

The silent genocide in Gaza: The fragility of international law and institutional inaction

Le génocide silencieux à Gaza: La vulnérabilité du droit international et l'inertie institutionnelle

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The 1948 convention on the prevention and punishment of the crime of genocide, in its Article II (1), defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: i) Killing members of the group; ii) Causing serious bodily or mental harm to members of the group; iii) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; iv) Imposing measures intended to prevent births within the group; v) Forcibly transferring children of the group to another group. This definition was directly incorporated into Article 6 of the Rome statute of the international criminal court (ICC), as well as in the statutes of other international and hybrid tribunals (1). However, it is important to note that the systematic nature of the executions is not explicitly stated in these definitions, which focus instead on the specific intent to commit genocide —a subjective element that is often difficult to establish. In contrast, international human rights organizations, such as amnesty international (AI), do recognize and emphasize this systematic dimension, although this advocacy-based non-governmental organization does not possess any legal or executive authority (2).

In international law, genocide is presented as 'a crime of exceptional gravity' (Article V) (3), 'which must be punished' (Article I) (4), and whose perpetrators 'must be prosecuted' (Article IV) (5, 6). Genocide is so serious that its denial (or negationism) constitutes a legal entity recognized by many national legislations, making it a

criminal act (7). This offense encompasses the explicit refusal to acknowledge that a genocide has occurred, often expressed through public statements, writings, or actions (7). The genocide denial can take the form of outright denial of the existence of genocide, minimization of the severity of the crimes committed, or attempts to justify genocidal acts by presenting them as legitimate responses to perceived threats or historical conflicts (7). Laws in Europe are particularly punitive regarding the denial of the Holocaust (7). Although these events date back to World War II, the sanctions in place are severe (7) (eg; up to five years of imprisonment in Germany (7)). These so-called "memory laws", which aim to preserve 'morality' (7), continue to provoke widespread controversy due to their restrictive impact on freedom of speech (eg; Gayssot law in France) (7).

Until late April 2025, and for more than a year, the daily slaughter of civilians in Gaza (Palestine) has escalated to previously unseen levels of brutality (8, 9). For the first time in Humanity history, the world is witnessing a live genocide, and an increasing number of people are standing up against this atrocity (8, 9). In stark contrast, many are despairing over the international community's inaction and condemning the institutional denial of genocide (10). In international law, there is no specific treaty prohibiting genocide denial, and its legal status varies depending on the country (eg; not recognized in the UK, its severity debated in Switzerland) (7). The definition of genocide (4, 11), raises several issues, given:

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- i) Its restrictive scope (6), as it deliberately excludes political and social motives (11-13) in order to limit the extent of the term.
- ii) The need to prove the intent of the perpetrators (ie; *dolus specialis*) (11): This requirement makes the recognition process particularly complex (11). The proof of subjective intent is difficult to establish, often becoming diluted within the chains of command or merging with the collateral consequences of military operations (11).
- iii) An imprecise obligation to prevent and punish (11): Although states are required to prevent and punish genocides, the text does not explicitly mandate military intervention. This legal ambiguity falls within the framework of the "Responsibility to protect" principle, which often clashes with respect for state sovereignty and the lack of binding mechanisms (11).
- iv) The absence of automatic recognition mechanisms (11): No international institution is authorized to independently and automatically recognize an ongoing genocide, which delays international responses.

Moreover, from a procedural standpoint, the rescue of Gaza can only occur if the competent authorities establish 'genocide'. However, this recognition is a multi-faceted process that must result from a combined legal, political, and social acknowledgment (11). First, legal recognition by the international court of justice (4), ICC (3), or national courts (6), aims to secure legitimacy for any potential intervention and involves prosecutions and sanctions. This is a laborious and lengthy process, requiring the attainment of international consensus after thorough investigations and "conclusive" evidence (6). Second, political recognition primarily seeks to mobilize resources and secure the necessary logistical support. It is the most appropriate option in humanitarian emergencies, offering greater operational flexibility, but it requires a genuine international commitment to action. This approach has precedents, such as the military intervention in Libya, authorized by the United Nations (UN) Security Council (UNSC) despite the lack of unanimity and the reluctance of two permanent members, under the justification of "protecting populations" (14). However, for Gaza, reaching international consensus would be challenging due to the intense geopolitical tensions in the Middle East, where recognizing genocide is often viewed as a political stance. Governments in the region, heavily dependent on external aid, tend to remain silent (15). Third, as for public opinion, it can exert pressure on decision-makers to create a political counterbalance. For instance, in the case of the Rwandan genocide, the intense mobilization of civil society compelled the UN to intervene (16). However, this action was only taken late, after the massacres had already ended (17).

Although essential for maintaining global order, it must be acknowledged that international law remains a particularly fragile tool when it comes to addressing genocide (11). International law is based on a fragmented system of competencies, shared among various non-hierarchical entities, often lacking clear coordination and exclusive authority (18). This fragmentation,

resulting from the absence of centralization, weakens the effectiveness of international responses and dilutes accountability (18). The recognition of genocide, which is not simply a factual assessment (18); is undeniably a process shaped by political considerations (18), influenced by the dynamics of the moment that determine the outcome of investigations and resolutions (18). Given that its budget is heavily dependent on contributions from major powers (19), the ICC can only intervene if the concerned country is a signatory of the Rome statute or if the UNSC decides to refer the case to it (11). Moreover, the veto power in the UNSC exacerbates this politicization, as evidenced by the repeated blocking of ceasefire proposals in Gaza by the United States (20). Political compromises have significantly contributed to the paralysis of international institutions, reinforcing a widespread perception of systemic impunity. This growing sentiment fuels popular mobilizations, threatens global civil peace, and risks displacing the conflict from institutional forums to the streets of major cities (21). A rare moment of accountability emerged on November 21, 2024, when the ICC issued two arrest warrants targeting key individuals responsible for the atrocities committed in Gaza (22). In the same vein, AI formally recognized the genocidal character of these events in its report of December 2024 (23). Nevertheless, the persistent 'complicity by omission' of major international actors has contributed to a death toll exceeding 51000 -predominantly women and children- by the end of April 2025. Weekly demonstrations in global capitals continue to denounce what many are calling the 'justice of the absent'.

In response to this escalating humanitarian emergency, several major human rights organizations have issued repeated and urgent appeals for action (23-26). First, AI has asserted that Israel's actions in Gaza meet the criteria for genocide, citing deliberate and systematic policies designed to inflict irreparable harm on the civilian population (23). Second, human rights watch has similarly accused Israeli authorities of intentionally denying access to essential resources, such as water, since October 2023, arguing that such practices amount to war crimes and genocide (24). Third, 'médecins sans frontières' has condemned the total collapse of Gaza's health infrastructure and has called for the establishment of humanitarian corridors and a sustained ceasefire (25). Fourth, the Norwegian refugee council has highlighted the systematic obstruction of humanitarian assistance, describing living conditions in Gaza as 'uninhabitable' (26). Despite the gravity and consistency of the aforementioned reports (23-26), the international community's response has remained largely rhetorical (8, 9, 27, 28). Proposals for binding action—whether through sanctions, arms embargoes, or international prosecutions—have been repeatedly stalled or neutralized in multilateral forums such as the UNSC, largely due to entrenched geopolitical interests (29). This persistent failure to act not only illustrates the selective application of international law, but also reflects deeper structural asymmetries in the global governance of human rights and humanitarian protection" (30).

In summary, the crimes in Gaza are a genocide in progress, highlighting the inadequacies and politicization of international law in stopping and dealing with such crimes. Global institutions are ineffectual due to structural inefficiencies, political compromises, and the lack of a single mechanism for recognition and intervention, even with the legal and moral framework put in place to resist genocide. This inaction has perpetuated immense suffering and provoked widespread discontent, underlining the urgent need for a reformed, decisive international response to uphold justice and humanity.

To take home message

The ongoing genocide in the Gaza Strip (Palestine) exposes the profound flaws, politicization, and ineffectiveness of international institutions and law in stopping, identifying, and dealing with such crimes. This emphasizes the pressing need for a changed and forceful international response to preserve justice and safeguard humanity.

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