gaza Strip is the target of bombings, to then occupy the land and “cleanse” the underground bunkers of Hamas combatants, “making it clear that there is no hope of returning to the territories Israel will soon occupy”.
59. Acknowledging that this option would not acquire any legitimacy internationally, the Ministry underlines the need for a communications campaign explaining that the goal is to reduce the number of civilian casualties in Gaza. Some campaigns directly target Palestinians in the Gaza Strip, explaining that “there is no choice but to move to another place with the assistance of your Muslim brothers”. Refusing to be accomplices in a new “Nakba”, Egypt and Jordan stated their strong opposition to the transfer of population which could impact them directly in both security and political terms.
60. On October 31 and November 1, 2023, the Israeli army bombarded Jabaliya refugee camp, killing 195 people, 120 disappeared under the rubble and 777 gravely injured.
61. On November 1, experts appointed by the UN Human Rights Council and the UN Special Rapporteur on the situation regarding the Human Rights in the Occupied Palestinian Territories assessed that “the Palestinian people are at in great risk of genocide”, adding that “the time for action is now”. “Israel's allies also bear responsibility and must act now to prevent its disastrous course of action”, also declared these independent experts who have been appointed by but who do not speak in the name of the UN⁴⁹.

⁴⁸ Réf. Pour une traduction en anglais : <https://fr.scribd.com/document/681086738/Israeli-Intelligence-Ministry-Policy-Paper-on-Gaza-s-Civilian-Population-October-2023>

⁴⁹ https://www.lemonde.fr/international/live/2023/11/02/en-direct-guerre-israel-hamas-nouvelles-tensions-a-la-frontiere-entre-israel-et-le-liban_6197302_3210.html

g/ A major humanitarian crisis

62. Alerting of a « deeply worrisome » situation, the director-general of the World Health Organization declared: « Fourteen out of 36 hospitals and two specialty centers in Gaza are non-functional due to lack of fuel as well as damage and insecurity. The hospitals that remain open are overloaded with 40% more patients than they are designed to manage»⁵⁰.
63. On October 26, 2023, the UN Coordinator of Humanitarian Affairs for the Occupied Palestinian Territories explained that: « When the evacuation routes are bombed, when the people north as well as south are caught up in the hostilities, when the essentials for survival are lacking, and when there are no assurances for return, people are left with nothing but impossible choices »⁵¹.
64. UNRWA shelters host close to 630.000 displaced Gazans after their houses have been destroyed or after they fled from the north of the Strip following the evacuation order given by Israel on October 13⁵².
65. The UN estimates the number of displaced people within the Gaza Strip at 1.4 million. According to UNOCHA, overcrowding is a growing concern, as the average number of internally displaced people per shelter has reached more than 2.6 times their designated capacity, with the most overcrowded one reaching 11 times its intended capacity⁵³.
66. Volker Türk, the UN High Commissioner for Human Rights, declared that “The imposition of sieges that endanger the lives of civilians by depriving them of goods essential for their

⁵⁰ « As Gaza’s health system disintegrates, WHO calls for safe passage of fuel, supplies for health facilities », WHO, News and Press Release, October 24, 2023.

⁵¹ « Israël-Palestine : l’ONU insiste sur l’urgence de protéger les civils et de libérer les otages », Lynn Hastings, *ONU Info*, 26 octobre 2023.

⁵² « A Gaza, le système humanitaire confronté à un effondrement total, prévient Guterres », *ONU Info*, 27 octobre 2023.

⁵³ « Israël-Palestine : l’ONU insiste sur l’urgence de protéger les civils et de libérer les otages », Lynn Hastings, *ONU Info*, 26 octobre 2023.

survival is prohibited under international humanitarian law”. More than 60% of Palestinians in the Gaza Strip required humanitarian assistance⁵⁴.

67. On October 28, 2023, Craig Mokhiber, Director of the New York office of the Office of the High Commissioner for Human Rights, wrote: « This is a text-book case of genocide. The European, ethno-nationalist, settler colonial project in Palestine has entered its final phase, toward the expedited destruction of the last remnants of indigenous Palestinian life in Palestine. What’s more, the governments of the United States, the United Kingdom, and much of Europe, are wholly complicit in the horrific assault. Not only are these governments refusing to meet their treaty obligations “to ensure respect” for the Geneva Conventions, but they are in fact actively arming the assault, providing economic and intelligence support, and giving political and diplomatic cover for Israel’s atrocities.»⁵⁵.
68. On October 31, 2023, the UN Secretary-General again stressed that “International humanitarian law establishes clear rules that cannot be ignored. It is not an *a la carte* menu and cannot be applied selectively. All parties must abide by it, including the principles of distinction, proportionality, and precaution”. The level of humanitarian assistance “is completely inadequate and not commensurate with the needs of people in Gaza, compounding the humanitarian tragedy. I reiterate my call for an immediate humanitarian ceasefire and for unimpeded humanitarian access to be granted consistently, safely and to scale in order to meet the urgent needs created by the catastrophe unfolding in Gaza.”⁵⁶.
69. The UN High Commissioner for Human Rights underlined that ‘given the high number of civilian casualties [and] the scale of destruction following Israeli air strikes on Jabalia refugee camp, we have serious concerns that these are disproportionate attacks that could amount

⁵⁴ « Le siège total de Gaza est interdit par le droit international humanitaire, rappelle l'ONU », *franceinfo avec AFP*, 10 octobre 2023:

⁵⁵ Lettre de démission de Craig Mokhiber, directeur du Bureau de New York du Haut-Commissariat aux droits de l'homme, adressée le 28 Octobre 2023 au Haut-commissaire des droits de l'homme, Volker Turk.

⁵⁶ « Gaza: Le droit international humanitaire n'est pas un menu à la carte à appliquer de manière sélective, rappelle le Secrétaire général aux parties au conflit », Secrétaire général, *Communiqué*, SG/SM/22106, 31 octobre 2023.

to war crimes”⁵⁷. The analysis conducted by the *New York Times* revealed the Israeli army used 2,000-pound bombs in a strike on Jabalia refugee camp⁵⁸.

70. The WHO’s Emergencies Director, Dr Mike Ryan, denounced the difficulties in delivering humanitarian aid, when it manages to enter Palestinian territory: “Getting trucks over the border is one thing, getting them to the places in which they’re needed is another and that has not been facilitated, that has not been supported, in fact, if anything quite the opposite. At present, there is no humanitarian access and anyone out there that says we’ve got humanitarian access, it is not true!”⁵⁹.
71. On November 2, 2023, the Israeli Security Cabinet announced that Israel was cutting off all contact with Gaza⁶⁰.
72. On the same day, November 2, 2023, seven UN Special Rapporteurs, independent experts appointed by the UN, expressed their concern in a statement, sounding the alarm that a risk of genocide in Gaza exists, and called on Israel and its allies to agree to an immediate ceasefire. “Time is running out to prevent genocide and humanitarian catastrophe in Gaza” UN experts warned, expressing deep frustration with Israel’s refusal to halt plans to decimate the besieged Gaza Strip⁶¹.
73. On November 4, 2023, Israel’s Minister of Heritage, Amihai Eliyahu, wrote: “Northern Gaza is more beautiful than ever. Blowing everything up is incredible. Once completed, we will hand over the land of Gaza to the soldiers and settlers who lived in Gush Katif »⁶².

⁵⁷ « L’attaque d’Israël contre le camp de Jabalia pourrait constituer un crime de guerre, selon l’Onu », *Reuters Staff*, 1^{er} novembre 2023.

⁵⁸ Israel used 2,000-pound bombs in strike on Jabaliya, analysis finds », Christoph Koettl, Ainara Tiefenthaler, Haley Willis, Alexandre Cardia, *New York Times*, 3 novembre 2023.

⁵⁹ « L’OMS dénonce les obstacles à la livraison de l’aide humanitaire dans Gaza », *L’Orient Le Jour et AFP*, 2 novembre 2023.

⁶⁰ « Israël renvoie les travailleurs gazaouis et ‘coupe tout contact’ avec le territoire », *L’Orient Le Jour et AFP*, 3 novembre 2023.

⁶¹ « Gaza/Israël : Risque grave de génocide (rapporteurs de l’ONU) », *UNRIC*, 2 novembre 2023.

⁶² Réf. : https://twitter.com/L_ThinkTank/status/1720721292436156752?s=20 ; Le 1^{er} août 2023, il avait exhorté le gouvernement à annexer la Cisjordanie : « Je ne pense pas vraiment qu’il y ait une Ligne verte. C’est une ligne imaginaire. C’est notre patrie. C’est ici que le peuple juif est né. L’attitude de l’État d’Israël qui consiste à dire qu’il y a deux États ici est une erreur. Nous devrions imposer notre souveraineté à la Judée et à la Samarie » : *Times of Israël*, 2 août 2023.

74. On November 5, the directors of the main 18 UN agencies including UNICEF, the World Food Program and the World Health Organization issued a rare joint statement to express their outrage at the toll of civilian victims in Gaza and demand an “immediate humanitarian ceasefire” in the war between Israel and Hamas. “For almost a month, the world has watched the situation unfolding in Israel and the Occupied Palestinian Territory with shock and horror at the (growing) number of lives lost and devastated.” In Gaza, “an entire population is besieged and attacked, denied access to (elements) essential to survival, (residents) are bombed in their homes, in shelters, hospitals and places of worship. This is unacceptable; [...] We need an immediate humanitarian ceasefire. It’s been 30 days. Enough is enough. This must stop now”⁶³.
75. The attacks committed in Srebrenica, described as genocide by the International Court of Justice and the International Criminal Tribunal for the former Yugoslavia (ICTY), caused the death of 8,372 victims⁶⁴. This figure has already been exceeded in Gaza.

II - DISCUSSION

A - General information

1/ The legal framework

76. International humanitarian law is binding on both parties.
77. The West Bank, Gaza and East Jerusalem are occupied Palestinian territories. The regime of occupation therefore applies, governed by the 1907 Hague Regulations and the IVth Geneva Convention relative to the Protection of Civilian Persons in Times of War.

⁶³ <https://www.lorientlejour.com/article/1356274/les-chefs-des-grandes-agences-onusiennes-reclament-un-cessez-le-feu-a-gaza.html>

⁶⁴ CIJ, *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro)*, 26 février 2007, n° 2007/8 ; TPIY, *Le Procureur c/ Radislav Krstic*, 2 août 2001, n° IT-98-33, confirmé en appel le 19 avril 2004.

78. As such, the State of Israel must take the necessary measures to ensure the protection of the occupied population.
79. A people under occupation has the right to oppose it, a right that must be exercised within the limits authorised by international law. Armed resistance is therefore bound by the rules of international humanitarian law.

2/ The procedural framework

80. On 5 February 2021, the Court's Pre-Trial Chamber ruled that Palestine was a State, according to the Court's Statute, with sovereign jurisdiction over all the occupied Palestinian territories, i.e. the West Bank, Gaza and East Jerusalem. Since then, an investigation has been opened into crimes falling within the Court's jurisdiction.
81. Israel has not ratified the Treaty of Rome but has signed it. After the decision of 5 February 2021, Israel's leaders accused the Court of anti-semitism⁶⁵, referring to a lengthy memorandum by the Attorney General of Israel dated 20 December 2019⁶⁶, which ignores the fundamentals of international law and jurisprudence, in favour of a complete rewriting of the law in the service of settlement policy.

⁶⁵ For PM Benjamin Netanyahu, the decision is « the embodiment of antisemitism and hypocrisy ». Times of Israël, « Israël en colère contre l'enquête « antisémite » de la CPI sur les crimes de guerre ; L'AP et le Hamas applaudissent », 3 mars 2021 : <https://www.timesofisrael.com/israel-livid-over-scandalous-icc-war-crimes-probe-pa-and-hamas-cheer/>

⁶⁶ In French on the government's website: Procureur général de l'Etat d'Israël, Absence de compétence de la Cour Pénale Internationale concernant la prétendue situation en Palestine : <https://iccjurisdiction.com/wp-content/uploads/2020/07/L-ABSENCE-DE-COMPETENCE-DE-LA-COUR-PENALE-INTERNATIONALE-CONCERNANT-LA-PR%C3%89TENDUE-SITUATION-EN-PALESTINE.pdf>

B - The events of 7, 8 and 9 October 2023: the factual evidence

1/ Applicable law

82. In the face of an ongoing military occupation since 1967, whose patent aim is to conquer the occupied territories in question and deprive the Palestinian people of their right to self-determination, armed resistance is a right to defend the territory and the people. It is to be exercised in proportion to the violence imposed by the military power⁶⁷, and – in the case of organised and hierarchical fighting groups acting under a command - in compliance with international humanitarian law⁶⁸.
83. This right to self-defence is exercised within the framework of the provisions of Article 31 c) and d) of the Statute of the International Criminal Cour.

2/ Analysis

84. Criminal law is governed by the strict principles of fair trial, guaranteed by an independent and impartial judge, with the rule of evidence and the presumption of innocence at the forefront.
85. The signatories note and deplore the seriousness of the accusations, which have objective material consistency. However, an accusation does not constitute evidence.

⁶⁷ TPIY, *Le Procureur c. Haradinaj et al.*, n° IT-04-84-T, 3 avril 2008, § 60 ; TPIY, *Le Procureur c. Boskovskiet et Tarculovski*, n° IT-04-82-T, 10 juillet 2008, § 194-205. « The applicability of international humanitarian law to organized armed groups », J.K. KLEFFNER, *Revue internationale de la Croix Rouge*, vol. 93, n° 882, juin 2011, p. 443-461 « Taking prisoners : reviewing the international humanitarian law grounds for deprivation of liberty by armed opposition groups », D. CASALIN, *Revue internationale de la Croix-Rouge*, n° 883, septembre 2011, p. 743-757.

⁶⁸ CPI, *Le Procureur c. Thomas Lubanga Dyilo*, 14 mars 2012, ICC-01/04-01/06, condamnation prononcée le 10 juillet 2012 ; TPIY, *Le Procureur c. Hadzihasanovic, Alagic et Kubura*, n° IT-01-47-AR72, 16 juillet 2003, § 14-18. Tribunal spécial pour la Sierra Leone, *Le Procureur c. Sam Hinga Norman*, 31 mai 2004, § 22.

86. An accusation is not a proof, as you very well stated in your statement of October 30, 2023 2023⁶⁹ : « And when these types of acts take place, they cannot go uninvestigated and they cannot go unpunished. Because these types of crimes that we've all been watching, that we saw on the 7th of October, are serious violations, if proven, of international humanitarian law. [...] As I stated five days after the attacks that took place on the 7th of October, we have jurisdiction over crimes committed by the nationals of state parties. And therefore that jurisdiction continues over any Rome Statute crimes committed by Palestinian nationals or the nationals of any state parties on Israeli territory, if that is proven ».
87. The signatories note and deplore the extreme seriousness of certain accusations.

b/ The strict and limited framework of justification

88. The violence of occupation and the continued practice of colonization aimed at breaking up the Palestinian people, without any consideration for the right to self-determination and the sacred rule of equality of human beings, can, in fact, cause deep trauma to the victims, but these serious violations of the law cannot justify the commission of crimes.
89. This principle of responsibility, resulting in the matter of the rules of distinction, proportionality and self-defense, does not admit of exceptions, on the legal level as on the human level, this is patent.

c/ The need of an investigation

90. There is clearly grounds for an investigation.
91. First, a thorough examination of the facts must be carried out. The investigation must determine, with the precision required for criminal matters, beyond reasonable doubt, the

⁶⁹ Statement of ICC Prosecutor Karim A. A. Khan KC from Cairo on the situation in the State of Palestine and Israel, 30 October 2023 : <https://www.icc-cpi.int/fr/news/statement-icc-prosecutor-karim-khan-kc-cairo-situation-state-palestine-and-israel>

reality of the facts classified as crimes. The investigation must be in-depth inasmuch as claims suggesting absolute barbarity are made, and these claims are contested.

92. Next, the information provided mainly concern the Supernova Festival and Kibbutz Kfar Aza, while there were widespread border crossings, and many places of intervention by Palestinian fighters. It will therefore be necessary to methodically re-establish the accuracy of the facts alleged, distinguishing between what relates to general instructions to the attackers and what concerns the autonomous action of specific groups among them.
93. Finally, this factual analysis must be assessed in a concrete manner and in context, to measure the exact scope of the facts in question.
94. *In abstracto*, all of the crimes with which the Izz al-Din al-Qassam Brigades, the armed branch of Hamas, and the Al-Quds Brigades, the armed branch of Islamic Jihad, are accused, correspond to status qualifications, with indiscriminate shooting hitting civilian populations, hostage-taking and accusations of despicable crimes.
95. Regarding the shots fired of undetermined origin, their materiality is beyond doubt, and the combatant groups themselves claim to have fired. The investigation is however necessary to determine the exact content of claims regarding these, and to gather the material elements enabling the criminal responsibility of the combatants to be discussed, according to the rules recalled above. Indeed, these facts “do not come in a vacuum”. They must also be analyzed in the context of a respondent with the practices of the occupying military power, that is to say in the context of full respect for international humanitarian law, with as a basis the principles of distinction and proportionality, and the regime of self-defense.
96. Captured soldiers have the status of prisoners of war, and must be treated as such.
97. Regarding the hostage-taking of civilians, which has been established, even if the exact extent is not known, they cannot be justified.

98. Regarding the alleged abuses committed, these are contested by Hamas, and the only question is material proof, because they cannot have any justification.

d/ The need for an impartial investigation by the ICC

99. The signatories insist that this investigation should be carried out by the ICC's Office of the Prosecutor, which has jurisdiction due to the nationality of the combatants.

100. Indeed, there is a long and constant record of the complete unreliability of the Israeli judiciary when it comes to the rights of Palestinians.

101. As regards the applicable law, Israel's political authorities its the Supreme Court have proceeded to rewrite international law wholesale, inventing a body of rules all dedicated to defending colonisation and the violence of occupation, while eliminating the right to self-determination. The Supreme Court has denied any value to the ICJ opinion on the Separation Wall, and refuses to accept the application of human rights treaties in the Occupied territory. Among many other "separate" rules specific to it, it has legitimised certain forms of torture. On the occasion of the ICC's decision of 5 February 2021, Israel's Attorney General, in his above-mentioned memorandum, rejected this interpretation of the law - so incontrovertible that no State party appealed - with an implausible demonstration, specifically ignoring the case law of the International Court of Justice, which constitutes nothing more than legal denialism⁷⁰.

102. As far as past investigations conducted by the Israeli army are concerned, these may not be afforded the slightest credibility. This consistently feature the institutionalisation of lies.

Three illustrative examples suffice here as reminders:

- In 2016, in Hebron, while an injured Palestinian was waiting on the ground for an ambulance to arrive, an Israeli soldier approached a few meters away, and after obtaining

⁷⁰ Also see : Ministry of Foreign Affairs, « DISPUTED TERRITORIES : Forgotten Facts About the West Bank and Gaza Strip, February 2003

<https://mfa.gov.il/MFA/MFA-Archive/2003/Pages/DISPUTED%20TERRITORIES-%20Forgotten%20Facts%20About%20the%20We.aspx>

the officer's approval, he shot a bullet in the skull of the victim, causing his immediate death; he will be prosecuted for "involuntary" homicide, and will only serve a few months in detention;

- In the case of the murder of Abu Thorrya, in 2017, the Israeli army "proved" that the shot fired was of Palestinian origin, before an autopsy, carried out after exhumation, made it possible to extract an Israeli bullet;
- In the case of the destruction of the Gaza media towers in 2021, six successive versions were provided to explain the source of the explosions;
- In the case of the murder of Shireen Abu Akleh in 2022, the army claimed that the shot fired was of Palestinian origin, before having to admit, after ballistic expertise, that the shot was fired by an Israeli soldier.

103. The signatories therefore strongly hope that the facts in question can be investigated and judged by the International Criminal Court.

104. However, it is to be feared that the principle of subsidiarity will be invoked⁷¹, as Israel has initiated investigation procedures and clearly does not intend to delegate its competence to the Court.

105. To be sure, the ICC seeks to cooperate with all States, whether or not they have ratified the Statute. However, the signatories have the greatest reservations about cooperating with the State of Israel, whose leaders have insulted the Court, and which operates through a rewriting of the law allowing the Supreme Court to ignore the Palestinian people's right to self-determination, and to legitimise colonisation and all the violence thereto attached. Its participation in any form in the proceedings presupposes at the very least acceptance of the terms of the Court's Pre-Trial Chamber's decision of 5 February 2021.

⁷¹ Statut, Art. 17.

C - The Israeli response

106. This response must be examined from the perspective of the crime of genocide (1) and other crimes provided for in the Statute (2).

1/ Discussion on the crime of genocide

a/ Applicable law

i) The texts

107. In 1946, for the first time, the UN General Assembly recognized genocide as a crime in international law⁷². It was established as an autonomous crime in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide⁷³.

108. The ICC Statute, which reproduces the terms of the Convention of 9 December 1948 on the Prevention and Punishment of the Crime of Genocide, provides that the commission of massacres is one of the means by which genocide is committed, but other methods of destroying the group are also described.

109. Entitled «Crime of Genocide », Article 6 of the Statute provides as follows:

« For the purpose of this Statute, «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:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;

⁷² AGONU, Résolution 96 (I) du 11 décembre 1946, A/RES/96-I.

⁷³ Convention pour la prévention et la répression du crime de génocide de 1948 9 décembre 1948, Résolution 260 A (III) de l'Assemblée générale. United Nations, *Treaty Series*, vol. 78, p. 277.

c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part. [...] »

110. This approach is in line with Raphael Lemkin's fundamental doctrine, which states that genocide often involves « a coordinated plan aimed at destruction of the essential foundations of the life of national groups so that these groups 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 »⁷⁴.

111. The “intent to destroy in whole or in part, a national, ethnical, racial or religious group, as such” is the specific element of genocide that distinguishes it from other grave crimes. It is considered *dolus specialis*, i.e. a specific intent added to the specific intents that characterize each of the other incriminated acts, to constitute the crime of genocide⁷⁵.

112. The Preamble of the Genocide Convention emphasizes that “genocide has inflicted great losses on humanity” and that the goal of the Contracting Parties is to “liberate mankind from such an odious scourge”. As the Court noted in 1951 and recalled in 2007, the Convention also aims to protect “the very existence of certain human groups”⁷⁶.

113. The components of the crime provide all the require detail.

114. Article 6 a) Genocide by killing

1. The perpetrator killed one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.

⁷⁴ Genocide, A Modern Crime, Raphael Lemkin, 1945 ; *Axis Rule in Occupied Europe: Laws of Occupation - Analysis of Government - Proposals for Redress* , Raphael Lemkin, Carnegie Endowment for International Peace, 1944.

⁷⁵ CIJ, Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro), arrêt, Recueil 2007 (I), p. 121, par. 187.

⁷⁶ CIJ, Réserves à la convention pour la prévention et la répression du crime de génocide, avis consultatif, CIJ, Recueil 1951, p. 23, et Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro), arrêt, CIJ Recueil 2007 (I), p. 125, par. 194.

3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

115. Article 6 b) Genocide by causing serious bodily or mental harm

1. The perpetrator caused serious bodily or mental harm to one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

116. Article 6 c) Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction

1. The perpetrator inflicted certain conditions of life upon one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conditions of life were calculated to bring about the physical destruction of that group, in whole or in part.
5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

ii) The case law

General regime

117. Genocide presupposes that a «group» is targeted⁷⁷, in particular for reasons of nationality or ethnic origin, and it is the «group» that is protected⁷⁸. Within a general group, a sub-group may be targeted, in a specific geographical area⁷⁹.
118. Genocide, like the crime against humanity of persecution, is characterised by the intention to target this group for specific reasons and as part of a State policy, but in the case of genocide, it is the group itself, as a whole, that is targeted for destruction. In 1946, the General Assembly adopted the notion of « denial of the right of existence » of these human groups, in contradiction with the objectives of the United Nations⁸⁰. Sufficient acts must exist to demonstrate not only the intent to target specific persons, by virtue of their belonging to a specific group, but also that of destroying, in whole or in part, the group itself⁸¹.
119. In 2007, the ICJ assessed that “the intent must have been to destroy at least a substantial part of the group”⁸² and that this criterion is “determining”⁸³. According to the Court, “it is broadly acknowledged that genocide may be determined when the intent is to destroy the group within a given geographic area”⁸⁴. If a certain part of the group is representative of the group as a whole, or is essential to the survival of the group as a whole, it may be concluded that that part is substantial in the sense of Article 4 of the Statute⁸⁵.

⁷⁷ TPIR, *Le Procureur c. Musema*, affaire n° ICTR-96-13-T, jugement de première instance, 27 janvier 2000, par. 165.

⁷⁸ TPIY, *Le Procureur c. Krstić*, affaire n° IT-98-33, jugement de la Chambre d'appel, 19 avril 2004.

⁷⁹ This was the case during the Srebrenica genocide, the « group » in question being the Muslims of Bosnia et the « part » of the group being represented by the Bosnian Muslim population of Srebrenica.

⁸⁰ CIJ, *Application de la Convention pour la prévention et la répression du crime de génocide, Gambie c. Myanmar, mesures conservatoires*, ordonnance du 23 janvier 2020, C.I.J. Rapports 2020, p. 3, par. 69, citant l'AGNU Rés. 96(I) du 11 décembre 1946.

⁸¹ CIJ, *Application de la convention pour la prévention et la répression du crime de génocide (Croatie c. Serbie)*, arrêt, CIJ, Recueil 2015, p. 3, para. 139.

⁸² CIJ, Recueil 2007 (I), p. 126, par. 98.

⁸³ *Ibid.*, p. 127, par. 201.

⁸⁴ *Ibid.*, p. 126, par. 199.

⁸⁵ Art. 4 du Statut du TPIY, dont le paragraphe 2 reprend pour l'essentiel l'article II de la Convention : IT-98-33-A, arrêt du 19 avril 2004, par. 12.

120. According to the case law, the crime is constituted by the fact of « subjecting a group of people to a subsistence diet, systematic expulsion from homes and the induction of essential medical services below minimum requirement», and « construed as the methods of destruction by which the perpetrator does not immediately kill the members of the group, but which, ultimately, seek their physical destruction »⁸⁶.
121. The definition given under Article 2 of the Genocide Convention is identical to the one used in the ICC Statutes and by the ICTY and the ICTR⁸⁷.
122. The specific intent to destroy a group can be deduced from the general context⁸⁸.
123. The *dolus specialis*, the specific intent to destroy the group in whole or in part, must be established “in reference to specific circumstances, unless the existence of a general plan to this end may be convincingly demonstrated; for a pattern of behaviour to be admissible proof of such an intent, it must be such that the existence of such intent cannot but be concluded from such a pattern of behaviour”⁸⁹.
124. To deduce the existence of the *dolus specialis* of a pattern of behaviour, it is both necessary and sufficient that this conclusion is the only one that may reasonably be deduced from the acts in question⁹⁰.
125. In the Krajišnik case, the First Instance Chamber assessed that the violation “must be such that it contributes, or tends towards contributing to, the destruction of the group or of a part thereof.”⁹¹ The violation of physical or mental integrity in the sense of point b) of Article II of

⁸⁶ *Le Procureur c. Akayesu*, * Trial Judgment.

⁸⁷ Statut de la CPI, art. 6 ; Statut du TPIY, adopté par la résolution S/RES/827, 25 mai 1993, art. 4 ; Statut du TPIR, adopté par la résolution S/RES/955, 8 novembre 1994, art. 2

⁸⁸ TPIR, *Le Procureur c. Akayesu*, affaire n° ICTR-96-4-T, jugement de première instance, 2 septembre 1998, p. 523.

⁸⁹ CIJ Recueil 2007 (I), p. 196-197, par. 373.

⁹⁰ CIJ, Application de la convention pour la prévention et la répression du crime de génocide (Croatie c. Serbie), arrêt, CIJ, Recueil 2015, p. 3, para. 148.

⁹¹ TPIY, *Le Procureur c. Krajišnik*, IT-00-39-T, jugement du 27 septembre 2006, par. 862; voir également TPIY, *Le Procureur c. Tolimir*, IT-05-88/2-T, chambre de première instance, jugement du 12 décembre 2012, par. 738.

the Convention must be such that it contributes to the physical destruction of the group, in whole or in part⁹².

126. Last, genocidal action is incompatible with self-defence⁹³. The right of self-defence, subject to the principles of international law⁹⁴, including the rules of distinction and proportionality, « may not include reprisals or punitive measures »⁹⁵.

The material criterion

127. The intentional subjecting of a group to conditions of existence designed to lead to its physical destruction in whole or in part in the sense of Article 2 of the Convention concerns the means of physical destruction other than murder whereby the author ultimately seeks the death of the members of the group⁹⁶. These modes of destruction include denial of access to food, to medical care, to housing or clothing, lack of hygiene, systematic expulsion from housing or exhaustion through excessive labor or physical efforts⁹⁷.
128. The living conditions referred to in point 4 of Article 6 c) concern the deliberate deprivation of resources essential to survival, such as food or medical services, or the systematic expulsion from homes⁹⁸.
129. In the case of Srebrenica, the ICTY held that such methods of destruction « do not immediately kill the members of the group, but, ultimately, seek their physical destruction »,

⁹² CIJ, Application de la convention pour la prévention et la répression du crime de génocide (Croatie c. Serbie), arrêt, CIJ, Recueil 2015, p. 3, para. 157.

⁹³ CPI, Statut, Art 31. Hannah TONKIN, « Defense Force Under the Rome Statute », *Melbourne Journal of International Law*, 2005 ; William A. Schabas, *Genocide in International Law: The Crime of Crimes*, Chapter 7 « Defences to Genocide », Cambridge University Press, July 2009.

⁹⁴ CIJ, *Licéité de la menace ou de l'emploi d'armes nucléaires*, avis consultatif, ICJ Reports 1996, p. 226, para. 42

⁹⁵ Voir William A. SCHABAS, *Genocide in International Law: The Crime of Crimes*, Cambridge University Press 2009, p. 395 ; TPIY, *Le Procureur c. Martić*, Affaire No. IT-95-11-R61, Examen de l'acte d'accusation conformément à l'article 61 du Règlement de procédure et de preuve, 13 mars 1996, para. 17.

⁹⁶ TPIY, *Le Procureur c. Stakić*, IT-97-24-T, jugement du 31 juillet 2003, par. 517 et 518

⁹⁷ TPIY, *Le Procureur c. Brđanin*, IT-99-36-T, jugement du 1er septembre 2004, par. 691

⁹⁸ CIJ Recueil 2007 (I), p. 123, par. 190

adding that the « proof that a result was attained » is not required⁹⁹. Thus, according to established case law, account is taken of compromising access to medical services¹⁰⁰, systematically expelling members of the group from their homes¹⁰¹, and creating circumstances that « would lead to a slow death », such as the lack of suitable housing, water, shelter, clothing, hygiene, sanitation or adequate food, including by subjecting people to a subsistence regime¹⁰². These « living conditions » are imposed to promote the physical improvement of a group with a view to its destruction, in whole or in part : « 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 »¹⁰³.

130. There is no minimum number of persons killed necessary to establish that genocide has been committed¹⁰⁴. Examples of serious bodily or mental harm as an act of genocide include inhuman or degrading treatment, harm to health and the harm need not be permanent and irremediable¹⁰⁵. Threats of death and knowledge of imminent death can constitute such harm¹⁰⁶, with war crimes tribunals specifically recognising the serious mental harm caused by the threat of indiscriminate killing: « the sense of utter helplessness and extreme fear for their family and friends' safety as well as for their own safety, is a traumatic experience from

⁹⁹ TPIY, *Le Procureur c. Popović et al.*, N° IT-05-88-T, jugement, 10 juin 2010, para. 814.

¹⁰⁰ TPIY, *Le Procureur c. Popović et al.*, N° IT-05-88-T, jugement, 10 juin 2010, para. 815 ; TPIR, *Musema*, jugement, para. 157.

¹⁰¹ TPIY, *Le Procureur c. Brđanin*, N° IT-99-36, jugement, 1^{er} septembre 2004, para. 691 ; *Le Procureur c. Stakić*, N° IT-97-24-T, jugement, 31 juillet 2003, para. 517 ; TPIR, *Le Procureur c. Akayesu*, jugement, para. 506.

¹⁰² TPIR, *Le Procureur c. Akayesu*, jugement, par. 523 ; TPIY, *Le Procureur c. Stakić*, jugement, par. 517 ; *Le Procureur contre Karadžić*, N° IT-95-5/18-T, jugement, par. 547. The ICJ also includes the destruction of villages and houses, the denial of access to food, shelter and other essentials of life, as well as the massacres as acts that violated the “right to existence of a protected group” of the Convention on Genocide in the context of accusations of genocide committed against the Rohingya, *Ordonnance sur la Gambie*, par. 71.

¹⁰³ TPIY, *Le Procureur c. Karadžić*, jugement, para. 548.

¹⁰⁴ L'ampleur de la destruction effective ou tentée d'un groupe, par tout acte énuméré à l'article 2 du Statut, est la preuve solide de l'intention de détruire un groupe, en tout ou en partie. TPIR, *Le Procureur c. Muhimana*, n° ICTR-95-1BT, jugement, 28 avril 2005, par. 498.

¹⁰⁵ TPIY, *Le Procureur c. Karadžić*, jugement, para. 545 ; *Akayesu Trial*, jugement, para. 502.

¹⁰⁶ TPIY, *Le Procureur c. Tolimir*, N° IT-05-88/2-T, Jugement, 12 décembre 2012, paras. 754- 755. Assessing the threat to kill in the context of Srebrenica, the First Instance Chamber concluded that: « Les souffrances des hommes séparés à Potocari ou détenus après leur reddition ou leur capture dans la colonne d'hommes quittant Srebrenica, sachant qu'ils risquaient d'être tués, constituaient de graves les dommages corporels et mentaux comme *actus reus* du génocide. Elle était de nature à contribuer ou tendre à contribuer à la destruction du groupe dans la mesure où leurs souffrances empêchaient ces membres de mener une vie normale et constructive ».

which one will not quickly - if ever - recover »¹⁰⁷. Expulsion has also long been recognised as causing serious physical or mental harm¹⁰⁸.

The intent criterion

131. The legal regime requires that these acts be « committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group »¹⁰⁹. The aim of destroying the group, in whole or in part, must be clearly identified, but it is the group as a whole, and not just individual members of the group, that must be targeted for destruction¹¹⁰. « In part » means a substantial part of a particular group within a limited geographical area¹¹¹.
132. This specific intent is analysed on the basis of all the facts and circumstances of the case¹¹².
133. Evidence of specific intent may include the general context, the scale of the atrocities, the systematic targeting of victims because of their membership of a particular group, other culpable acts systematically directed against the same group, or the repetition of destructive and discriminatory acts¹¹³.

¹⁰⁷ TPIY, *Le Procureur c. Blagojević et Jokić*, No. IT-02-60-T, jugement, 17 janvier 2005, para 647.

¹⁰⁸ TPIY, *Le Procureur c. Blagojević*, jugement, para. 646 et 650 : « Le déplacement forcé de femmes, d'enfants et de personnes âgées était en soi une expérience traumatisante, en particulier lorsqu'il a été suivi d'une fuite d'une zone soumise à une offensive militaire de cinq jours alors qu'on lui tirait dessus, qu'on était séparé de sa famille et qu'on voyait de la fumée s'élever de leurs maisons, sachant que le déplacement n'était pas temporaire ».

¹⁰⁹ Convention sur le génocide, art. 2.

¹¹⁰ CIJ, Arrêt, *Application de la Convention pour la prévention et la répression du crime de génocide*, CIJ Rapports 2015, par. 139.

¹¹¹ CIJ, *Bosnie-Herzégovine c. Serbie-et-Monténégro*, 26 février 2007, CIJ Rapports 2007, par. 126 ; CIJ, *Application de la Convention pour la prévention et la répression du crime de génocide (Croatie c. Serbie)*, exceptions préliminaires, arrêt, C.I.J. Rapports 2008, para. 199 : <https://www.icj-cij.org/case/118/judgments>

¹¹² TPIY, *Le Procureur c. Jelisić*, N° IT-95-10-A, arrêt d'appel, 5 juillet 2001, par. 47. En fait, les manifestations explicites d'intention criminelle sont « souvent rares dans le contexte de procès pénaux ». Déduire l'intention à partir de faits et de circonstances pertinents « empêche les auteurs d'échapper à une condamnation simplement parce que de telles manifestations sont absentes » : TPIR, *Le Procureur c. Rutaganda*, n° ICTR-96-3-T, jugement, 26 mai 2003, para 525.

¹¹³ TPIY, *Le Procureur c. Jelisić*, arrêt en appel, para. 47 ; TPIY, *Le Procureur c. Karadžić*, jugement, para 550.

134. Forced population transfer is an important point in assessing genocidal intent¹¹⁴. This practice is characteristic of specific intent¹¹⁵. Public discourse and statements by those responsible must also be taken into account¹¹⁶.
135. In considering a request for provisional measures in relation to the ongoing genocide of the Rohingya in Myanmar (Burma), the ICJ analysed a variety of UN reports, and underlined « 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 interim measures¹¹⁷.

b) Analysis

i) Material elements

136. There is no need to undertake a detailed listing of the facts here, as this will be the subject of the investigation.
137. On site, the authorities, especially the health and civil security authorities, are gathering, case by case and day by day, all the information needed to establish the facts. In-depth work is undertaken by the UN agencies, especially UNRWA¹¹⁸. This work is also carried out in a complementary manner by NGOs¹¹⁹. Lastly, the press is very active and provides high-quality information.

¹¹⁴ TPIY, *Le Procureur c. Popović et al.* Jugement, para. 824.

¹¹⁵ TPIY, *Le Procureur c. Jelisić*, arrêt en appel, para. 48

¹¹⁶ TPIR, *Le Procureur c. Nahimana et al.*, No. ICTR-99-52-A, arrêt en appel, 28 novembre 2007.

¹¹⁷ CIJ, *Gambie c. Myanmar*, Ordonnance, paras. 55-56.

¹¹⁸ Le site de l'ONU tient une synthèse chronologique à jour : <https://unric.org/fr/ONU-et-la-crise-au-proche-orient-gaza/>

¹¹⁹ « Israël/TPO : Appel urgent à un cessez-le-feu immédiat de toutes les parties pour mettre fin aux souffrances civiles sans précédent », Amnesty International, 26 octobre 2023 <https://www.amnesty.org/en/latest/news/2023/10/israel-opt-urgent-call-for-an-immediate-ceasefire-by-all-parties-to-end-unprecedented-civilian-suffering/> 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://pchr.org/en/category/press-releases/>. Voir aussi : AlHaq, 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),

138. But above all, in this factual work, the remarkable phenomenon is that the most striking facts are announced and claimed by the Israeli political and military leadership. This applies both to the facts - cutting off energy supplies, halting food deliveries, attacking hospitals, restricting medicines, destroying homes, forcing people to move under mortal threat, bombing civilian areas, etc. - and to the declarations of intent.
139. As such, even in the urgency of this first stage, there is no real doubt about the facts, which are put forward and claimed by the Israeli side.
140. These facts correspond to those established by the case-law, and therefore provide a case for opening an investigation.

ii) Elements of intent

141. The evidence gathered establishes the reality of a succession of statements, by political and military leaders, which unambiguously—on the contrary, in a bid to outdo each other—affirm the desire to destroy Palestinian society in Gaza, by creating living conditions that no human group can withstand. The language is not that of regret for imposing constraints on civilian populations as a result of a military operation, but of a military operation that is going to hit every Palestinian, turning their whole life upside down, to lead them to options that they would never have accepted, and especially to give up their sovereign rights and abandon their land.
142. From day one, these declarations have been aimed at the entire Palestinian people in Gaza, without distinguishing between civilians and combatants, without any reference to gender or age, each Palestinian being an inseparable part of a whole, which must leave the area.

https://www.alhaq.org/cached_uploads/download/2023/10/12/final-urgent-appeal-to-special-procedures-on-gaza-11-oct-1697135190.pdf ; « Israel's Unfolding Crime of Genocide of the Palestinian People & U.S. Failure to Prevent and Complicity in Genocide », The Center for Constitutional Rights, October 18, 2023.

143. The language used is clearly dehumanising, describing the Palestinians of Gaza as « human animals », who must be treated as such. Hence, only the reality of the damage caused will matter, with the army commanded to use «fire of a magnitude that the enemy has not known».
144. These declarations are made to tell the Palestinians that they are from another world, and that no form of dialogue is conceivable, the Palestinian people being cast to the margins of the human community, with no future other than that of relegation and submission..
145. Moreover, this military operation of massive destruction is not accompanied by any realistic political project. 2.3 million Palestinians live in Gaza, out of a total of 13 million. Although the Palestinian people have the right to self-determination, there is not the slightest proposal for a political solution that respects the Green Line. The Finance Minister, Bezael Smotrich, has himself declared that the Palestinian people do not exist¹²⁰.
146. With 10,000 people now dead and 30,000 seriously injured, the vast majority of them civilians, in a context of extreme pressure combining bombings, a total blockade, deprivation of basic needs, forced displacement of the population - while no area is safe, all of this accompanied by with dehumanising language, the aim is clearly to tell the Palestinians that they are not human beings like the others, that their lives are worth less, and even that they do not count as long as they remain on this Palestinian land, which has been coveted since 1917. This was made explicit when it was decided, on two occasions, to bomb the Jabalia refugee camp, in other words, that even refugees have no place there.
147. Finally, these statements and current events are deeply rooted in a simple reality: Israeli leaders have never taken into account the Palestinian people's right to self-determination on their own land. The *raison d'être* of the State, which has characterised itself as a Jewish State, is the elimination of the Palestinian people, who must be ousted from their land, because

¹²⁰ Louis IMBERT, « Bezael Smotrich, le colon radical qui impose sa marque au gouvernement israélien », *Louis Imbert, Le Monde*, 7 mars 2023.

¹²⁰ Jonathan LIS, « Far-Right Minister Smotrich: Palestinians Don't Exist, White House Must Hear the Truth », Jonathan Lis, *Haaretz*, March 20, 2023.

according to Israel's version of reality, this land belongs exclusively to Israel. This line has been constant since the Nakba. This denial of the existence of the people explains the ease with which the leaders commit the most serious violations of the law without the slightest moral or political restraint: ethnic cleansing to ensure the Jewish character of the State, open refusal of the right of return for refugees, annexation of East Jerusalem despite the strong opposition of the Security Council, generalisation of settlements on Palestinian land, management of a colonising military occupation since 1967, refusal to apply international law, illegal blockade of Gaza, recurrent disproportionate attacks on the territory of Gaza, etc.

148. According to Article 1 paragraph 2 of the UN Charter, « The Purposes of the United Nations are: [...] To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace ».

149. It would appear all but impossible to express more clearly that the refusal to consider the right of peoples to self-determination is the mechanical factor of war and, over time, breeds genocidal practices.

150. In light of the foregoing, both factually and intentionally, the elements are present for the opening of a specific criminal investigation into the crime of genocide, under the definitions of Article 6, a), b) and c).

2/ Other crimes provided for in the Statute

151. The facts reported also warrant becoming the subject of an investigation, within the framework of the following articles :

152. **Article 7 (1) (d) Crime against humanity of deportation or forcible transfer of population**

1. The perpetrator deported or forcibly transferred¹²¹, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.
2. Such person or persons were lawfully present in the area from which they were so deported or transferred.
3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

153. Article 7 (1) (h) Crime against humanity of persecution

1. The perpetrator severely deprived, contrary to international law,²¹ one or more persons of fundamental rights.
2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.
3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.
4. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court¹²².
5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

¹²¹ The term “forcibly” is not restricted to physical force and may comprise an act committed by use of the threat of force or coercion against the third parties concerned, such as those caused by the threat of violence, coercion, detention, psychological pressure, abuse of power, or benefiting from a coercive environment.

¹²² It is understood that no further psychological element is required here, beyond that which is inherent to element 6.

6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population

154. Article 8 (2) (a) (i) War crime of wilful killing

1. The perpetrator killed one or more persons.¹²³
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status¹²⁴.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict¹²⁵.

155. Article 8 (2) (b) (i) War crime of attacking civilians

1. The perpetrator directed an attack.
2. The object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities.
3. The perpetrator intended the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

¹²³ The term “killed” is interchangeable with “caused the death of”.

¹²⁴ As regards nationality, it is understood that the author needed only know that the victim belonged to the enemy party within the conflict.

¹²⁵ The expression « international armed conflict” includes military occupation.

156. Article 8 (2) (e) (iv) War crime of attacking protected objects

1. The perpetrator directed an attack.
2. The object of the attack was one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.
3. The perpetrator intended such building or buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives, to be the object of the attack.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

C - On the investigation

1/ Applicable law

157. Pursuant to Article 68(3) of the Statute, as well as Articles 92(3) and 8(1) of the Rules of Procedure and Evidence, the Court must conduct activities to raise awareness of its activities among persons likely to be affected by a case.

158. In its decision of 13 July 2018, paragraph 7, the Chamber sets out the matters of mutual understanding:

« In the view of the Chamber, for the Court to be able to properly fulfil its mandate, it is imperative that its role and activities are properly understood and accessible, particularly to the victims of situations and cases before the Court. Outreach and public information activities in situation countries are quintessential to foster

support, public understanding and confidence in the work of the Court. At the same time, they enable the Court to better understand the concerns and expectations of victims, so that it can respond more effectively and clarify, where necessary, any misconceptions».

159. In paragraph 8, the Chamber writes:

« The Chamber recalls that victims play an important role in the Court's proceedings. Pursuant to article 68(3) of the Statute, the Court *shall permit* the views and concerns of victims to be presented and considered at the stages of the proceedings determined to be appropriate by the Court. Victims have therefore the *right* to be heard and considered, at stages of the proceedings determined to be appropriate, and the Court has the *duty* to effectively enable them to exercise this right».

160. After recalling the provisions of the Statute and the references to international law, the Chamber adds in paragraph 10:

« The Chamber underlines that in accordance with the Court's legal framework, the rights of victims before the ICC are not limited to their general participation within the context of judicial proceedings pursuant to article 68(3) of the Statute. 16 In this regard, it is worth recalling that victims also have the right to provide information to, receive information from and communicate with the Court, regardless and independently from judicial proceedings, including during the preliminary examination stage » .

2/ Analysis

161. On the basis of these elements, the witnesses who are signatories to this document wish to emphasise the imperative need to involve Palestinian victims from the very first phase of the investigation.

162. Consideration for the victims is all the more necessary in the context of an investigation into the crime of genocide, which is based on the denial of the person. Thus, giving victims their full place as parties to the proceedings is the first means of restoring the fundamental right.
163. In practical terms, victims' testimonies will be both generally repetitive but in reality all unique, depending on the decisive elements of proof, acknowledging that the material and intentional elements of the genocidal attack are well established and even claimed..
164. Experience has demonstrated that, in addition to practising war medicine, the hospital services are perfectly well versed in compiling high-quality medical and legal files.
165. The occupying power, which, as has been explained, has built itself upon violation of the law, will never allow the ICC teams to visit the site. It goes without reminding that is is out of the question that the victims' rights of access to justice should be blocked or restricted. Therefore, the primary work to be carried out is the hearing of the victims, which can be conducted on site and under the direct supervision of the ICC's teams, via available communications procedures.
166. The first hearings are expected as soon as possible.
167. In accordance with the Statute and practice, and given the urgency of the situation, the plaintiffs ask the Prosecutor to submit the matter to the Pre-Trial Chamber, for the purpose of issuing arrest warrants against Mr. Benyamin Netanyahu and any other person, depending on the progress of the investigation.
168. And it will be justice.

by, 6 to november 2023

A large, stylized handwritten signature in black ink, consisting of a vertical line that curves to the right at the bottom.

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