

Reflecting on genocidal intent in ICJ Case



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OPINION

As Israel has stated again and again since October 7, its military objective in Gaza is to destroy Hamas, the political party and armed group that has governed the Gaza Strip since 2007. Israel has deployed a version of this argument to challenge South Africa's case before the International Court of Justice (ICJ), where it stands accused of violating the UN Convention on the Prevention and Punishment of the Crime of Genocide for its actions against the Palestinians of Gaza. In arguing that its aim is to destroy Hamas rather than the Palestinian people themselves, Israel is attempting to skirt liability under the Convention by

exploiting the fact that it does not protect political and military organizations from annihilation.

Instead of undercutting South Africa's genocide case, Israel's desired elimination of Hamas provides more proof that its actions satisfy the Convention's definition of genocide. As Israeli Prime Minister Benjamin Netanyahu wrote in a December Wall Street Journal op-ed, destroying Hamas means eliminating both its "military capabilities" and "political rule over Gaza". As reflected in that statement, other statements made by the Israeli cabinet, as well as Israel's actions on the battlefield, the Israeli cabinet's desired destruction of Hamas includes the annihilation of its civilian political and administrative leadership. Expert legal commentary suggests that this goal — alongside the destruction of Hamas's military personnel and law enforcement — can help demonstrate that Israel's actions satisfy the intent requirement for genocide.

While some have rightly argued that annihilating Hamas may be an impermissible defensive objective violating international law on the use of force, few have explored how targeting Hamas — both in terms of its civilian and military arms — may also help satisfy the Genocide Convention's onerous intent requirement. This post begins by describing expert commentary on how the destruction of a group's political and administrative leadership, as well as its military and law enforcement personnel, can help establish genocidal intent. It then turns to the case of Gaza, demonstrating how the targeting of Hamas's political and administrative leaders, as well as its police force, can establish intent to physically eradicate the Palestinian people of Gaza, as such. This post ends by examining how Israel's targeting of Hamas's military arm provides additional evidence of genocidal intent.

Committing genocide by destroying protected group's civilian leadership, law enforcement personnel, and military

Under the Genocide Convention, a state is prohibited from engaging in certain enumerated acts of genocide, against any national, ethnic, racial, or religious group. In order to violate the Convention, a state must commit those acts with the "intent to destroy" the group "in whole or in part... as such". The Genocide Convention requires both intent to commit the underlying acts of genocide, which have their own intent requirement, and intent to destroy the protected group itself. As many have noted, demonstrating intent to destroy

a protected group is usually the hardest part of proving a genocide claim, including at the ICJ. According to some legal experts, one way to prove this second element of genocidal intent is through evidence that the protected group's civilian leadership, as well as its military and law enforcement, have been targeted for elimination. This view was articulated in 1994 by a commission of legal experts convened at the instruction of the UN Security Council to investigate alleged breaches of international humanitarian law

committed during the civil war in the former Yugoslavia. In issuing its final report, the Yugoslav Commission of Experts observed: "If essentially the total leadership of a group is targeted, it could... amount to genocide. Such leadership includes political and administrative leaders, religious leaders, academics and intellectuals, business leaders, and others — the totality per se may be a strong indication of genocide regardless of the actual numbers killed. A corroborating argument will be the fact of the rest of the group. The

character of the attack on the leadership must be viewed in the context of the fate or what happened to the rest of the group. If a group has its leadership exterminated, and at the same time or in the wake of that, has a relatively large number of the members of the group killed or subjected to other heinous acts, for example, deported on a large scale or forced to flee, the cluster of violations ought to be considered in its entirety in order to interpret the provisions of the Convention in a spirit consistent with its purpose. Similarly, the extermination of a

group's law enforcement and military personnel may be a significant section of a group in that it renders the group at large defenceless against other abuses of a similar or other nature, particularly if the leadership is being eliminated as well. Thus, the intent to destroy the fabric of a society through the extermination of its leadership, when accompanied by other acts of elimination of a segment of society, can also be deemed genocide." In effect, these experts understood a desire to eliminate the entire civilian leadership of a group —

alongside the destruction of its military and law enforcement — as evidence of intent to destroy the "fabric" of the group. The report goes on to apply this approach to reach specific substantive conclusions, including the determination that genocide may have been committed by Serbian forces in a town in north-western Bosnia partly because the "backbone" of non-Serb (Muslim and Croat) groups living in that town were removed or eradicated, including their political leaders, bureaucrats, military personnel, and law enforcement.

Physically destroying Palestinian people in Gaza by exterminating Hamas's civilian leadership, law enforcement personnel

In the ten months since October 7, Israel has killed over 39,000 Palestinians, an estimate widely considered to be conservative. As South Africa noted in its briefing to the ICJ, Israel's killing spree has targeted the intellectual, cultural, and religious leadership of Gaza. In the course of its onslaught on the Strip, Israel has also committed

various "heinous acts" against the Palestinian population, ranging from forced displacement to mass killing, to starvation. Against this backdrop, the Yugoslav Commission's expert commentary suggests that Israel's avowed desire to destroy Hamas is probative of intent to physically destroy Palestinians as a group since it is occurring

alongside a steep death toll, other heinous acts, and as part of Israel's targeting of the "total leadership" of the Palestinian people in Gaza. Israel's desire to destroy Hamas includes both the extermination of its political and administrative leadership and the annihilation of its civilian police force and military wing. While Hamas has a military arm that is largely separate from its civilian governmental apparatus and extensive social welfare networks, Israel treats Hamas's military, political, and administrative units as extensions of one another. In line with this approach, Israel effectively identifies all government ministries in Gaza as one with Hamas's military movement. For instance, in a recent court filing, the Israeli cabinet stated that its war goals in Gaza include not just "eradicating" Hamas's military capacity but also its non-military, civilian institutions, which include the "Ministry of Health, Ministry of Economy, the Ministry of Welfare, the Ministry of the Interior, the Ministry of Agriculture, and the Government Information Office" — an aim that is facially illegal under international law.

Relying on these connotations, Israel has targeted Hamas's political and administrative leadership across Gaza. Over the last ten months, numerous Hamas political leaders, including the head of the Ministry of Economy, the head of the Ministry of National Relations of Hamas's political bureau, and the deputy minister of the Ministry of Labor, have been killed by the IDF. In conducting these assassinations, Israel has made clear that these killings were intentional and that "neutralizing" Hamas's political leadership is central to its military objectives in Gaza. Israel has also targeted members of Hamas's administrative leadership and personnel, most recently killing the head of Gaza's ambulance and emergency department, as well as five members of the Strip's municipal staff involved in operating water wells. Since Hamas's civilian administration includes substantial extra-governmental social services, Israel has assassinated civil society members working for these so-called "Hamas-linked" charitable groups as part of its destruction of Hamas's civilian presence in Gaza. Though some might claim these

individuals are simply "collateral damage," rather than deliberate IDF targets, that argument is unpersuasive given the cabinet statements noted above, as well as the systematic nature of Israel's targeting of political and administrative leaders and government staff in Gaza. Nor has Israel publicly presented meaningful evidence that the political and administrative personnel it has killed were targetable under the laws of war. Where effort has been made to justify or legitimize these killings, Israeli officials have typically made broad statements about the person's culpability, relying largely on their position within Hamas's political arm or civilian government to give credence to its claims. In short, Gaza's political and administrative leaders and personnel have largely been targeted not because they are directly participating in hostilities — which would make them targetable under the laws of war — but rather because of their civilian political and administrative work. Alongside its assassination of Hamas's political and administrative leadership and personnel, Israel has systematically targeted

civilian police officers — including killing the head of Gaza's police force. The IDF has often targeted these individuals while they were conducting their civilian duties and, again, without providing any evidence that they were otherwise targetable under the laws of war. As the Yugoslav Commission notes, the extermination of a protected group's leadership is particularly probative of genocidal intent where it occurs alongside the extermination of law enforcement personnel. In the Commission's view, exterminating law enforcement helps render the protected group "defenceless against... abuses." Israel's systematic extermination of the police force in Gaza, which has been critical to the delivery of much-needed humanitarian aid since October 7, satisfies this standard. Alongside Israel's erasure of the public healthcare system as well as attacks on aid workers with UNRWA — an organization Israel has falsely accused of having links with Hamas — Israel's destruction of Gaza's police force has left the Palestinian population defenseless and vulnerable to disease, starvation, and death.



Top Turkish, Hamas, and other regional leaders attend the burial of Hamas political chief Ismail Haniyeh, who was assassinated by Israel in Iran, near Doha, Qatar, on August 2, 2024.
● ANADOLU AGENCY