8 January 2024

Statement by the International Association of Jewish Lawyers and Jurists (IJL) in response to South Africa's ICJ Application Accusing Israel of Genocide

If Everything is Genocide, Nothing is Genocide

On 29 December 2023, South Africa applied to the International Court of Justice requesting the Court to institute proceedings, including an urgent provisional measures procedure, alleging that Israel violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention") in its conduct towards Palestinians in Gaza.

This baseless accusation of "Genocide" levelled at Israel by South Africa is a blatant attempt to subvert international law.

The driving force behind the Genocide Convention was a Polish Jew, Raphael Lemkin, whose work to codify the crime of genocide was motivated by his personal experience of an actual genocide - the efforts of the Nazis and their collaborators to exterminate the Jewish people. The term he then coined – "Genocide", was intended to portray the most heinous of atrocities against humanity, the intentional attempt to annihilate a people.

The attempt to harness the Genocide Convention to target the very people whose murder led to the Convention reflects a growing phenomenon of undermining the right of the Jewish people to a state of their own through accusations comparing Israel with the Nazi regime. In practice, it is intended to deny Israel the right to defend itself against those seeking its destruction.

One would expect that the complete and utter falsity of the genocide accusation and the abuse of international law which it entails, would be obvious to all. It is therefore with a sense of deep disappointment that we feel obliged, as the International Association of Jewish Lawyers and Jurists, founded some 55 years ago by, among others, French Nobel Prize laureate *René Cassin*, an initiator and co-drafter of the Universal Declaration of Human Rights, to publicly respond to a libel so patently untrue that a response should be unnecessary.

We will do so by stating the obvious: There is no genocide or attempted genocide in Gaza.

Israel is engaged in a military campaign against Hamas, an internationally designated terrorist organization, which launched a widespread attack inside Israel on October 7th, 2023, taking control of over twenty towns and villages while murdering and wounding thousands. Hamas has, for decades, pursued a relentless campaign of terrorism against Israeli civilians aimed at achieving its declared aim of the destruction of the State of Israel.

However, what took place on October 7th, was of unprecedented magnitude and cruelty, a rampage of murder, torture, rape, mutilation and other atrocities, intentionally targeting civilians - babies, children, older persons, women and men - just for being Jewish. In parallel, over 3,800 rockets were launched that day alone at Israeli civilian population centers. 253 people were taken hostage ranging in age from 9 months to over 80 years. To date, 132 hostages kidnapped from Israel over 90 days ago, in addition to 4 held prior to October 7, are still being held in Gaza, whereabouts and fate unknown. There are well-grounded fears for their health and wellbeing with no access being granted to the International Red Cross. The indiscriminate rocket attacks against Israel continue - over 13,400 since October 7th.

The Hamas attacks are linked to a wider campaign orchestrated by an Iran-led axis which includes terror organizations such as Hezbollah and the Houthis, attacking Israel on all fronts, with the openly-stated common purpose of annihilating the Jewish State.

Another component of this campaign is the instigation of widespread protests around the world calling for Israel's demise, coupled with a wave of rampant antisemitism, including violence and threats of violence against Jews. These have clearly exposed the link between the denial of Israel's right to exist and the denial of the Jewish people's right to exist. This is the rhetoric of Genocide.

The deeds of Hamas, accompanied by its clear statements of intent to bring about the destruction of Israel while calling for the murder of Jews, fulfill the definition of Genocide.

It is sad and deeply troubling that South Africa has decided to ignore the perpetrators of genocide and chooses instead to blame the victim.

The vicious attacks by Hamas and its allies have compelled Israel to defend itself by removing the threat of Hamas in the Gaza Strip, where it has exploited its control over the area, transforming it into a giant fortified military compound, configurated with one primary goal - to attack Israel and bring about its destruction.

The tragic high Palestinian civilian casualty toll and level of destruction are an unfortunate, but inevitable, consequence of Hamas' *modus operandi* of enmeshing its military-terror apparatus within the civilian environment. This includes their launching and conduct of military-terror activities from within, around and under residential buildings, schools, mosques and even hospitals and UN facilities. Hamas and its leaders have clearly proven that the destruction of Israel is their only motivation and that they view their and the Palestinian civilians' lives as a price worth paying to achieve this goal.

Contrary to the picture portrayed by South Africa in its application, the IJL notes that the Israeli Government and the official spokespersons of the Israel Defense Forces (IDF) have declared, time and time again, that the military effort is directed against Hamas and not against the people of Gaza.

This is clearly reflected in the actual conduct of the IDF on the ground by *inter alia*: giving advance warnings to civilians of impending airstrikes and other military operations; urging the evacuation of civilians from pending combat zones; designation of a humanitarian zone within Gaza; and working with the international community to facilitate the entry of large quantities of humanitarian aid to the Gaza Strip.

It requires an extraordinary contortion of fact and logic to read into these actions proof of "genocidal intent" on Israel's part.

South Africa further purports to prove "genocidal intent" by presenting heated quotes from various Israeli politicians and other figures (made soon after the massacre of October 7th), none of which constitute official Israeli government statements or policy nor reflect the policies and practices of the IDF. This displays at best, a willful ignorance, or at worst, an intentionally selective misrepresentation of Israeli policy.

Notwithstanding the bitter and protracted dispute between Israel and the Palestinians, Israel has never displayed any hint of intention to harm the Palestinian people *per se*. To impute such an intention to Israel today can only be understood as an attempt to focus the international discourse on Israel and away from Hamas' egregious and heinous crimes.

More broadly, by labelling Israel's defensive war against Hamas an act of genocide, South Africa is effectively stripping the term of its meaning. If this is genocide, then many instances of the use of force in response to an armed attack could easily meet that definition.

In light of the above, the IJL calls on governments, international institutions and the international legal community, to denounce and reject the cynical and dangerous misuse of the Genocide Convention.

The International Association of Jewish Lawyers and Jurists (IJL), founded in 1969, comprises lawyers, judges, judicial officers, and academic jurists from around the world.

The IJL strives to advance human rights for all, including by combatting antisemitism, racism, xenophobia, Holocaust denial, and the delegitimization of the State of Israel.