

The Global South and civil society seek international and domestic jurisdictional remedies to prevent and punish actions leading to the imminent risk of genocide in Gaza.

El sur global y la sociedad civil buscan vías jurisdiccionales internacionales y nacionales para prevenir y sancionar las acciones que pueden entrañar el riesgo inminente de un genocidio en Gaza.

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Executive summary

Global South is not only a geographic expression. It is an intersectional coalition that encompasses individual and group actors of the civil society physically located in the Global North. In this article we explore ways in which, confronted with the injustice of the unfolding genocide of the Palestinian people of Gaza, State and civil society actors of a new shaping Global South develop strategic jurisdictional litigation actions, invoking the enforcement of international law, and particularly the Convention on the Prevention and Punishment of the Crime of Genocide, to prevent and not only punish *post facto* the crime of crimes. These actions reclaim the strategic value of international law as an essential pillar for a future world order of global peace and justice, and challenge the “policy doctrine” through which certain national governments attempt, especially in the Global North, to insulate their foreign policy from the checks and balances of the rule of law and the jurisdictional oversight of legality.

Resumen

El Sur Global no es sólo una expresión geográfica. Es una coalición interseccional que también involucra a actores individuales y colectivos de la sociedad civil ubicados físicamente en el Norte Global. En este artículo exploramos las formas en que, ante la injusticia del genocidio que viene produciéndose contra el pueblo palestino de Gaza, los actores estatales y de la sociedad civil de un nuevo Sur Global desarrollan acciones de litigio jurisdiccional estratégico, invocando la aplicación del derecho internacional, y en particular la Convención para la Prevención y la Sanción del Delito de Genocidio, para prevenir y no sólo castigar *post facto* el crimen de los crímenes. Estas acciones reivindican el valor estratégico del derecho internacional como pilar esencial por un futuro orden mundial de paz y justicia global, y desafían la "doctrina de la inviolabilidad de la política exterior" a través de la cual ciertos gobiernos nacionales, especialmente en el Norte Global, intentan aislar su política exterior de los controles y contrapesas del Estado de derecho y del control jurisdiccional de la legalidad.

Key words: Palestine, Global South and North, international law, justice, genocide.

Palabras clave: Palestina, Sur y Norte Global, derecho internacional, justicia, genocidio.

(A) South Africa requests and the International Court of Justice orders that Israel implements provisional measures to prevent and punish the risk of genocide in Gaza.

(1) On 26 January 2024, in The Hague (The Netherlands), the United Nations’ **International Court of Justice**,¹ has determined that there is an international dispute and it has jurisdiction to adjudicate the **application**² through which the Republic of South Africa accuses the State of



Israel of committing grave violations of the **1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide**³(Convention). The lawsuit is aimed at **the military air, land and sea offensive**⁴ that the State of Israel has been conducting against the Palestinian people of the Gaza Strip (Occupied Palestinian Territories), since 8 October 2023. Admitting the case, and considering that it is plausible that the Respondent may be committing acts of genocide to be assessed on the merits, the Court has indicated, at the request of South Africa, the **provisional measures**⁵ that Israel must comply with in order to avoid the risk of irreparable harm to the Palestinian people in Gaza.

(2) In relation to the members of the Palestinian group in Gaza Israel shall:

(1) **“Take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention**, in particular: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and (d) imposing measures intended to prevent births within the group”;

(2) **“Ensure with immediate effect that its military does not commit any acts described in point 1 above”;**

(3) **“Take all measures within its power to prevent and punish the direct and public incitement to commit”;**

(4) **“Take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance** to address the adverse conditions of life faced by Palestinians in the Gaza Strip”;

(5) **“Take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II and Article III of the Convention on the Prevention and Punishment of the Crime of Genocide against members of the Palestinian group in the Gaza Strip”;**

(6) **“Submit a report to the Court on all measures taken to give effect to this Order within one month as from the date of this Order”.**

(3) In its application, South Africa acknowledges the immediate and historical context of this military operation. The **violations of international law** committed in the territory of Israel by **Palestinian armed groups on 7 October 2023**⁶ are the immediate context and injustice, which South Africa unequivocally condemns, maintaining, however, that these cannot justify neither legally nor morally the violation of the Convention in the subsequent Israeli military offensive. The historical context and injustice is the expulsion and ethnic cleansing of the indigenous Palestinian people from the territory now internationally recognized as the State of Israel (the Nakba, the catastrophe or forced displacement of 750,000 Palestinians in 1948), and the annexation, military occupation and apartheid,⁷ that the State of Israel has maintained over the Palestinian Territories of the West Bank and Gaza Strip since 1967, allowing, after having expelled another 250,000 Palestinians,⁸ the illegal settlement of more than 700,000 Jewish settlers in the West Bank and subjecting the Gaza Strip to an air, land and sea blockade since 2007. Between 2006 and January 2023, as a result of the blockade and the state of asymmetric belligerence between the occupying colonial power and the Palestinian armed groups, the Gaza Strip has been the target of 8 Israeli military operations, including four large-scale military offensives.⁹ The cycle of violence and violations of humanitarian and human rights law is fueled by Israeli shelling and ground incursions into Gaza and the firing of missiles from Gaza

into Israel. The number of casualties among the Palestinian population in Gaza consistently multiplies the number of casualties in Israel.

(4) The Court has issued its order for provisional measures after hearing **oral arguments** from the parties on 11 and 12 January.¹⁰ In the preliminary phase of the trial, the plaintiff was not required to prove the crime as such, but to make a persuasive and documented case for the existence of a plausible expectation (possibility, foresight) that the defendant was committing acts of a genocidal nature. In the merits trial, which will take some years to conclude, the Court will determine whether or not the State of Israel committed, with provable genocidal intent, the 8 violations of the Convention which South Africa charged against it:

- (1) **Killing Palestinians in Gaza**, including a large proportion of women and children (around 70 per cent of the total fatalities) some of whom appear to have been summarily executed;
- (2) **Causing serious mental and bodily harm to Palestinians in Gaza**, including through maiming, psychological trauma, and inhuman and degrading treatment;
- (3) **Causing the forced evacuation and displacement of around 85 per cent of Palestinians in Gaza** - including children, the elderly and infirm, and the sick and wounded - **as well as causing the large scale destruction of Palestinian homes, villages, refugee camps, towns and entire areas in Gaza, precluding the return** of a significant proportion of the Palestinian people to their homes;
- (4) **Causing widespread hunger, dehydration and starvation to besieged Palestinians in Gaza**, through the impeding of sufficient humanitarian assistance, the cutting off of sufficient water, food, fuel and electricity, and the destruction of bakeries, mills, agricultural lands and other methods of production and sustenance;
- (5) **Failing to provide and restricting the provision of adequate shelter, clothes, hygiene or sanitation to Palestinians in Gaza**, including the 1.9 million internally displaced people, compelled by Israel's actions to live in dangerous situations of squalor, alongside the routine targeting and destruction of places of shelter and the killing and wounding of those sheltering, including women, children, the disabled and the elderly;
- (6) **Failing to provide for or to ensure the provision for the medical needs of Palestinians in Gaza**, including those medical needs created by other genocidal acts causing serious bodily harm, including through directly attacking Palestinian hospitals, ambulances and other healthcare facilities in Gaza, killing Palestinian doctors, medics and nurses, including the most qualified medics in Gaza, and destroying and disabling Gaza's medical system;
- (7) **Destroying Palestinian life in Gaza**, through the destruction of Gaza's universities, schools, courts, public buildings, public records, stores, libraries, churches, mosques, roads, infrastructure, utilities and other facilities necessary to the sustained life of Palestinians in Gaza as a group, alongside the killing of entire family groups - erasing entire oral histories in Gaza - and the killing of prominent and distinguished members of society.
- (8) **Imposing measures intended to prevent Palestinian births in Gaza**, through the reproductive violence inflicted on Palestinian women, newborn babies, infants, and children.

(5) South Africa has provided extensive documentary evidence of expressions of genocidal intent against the Palestinian people by Israeli state officials. It argues: "The evidence of

specific intent by Israeli state officials (*'dolus specialis'*) to commit and persist in committing genocidal acts or to fail to prevent them has been significant and manifest since October 2023. Such statements of intent, when combined with the level of killing, maiming, displacement and destruction on the ground, along with the siege, are evidence of an ongoing and continuing genocide". Meanwhile, Segal and Green have argued that, in this case, **genocidal intent is not difficult to prove**,¹¹ and the NGO Law for Palestine has meticulously compiled a **database**¹² of more than 500 statements and expressions of incitement to genocide by Israeli officials and public figures: (a) policy makers or decision makers; (b) army officers and personnel; (c) members of parliament; (d) journalists and influencers; (e) public expressions of hatred.

(6) The Court has not granted some of the **measures requested by the plaintiff**:¹³

- It has not ordered a cease-fire or the "immediate suspension (of) the (Respondent's) military operations (in and against Gaza)";
- It has not explicitly prohibited the continuation or called for the prevention of the expulsion and forced displacement of the Gaza population from their homes; and
- It has not strengthened its order to "prevent the destruction and ensure the preservation of evidence relating to allegations of acts falling within the scope of Article II and Article III of the Convention" (measure 5) with an explicit duty "not to act to deny or otherwise restrict the access of fact-finding missions, international mandates and other agencies to Gaza to help ensure the preservation and retention of such evidence" (requested by plaintiff).

(7) However, it can be interpreted, as the plaintiff contends,¹⁴ that the Court's order would be impossible to implement, if Israel were to continue the type of military attacks it has been carrying out over the past three months. As a whole, therefore, the order would be configured as a "constructive ceasefire" or an "implicit" call for a ceasefire (Mokhiber, 27-01-2024).¹⁵ According to Finkelstein (27-01-2024),¹⁶ the Court could not order a cease-fire, because a cease-fire involves an armed conflict between two States. When one of the parties is a non-state actor (Hamas), the ceasefire would, Israel argues, have the effect of inhibiting the action of only the state actor involved, depriving it of the right of self-defense. On the other hand, Mokhiber (23-01-2024) argues that it is questionable whether, as an occupying colonial power, Israel can invoke the right of self-defense against one of its occupied territories.¹⁷ It is not an act of international aggression (Russia against Ukraine) or internal aggression (civil war in Myanmar since 2021¹⁸). As the Court has already ruled in its **advisory opinion on the legal consequences of the construction of a separation wall in the Occupied Palestinian Territories**,¹⁹ Israel, as an occupying power, cannot invoke the right of self-defense recognized by **Article 51 of the Charter of the United Nations**²⁰ in the territories it occupies. This means that it can defend itself in general terms, but it does not have the right to wage war against Gaza in the name of its right of self-defense. Second, the types of acts Israel is committing in Gaza would be illegal even if the right of self-defense were applicable in this case. Third, if, as the Court has recognized, there is a plausible case of genocide, self-defense cannot be invoked as an excuse. Finally, a cease-fire would not deprive Israel of its right to defend itself, because it could continue to repel any attacks against its citizens. On the other hand, in the face of a plausible risk of genocide against a specific group or people, the Court should not order a cease-fire but rather a halt to the acts of genocide codified in the Convention (Mokhiber, 27-01-2024).²¹

(8) According to some experts (Rabbani, 27-01-2024; Mokhiber and Finkelstein, 27-01-2024)²², the decision constitutes a “landmark” or a “historic victory” because the Court has recognized that:

- (a) Between the parties there is a relevant dispute for the purposes of the Convention;
- (b) South Africa has made a plausible allegation and there is a plausible expectation or possibility that the Respondent is committing acts of a genocidal nature;
- (c) The allegation must be tried on the merits with a full trial;
- (d) Each provisional measure has been taken with a very large majority (15 to 2 and 16 to 1) (Rabbani);²³
- (e) The decision "cracks" the status of historical impunity under international law that the state of Israel has enjoyed since its creation (Mokhiber; Rabbani);²⁴
- (f) The State of Israel remains under the supervision of the Court and is accountable to it for its actions in this matter;
- (g) If the State of Israel were to implement in good faith the required measures, the living conditions would improve considerably for the population in Gaza;
- (h) Any present or future action by which Israel kills civilians or causes them serious bodily or mental harm, destroys civilian infrastructure, maintains the blockade of the Strip and prevents humanitarian access, reiterates the expression of dehumanizing messages and genocidal hatred against Palestinians, destroys evidence of possible genocidal acts, or fails to report to the Court, shall be a violation of the Court's order (Mokhiber).²⁵

(9) Five of the 17 judges submitted, respectively, three individual statements (Xue, Bhandari, Nolte),²⁶ a separate opinion (Barak),²⁷ and a dissenting opinion (Sabutinde).²⁸ The German Judge Nolte, while finding that the acts charged did not constitute genocide, voted in favor of all the provisional measures because he found that the Israeli officials made serious and repeated expressions of genocidal intent (Rabbani, 27-01-2024).²⁹ This statement is particularly relevant because in this case the Court's jurisdiction is limited to the Genocide Convention. The crime of genocide is not a purely action-based crime. It is not enough to show that war crimes and crimes against humanity occurred. Its constituent acts (actus reus) – “a) Killing of members of the group; b) Causing serious bodily or mental harm to members of the group; c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part; d) Imposing measures intended to prevent births within the group; e) Forcibly transferring children of the group to another group” (art. II) - are only genocidal if they were committed with a particularly aggravated special intent (mens rea): the “intent to destroy, in whole or in part, a national, ethnical, racial or religious, as such” (art. II). If there is such an intent, the Convention requires the prevention and punishment of all acts of “(a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; and (e) Complicity in genocide” (art. III) with such special intent.

(10) From an historical perspective, according to Finkelstein,³⁰ the Court's decision to prosecute Israel and impose interim measures to prevent a possible genocide against the Palestinian people of Gaza is the third legal intervention challenging the legality and legitimacy of Israel's practices in the Occupied Palestinian Territories. The other two are, respectively, the **Court's Advisory Opinion on the Legal Consequences of the Construction of the Separation Wall in the Occupied Palestinian Territories (2004)**,³¹ and the **Report of the**

United Nations Fact-Finding Mission on the Gaza Conflict (2009), the so-called Goldstone Report.³²

(11) The Advisory Opinion on the Legal Consequences of the Separation Wall represented a “stunning” victory for the Palestinian people because it established that: (a) settlement construction of Jewish settlements in the occupied territories is illegal under international law; (b) East Jerusalem is an integral part of the Occupied Palestinian Territories; (c) the legitimate international borders of Israel are those that existed in June 1967, prior to the Six-Day War and the Israeli occupation of the West Bank, the Golan Heights and Gaza; (d) the West Bank, including East Jerusalem, and the Gaza Strip are the territorial unit in respect of which the Palestinian people must be allowed to exercise their inalienable right to self-determination. The 2009 Goldstone Report was the result of the findings of a UN Commission of Inquiry (to which Israel did not provide any cooperation nor grant any right of access; access to Gaza was provided only by Egypt) into the multiple war crimes, crimes against humanity and human rights violations committed by Israel during the military actions related to Operation Cast Lead in Gaza and the West Bank before, during and after the period from 27 December 2008 to 18 January 2009. Already in this report, the Commission considered that the blockade of Gaza by land, sea and air constitutes in itself a crime against humanity.

(12) As Ralph Wilde argues,³³ Israel captured the Palestinian Gaza Strip and West Bank, respectively from Jordan and Egypt, in 1967, claiming that it was acting in preemptive self-defense. Israel's 56-year military occupation of the West Bank and Gaza Strip is an extension without end and a continuation in other forms of the illegal and illegitimate use of force (and abuse of the right to war) that gave rise to it. Since the Palestinians have an inherent and inalienable right to self-determination, Israel is obliged to put an end to the illegitimate use of force by which it maintains its occupation or continued aggression over the Occupied Palestinian Territories. The illegal occupation generates in the occupied indigenous people a right of resistance to the occupation (equivalent to the right of Ukrainians to resist and use force in legitimate defense against the Russian aggression). The right of resistance incorporates the use of force, but does not justify the intentional targeting of civilians or indiscriminate attacks that carry a risk of harm to the civilian population or the kidnapping of civilians, all illegal and proscribed forms of exercising this right that violate international humanitarian, human rights and criminal law. In this context, Israel's current military operation against Gaza cannot be characterized as an isolated use of force incident and to ask whether, according to international law, Israel has the right of self-defense in this action is to misrepresent the situation. Israel's current action is a reconfiguration of its pre-existing use of force, which in the current phase took the form of a comprehensive blockade, accompanied by periodic military incursions into Gaza (and until 2005 had been one of direct military presence and illegal settlement). To say that Israel has the right to exercise this form of self-defense now, because it suffered violent resistance attacks (albeit indiscriminate and not permitted under international law) is either a logical fallacy or a circular argument. If there was no legal basis for the use of force that led to the capture and occupation of the Palestinian Territories then, there can be no justification for continuing to use force now in response to violent attacks by the Palestinian resistance. Justification for the use of force cannot be built solely on the basis of the consequences of violent resistance to the illegal use of force. Otherwise, then, an illegal use of force would become legitimate simply because the subjects being oppressed violently resisted the force used against them.

(13) The continuing illegality of Israel's use of force in the Palestinian Territories, by occupying them, has or should have powerful international legal and political consequences in the face of the current Israeli war offensive on Gaza:

(a) Israel has an obligation to immediately end this use of force, with a cease-fire, by putting an end to its 16-year military blockade of Gaza, and through a complete withdrawal of its authority and control over the West Bank and East Jerusalem;

(b) Israel's violations of international law give rise to *jus cogens* (binding law) obligations that extend *erga homnes*, on all parties in the international community. Therefore, all other states have **negative** and **positive obligations** that bind (or should bind) their behavior in this situation and cannot act as if only Israelis and Palestinians had rights and obligations in this situation;

(c) **Their negative obligation** is that **they can neither recognize as legitimate** (saying that Israel has the right to use such force, or uses it in the form of legitimate defense) **nor support or assist** (including by supplying arms) the use of force that Israel is exercising, including by occupation, on Gaza and the West Bank;

(d) **Their positive obligation** is that they must take positive steps to end this illegal situation, at a minimum call Israel to cease fire, and to end its illegal occupation.³⁴

(14) Both before³⁵ and after³⁶ learning of its contents, the Prime Minister of Israel has clearly indicated that the respondent will not comply with the Court's order. From February 26 to March 4, 2024 (13 days) the Israeli military operation has caused 1,282 new fatalities (almost 100 per day) increasing their total number from 26,083 to 27,365. There were another 2,143 new casualties (165 new casualties every day). Their number grew from 64,487 to 66,630.³⁷ As Euromed has documented, in the first two days they were in force, Israel has committed extensive violations of each of the measures outlined by the Court (29 January 2024).³⁸

(15) On the same day of the Court's decision, Israel has leaked to the press,³⁹ but did not share with UNRWA (the United Nations Relief and Works Agency for Palestine Refugees) an intelligence dossier containing allegations that 12 and then 13 of its employees in Gaza participated in the Hamas armed attack against Israel on October 7, 2023. According to other media reports, the same mysterious dossier also states that Israel has identified 190 “hardcore” militants from Palestinian armed groups among the local UNRWA staff in Gaza⁴⁰ or, indeed, that about 10% of its employees (1,200) would have “links” to Hamas or the Islamic Jihad.⁴¹ Even without having or having received evidence of the allegations, and without being able to independently confirm whether the information is correct or not,⁴² UNRWA has dismissed the suspects with immediate effect⁴³ and, despite the UN Secretary General's call for them to maintain or resume it,⁴⁴ 18 among states and donors from the Global North, including the United States and the European Union have suspended their funding of the Agency.⁴⁵

(16) The agency was created in 1949 - one year after the Nakba (the catastrophe) in which 750,000 Palestinians were expelled from their homes during the creation of the state of Israel. It has some 30,000 employees, 13,000 in Gaza (**at least 152 of whom were killed**⁴⁶ by the Israeli army's war offensive), and fulfils protection and service functions for Palestinian refugees analogous to those of a state in Syria, Jordan, the West Bank, Gaza and Lebanon. It has 760 (183 in Gaza) schools attended by 550,000 students (286,645 in Gaza). Each year it provides medical consultations to some 7 million patients at its primary health centers (there are 26 primary health centers and 7 women's centers in Gaza). Its social services and protection



department provides aid and services to 400,000 of the neediest people throughout the Middle East. It stores emergency food stocks for 1.7 million people, 1.2 million of whom live in Gaza. In addition to these essential services, it manages an emergency program which is the one used today to alleviate the suffering and needs of Gaza's threatened population (2.3 million). The presence of UNRWA staff and resources is essential to enable the distribution of humanitarian aid. This is why the massive cut in the agency's funding will have disastrous effects on Palestinians, mothers and children in Gaza who come to food distribution centers or take shelter in the remaining UNRWA schools and primary health facilities,⁴⁷ as **145 of their facilities were destroyed or severely damaged by Israel.**⁴⁸

(17) As UNRWA Commissioner General Philippe Lazzarini states: “As the war in Gaza is being pursued unabated, and at the time the International Court of Justice calls for more humanitarian assistance, it is the time to reinforce and not to weaken UNRWA. The Agency remains the largest aid organization in one of the most severe and complex humanitarian crises in the world (...) I echo the call of the UN Secretary General Antonio Guterres to resume funding to UNRWA. If the funding remains suspended, we will most likely be forced to shut down our operations by end of February not only in Gaza but also across the region”. Thomas White, Director of UNRWA Affairs in Gaza adds, “Rafah has become a sea of people fleeing bombardments (...) It’s difficult to imagine that Gazans will survive this crisis without UNRWA.”⁴⁹ The blatant inhumanity of the decision by which 18 countries, without conclusive evidence, turn off the tap of UNRWA, risking non-compliance with the Court's order to take "immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse living conditions faced by Palestinians in the Gaza Strip" is astounding. The decision-makers involved prioritize allegations that remain to be proven, over the life, health and well-being of Gazans at risk of imminent death and the duty to investigate and account for the killing of 156 UNRWA workers by Israel. This decision has been defined, respectively, as a “likely” act of “complicity in genocide”,⁵⁰ “immoral” and a form of “collective punishment”,⁵¹ “worse than collective punishment”,⁵² “another step towards the elimination of the Palestinians”,⁵³ a “war against all Palestinians”.⁵⁴ Francesca Albanese United Nations Special Rapporteur on the situation of human rights in the Occupied Palestinian Territory said: “The day after ICJ concluded that Israel is plausibly committing Genocide in Gaza, some states decided to defund UNRWA, collectively punishing millions of Palestinians at the most critical time, and most likely violating their obligations under the Genocide Convention.”⁵⁵

(18) Prime Minister Netanyahu has made his intentions regarding the future of UNRWA clear: “It's time for the international community and the UN itself to understand that UNRWA's mission must be terminated (...) It seeks to preserve the issue of Palestinian refugees. We must replace UNRWA with other UN agencies and other aid agencies, if we want to solve the Gaza problem as we plan to do”.⁵⁶ As David Hearst argues,⁵⁷ the core of this plan is “no UNRWA, no refugees”. To the current Israeli regime, UNRWA is an undesirable, and even threatening, United Nations organization because it “preserves” or perpetuates the issue of Palestinian refugees, registering and assisting as such any person who resided in Palestine between June 1946 and May 1948 and lost his home as a result of the Nakba (the mass expulsion or ethnic cleansing of the Palestinians). As the status of refugee is transmitted across generations, today there are more than five million registered Palestinian refugees in Lebanon, Syria, Jordan, the West Bank, East Jerusalem and Gaza. Refugees have the right to return and Israel wants to get rid of this problem. Should Israel’s plan to liquidate UNRWA be successful, the consequence

is that the United Nations would cease to recognize more than 5 million Palestinians as refugees.

(19) The irony of the Israeli plan to solve the refugee problem by eliminating their legal recognition and international protection, lies in the fact that “Israel is solely, serially and repeatedly responsible for creating refugees and denying their right to return home”. On 28 January 2024, two days after the provisional measures ordered by the International Court of Justice, 12 ministers of the current Israeli cabinet “were trying hard to create more refugees”, attending a conference calling for resettling the Gaza Strip with Jewish settlers, in what David Hearst considers “a chillingly public example of incitement to genocide being examined by the World Court”. Discussing the concept of the “voluntary emigration” of civilian Palestinians from Gaza, the Minister of Communications of the Likud Party, Shlomo Karhi, explained that in war “voluntary is at times a state you impose [on someone] until they give their consent”.⁵⁸

(20) As these indications corroborate the expectation that Israel shall not comply with the Court’s order, or will pretend that it abides by it without changing its conduct on the ground, this scenario highlights the problem of the effectiveness the Court’s order enforcement mechanisms. The main mechanism for enforcing it is the UN Security Council, where the United States keep vetoing any ceasefire decision. Given this impasse, the issue could go to the General Assembly with a special emergency session under the mechanism of Resolution 377(V) United for Peace of 1950.⁵⁹ However genocide is an issue of both treaty and customary international law which imposes *erga omnes partes* obligations, and all the states of the world are obliged to act in order to prevent and punish it, individually or collectively. To achieve this, they have a wide range of diplomatic, consular, economic, commercial, military or other measures at their disposal. If they do not do so, in each country the organized civil society can and in fact should take political, legal and judicial actions against those states that do not take adequate measures to give effect to the Court’s decisions.

(B) In the United States and the Netherlands the civil society judicially challenges State policies that facilitate and assist a possible genocide against the Palestinian people of Gaza

(21) As Rashid Khalidi argues,⁶⁰ Israel's war against the Palestinian people of Gaza is a colonial war where there is a huge disparity of power and weaponry between the parties, the deaths of one side multiply those of the other and the colonizing people “fight to establish (their) hegemony and absolute rights over the other,” the colonized people. This is the inherent logic of the Basic-Law on Israel - The Nation State of the Jewish People⁶¹ that the Israeli parliament, the Knesset, enacted in 2018, establishing that the right to national self-determination in Palestine “is exclusive to the Jewish People” (art. 1(c)) and that “the State views the development of Jewish settlement as a national value, and shall act to encourage and promote its establishment and consolidation.” (art. 7).

(22) Although the United States has always supported Israel militarily and diplomatically in all its wars since 1948 (except the Suez Canal war in 1956) the support it has given it in the current total war against Gaza is unprecedented for three reasons:

(a) First, for the absolute rejection of any hypothesis of a ceasefire and the unconditional support of the declared military objective of "destroying Hamas" despite the fact that its achievement entails the massacre of thousands of civilians and the total destruction of Gaza in the name of Israel's "right of self-defense" and mentioning as a secondary layer of this resolute

war policy a subsequent two-state solution, without any reference to the real obstacles that preclude it: the occupation and illegal settlements;

(b) Secondly, by the deployment of important US naval, air and land assets in the region, presumably with the aim of preventing an extension of the conflict, accompanied by the delivery to the Israeli army of 2,000 laser-guided hellfire missiles and 36,000 30-millimeter cannon cartridges for Apache combat helicopters, as well as 1,800 M141 bunker-buster rockets fired from the shoulder (there are orders for 1,200 more), and 57,000 155-millimeter artillery shells. The budgetary appropriation of military aid to Israel is unprecedented in history: 14.8 billion dollars that are added to 38 billion delivered in the last ten years (3.8 billion military aid per year). The purpose of unprecedented destruction and the availability of sufficient armaments reserves for any derivative and collateral regional conflict is obvious;

(c) An unprecedented third objective, the willingness to accept the displacement of a part of the Palestinian population in neighboring countries (Egypt and Jordan, considering the increase in violence and expulsive pressure also in the West Bank), has been officially and verbally refuted and withdrawn in a second phase, due to the angry and repeated protests of the Egyptian and Jordanian leaders. However, the American administration has foreseen appropriations for assistance to forced displacement (a second Nakba) including in its funding request to Congress on 20 October 2023 for aid to Ukraine and Israel "Migration and Refugee Assistance" funds inherent to the "potential needs of Gazans fleeing to neighboring countries", for "cross-border displacement" and for "programming needs outside Gaza".⁶²

(23) Faced with such a warmongering policy, clearly functional to the destruction of Palestinian life in Gaza, on 16 November 2023 the **Center for Constitutional Rights**⁶³ on behalf of **two Palestinian organizations**⁶⁴ and **eight palestinian-american and palestinian citizens**⁶⁵ has filed a **lawsuit**⁶⁶ before the Federal Court of California (Oakland) against the President (Biden), the Secretary of State (Blinken) and the Secretary of Defense (Austin) to challenge the complicity of the US government and demand that it works to prevent the genocide that is taking place in Gaza by fulfilling its international legal obligations under the Convention on the Prevention and Punishment of the Crime of Genocide (1948). In Gaza, the families of these citizens remain precariously vulnerable to ongoing direct attacks on civilians and civilian infrastructure, indiscriminate shelling, and the continued deprivation of their vital needs of water, fuel and electricity. Altogether, at the time of filing their lawsuit the plaintiffs had suffered the loss of more than 100 members of their families killed during Israel's indiscriminate military offensive.⁶⁷

(24) As CRC remarks: "Numerous Israeli government leaders have expressed clear genocidal intentions and deployed dehumanizing characterizations of Palestinians, including "human animals." At the same time, the Israeli military has bombed civilian areas and infrastructure, including by using chemical weapons, and deprived Palestinians of everything necessary for human life, including water, food, electricity, fuel, and medicine. Those statements of intent – when combined with mass killing, causing serious bodily and mental harm, and the total siege and closure creating conditions of life to bring about the physical destruction of the group – reveal evidence of an unfolding crime of genocide. Immediately after the launch of Israel's unprecedented bombing campaign on Gaza, President Biden offered "unwavering" support for Israel, which he and administration officials have consistently repeated and backed up with military, financial, and political support, even as mass civilian casualties escalated alongside Israeli genocidal rhetoric"⁶⁸.

(25) According to the lawsuit, the genocide we are witnessing is located and contextualized within the history of Israeli actions against the Palestinian people, starting with the Nakba of 1948. Despite the historical context of oppression and the material reality of the violence and destruction exerted against the Palestinian people of Gaza now, Defendants Biden, Blinken and Austin have not only failed to prevent the genocide, but “have helped advance the gravest of crimes by continuing to provide Israel with unconditional military and diplomatic support, coordinating closely on military strategy, and undermining efforts by the international community to stop Israel’s unrelenting and unprecedented bombing campaign and total siege of Gaza”. The lawsuit seeks declaratory and injunctive relief asking that the court declare that U.S. officials “have failed to prevent genocide and are aiding and abetting genocide”, y “order an end to U.S. military and diplomatic support to Israel”, enclosing the statements of leading experts on the subject of genocide and Holocaust and a motion for emergency preliminary injunction (EP) prohibiting all US military and diplomatic support to Israel while the case is being examined.⁶⁹

(26) On 26 January 2024 the Federal Court has heard the parties’ allegations and the oral testimonies, issuing its verdict on 31 January. The American judge has dismissed the case for jurisdictional reasons, that is, he has endorsed the “policy doctrine”, the legal doctrine according to which the judicial branch cannot interfere in the foreign policy affairs of the state that would be an absolute prerogative of the executive branch. In this way, it has rejected the thesis of the plaintiffs that the foreign policy of the state is a relative prerogative of the executive branch, which ceases to exist when the government policy openly violates and contravenes the law of the land, the obligations of domestic and international law that the state must comply with and enforce. Nonetheless, in his decision the federal judge observes that: “Both the uncontroverted testimony of the Plaintiffs and the expert opinion proffered at the hearing on these motions as well as statements made by various officers of the Israeli government indicate that the ongoing military siege in Gaza is intended to eradicate a whole people and therefore plausibly falls within the international prohibition against genocide”. Therefore, “as the ICJ has found, it is plausible that Israel’s conduct amounts to genocide” and “the Court implores Defendants to examine the results of their unflagging support of the military siege against the Palestinians in Gaza”, stating that “it is every individual’s obligation to confront the current siege in Gaza.”⁷⁰

(27) The judgment entails positive and negative aspects according to the plaintiffs.⁷¹

On the postive side	On the negative side
The court affirmed that what the Palestinian population in Gaza is enduring is a campaign to eradicate a whole people – genocide – and that the United States’ unflagging support for Israel is enabling the killing of tens of thousands of Palestinians and the famine facing millions (Katherine Gallagher, Senior Staff Attorney of CRC).	(...) We strongly disagree with the court’s ultimate jurisdictional ruling (Katherine Gallagher, Senior Staff Attorney of CRC).
We urge the Biden administration to heed the judge’s call to examine and end its deadly course of action. Together with our plaintiffs, we will pursue all legal avenues to stop the genocide and save Palestinian lives (Katherine Gallagher, Senior Staff Attorney of CRC).	My family lived through and was displaced by the first Nakba (catastrophe) in 1948, which the world has barely acknowledged (Waeil Elbhassi, Plaintiff).
To be clear, this is far from a win for the U.S. government. It is unprecedented and damning that a	

<p>federal court has all but affirmed that Israel is committing a genocide while criticizing defendants Biden, Blinken, and Austin’s ‘unflagging’ support for the acts that constitute that genocide (Diala Shamas, Senior Staff Attorney of CRC).</p>	<p>(...) We are still devastated that the court would not take the important step to stop the Biden administration from continuing to support the slaughter of the Palestinian people. Currently, my family lacks food, medicine, and the most basic necessities for survival (Mohammed Monadel Herzallah, Plaintiff).</p>
<p>(...) I testified to make a record of Israel’s horrific slaughter of my family, and the destruction of my homeland and Palestinian heritage, and to demand that the United States stop giving the Israeli government its total financial and diplomatic support for this ongoing genocide, a second Nakba (Waeil Elbhassi, Plaintiff).</p>	
<p>It is important that the court recognized the United States is providing unconditional support to Israel’s ongoing genocide in Gaza and that a federal court heard Palestinian voices for the first time (...)As Palestinians, we know this is a hard struggle, and as plaintiffs we will continue to do everything in our power to save our people’s lives (Mohammed Monadel Herzallah, Plaintiff)</p>	

We recommend you to watch the **oral session of the trial**,⁷² the **dialogue and speeches that set out the vision and strategy of the NGOs that support the case**,⁷³ and the **plaintiffs' press conference following the verdict**.⁷⁴

(28) According to Joshua Askew also Europe is “aiding and assisting Israel’s war in Gaza with vital weapons”.⁷⁵ The data collected by the Stockholm International Peace Research Institute (SIPRI) on European arms sales to Israel between 2013 and 2022 show that Germany and Italy have supplied crucial weapons and equipment that Israel is now using in its military campaign against Gaza. The UK has lucrative supply deals for fighter jet parts and components. The opacity of licensing systems makes it difficult to determine the type of weapons being transferred. Germany exports Merkava-4 tanks and Namer armored personnel carriers, Dolphin-type submarines and Sa'ar corvette ships, and would have also financed part of Israeli purchases of submarines and corvettes as a form of military aid. It would be a kind of compensation for the crimes committed by the Nazis against the Jewish people. There is also significant cooperation in the war industry sector between the two countries, involving companies such as Rheinmetal, MBDA Deutschland, and Krauss-Maffei Wegmann. In October 2023, the German prime minister informed the parliament that his government had offered military aid to Israel because “At this moment, there is only one place for Germany - the place at Israel’s side ... Our own history, our responsibility arising from the Holocaust, makes it a perpetual task for us to stand up for the security of the state of Israel”.⁷⁶ According to the Campaign Against Arms’ Trade (CAAT), between 2015 and 2020 Germany has exported to Israel weapons worth a total of 1.4 billion Euros (869 million in warships, 271 million in vehicles and tanks, 82 million in explosives).⁷⁷ Although on a smaller scale, Italy has supplied training and combat aircraft parts. Between 2013 and 2022 Italian companies have sold weapons worth 120 million euros to Israel (12 million per year).⁷⁸ The UK supplies parts that make up 15% of the F-35 “stealth” fighter jets that Israel is currently using to incessantly bomb hospitals, schools and residential areas in Gaza. CAAT estimates that since 2016 the United Kingdom has sold war equipment worth 386 million euros to Israel. But it should be considered that many open licenses could involve military-use equipment such as combat software and technology for airplanes and helicopters, artillery components, naval cannons, combat ships, equipment for missiles and ammunition and military radars.

(29) Amnesty International (AI) argues that sending military equipment to Israel in the context of its illegal occupation and apartheid regime over the Occupied Palestinian Territories violates EU policy requiring “respect for human rights in the country of final destination and respect for international humanitarian law by the (recipient) country”.⁷⁹ Article 6 of the United Nations Arms Trade Treaty (2013) prohibits the export when there is the potential that the weapons would be used to commit or facilitate acts of genocide, serious violations of international humanitarian law and human rights. Article 7 establishes criteria for the evaluation of arms exports. In particular, states should not authorize exports if there is a potential that the weapons would be used to undermine international peace and security; committing or facilitating a serious violation of international humanitarian and human rights law; facilitating terrorism, organized crime, and serious acts of gender-based violence or violence against women and children.⁸⁰

(30) According to Alberto Estévez, arms spokesman for Amnesty International Spain, “no one should be selling weapons to Israel, because everyone knows that it has created a regime of apartheid, occupation, with unpunished war crimes (...) It may be legitimate, but not legal, according to international law.” AI’s position is also that weapons should not be sold to both parties involved in the events of 7 October 2023 and the war over Gaza: “We call on all countries to refrain from providing weapons to both parties and to put pressure on those who supply them to turn off the tap. On September 11th, the slogan was coined, ‘You attack me, I’ll shoot you!’, without trials and even bin Laden should have had one. Human rights are basic. Torture does not prescribe.”⁸¹ In Spain, the Ministry of Economy, Trade and Enterprise has been publishing annual statistical reports on exports of defense equipment, other equipment and dual-use products and technologies since 2005.⁸² In the decade 2014-2023 arms exports authorized towards Israel reached a total of 107,252,415 Euros, with an annual average of almost 9 million Euros (8,937,701). While there were no exports in 2018, authorized exports exceeded the average in 2022 (9,292,435 €), 2019 (11,107,750 €), 2016 (13,057,875 €), and 2020 (€17,736,842), reaching an unusual peak of € 44,371,000 in 2023, a figure that is almost five times the average. According to the first half of 2023 report, the actual sales carried out in that period reach 713,397 Euros and the end user of the weapons earmarked for Israel have been private companies (100%).⁸³ The Minister of Foreign Affairs, José Manuel Albares, has confirmed that, since October 7, 2023, Spain has not transferred arms to Israel.⁸⁴ Nevertheless, AI argues that this suspension is “not enough,” and should be made permanent in line with Israeli practices in this and previous operations on Gaza and the occupied West Bank. According to AI, contrary to what the government maintains, the exports actually made in 2023 include “lethal weapons” (70,000 euros in bombs, torpedoes and missiles and about 600,000 in fire direction systems) “susceptible of use in the alleged war crimes that Israel has been committing in the last three months in Gaza and the West Bank”.⁸⁵

(31) The legal and factual context that defines the legality or illegality of these exports is made up, respectively, by the Arms Trade Treaty (2013, art. 6 and 7); and the occupation, blockade, military incursions and the daily violence that the occupying army and the illegal settlers exert on the Occupied Palestinian Territories. Between 2008 and October 6, 2023, the Israeli army and Jewish settlers have killed 1,017 Palestinians in the West Bank and 5,360 in Gaza. The total is 6,377 fatalities. Prior to October 7, 2023, the spikes in murders occurred in 2008 (899), 2009 (1.066), 2014 (2.329). The occupation’s homicides are carried out with weapons. Although the UN Office of Coordination of Humanitarian Affairs (OCHA) has data on the cause of death of only a part of the victims (4,969): 3,212 (64.6%) were killed by explosive weapons launched from the air; 1,502 (30.2%) by other causes; 219 (4.4%) by explosive

weapons launched from the ground; 13 by the impact of tear gas canisters; 10 by rubber bullets; 9 due to the inhalation of tear gas; and 4 because the victim burned in fires caused by hostilities. In comparison, between January 24, 2008 and October 6, 2023, Palestinian violent resistance has killed 310 Jews, 178 of whom civilians (91 settlers) and 132 military personnel between the West Bank, Gaza and Israel.⁸⁶ In the West Bank alone, in the 20 years from 2004 to October 6, 2023, the occupation has killed 1,607 Palestinians (more than 80 per year). In 2022 and 2023, already before the events of 7 October 2023 the number of Palestinian civilians killed had more than doubled compared to the previous years (170 and 208).⁸⁷ In this context it is legitimate to ask some democratic research questions: Why were these exports authorized to a country that does not meet the requirements of Articles 6 and 7 of the Arms Trade Treaty? Why, precisely in 2023, did Israel increase its order for weapons fivefold? What were they planning? How is it possible that only 1.6% of authorized sales were completed in the first half of 2023 (713,397 of the planned €44,371,000)? How many and which weapons have been delivered between July 1 and October 6, 2023 (third quarter of the year) and to which final beneficiaries?

(32) In the month of November 2023 a coalition of Dutch NGOs (Oxfam Novib, Amnesty International, PAX and Rights Forum) has filed a lawsuit against the government of the Netherlands for “being partially responsible for violations of the laws of war and acts of collective punishment against the civilian population of Gaza”, because it continues to export to Israel components of the F-35 fighter jets that are manufactured in the United States and assembled in the Netherlands before their delivery to Israel. Despite the warnings of the legal advisers of the Ministry of Foreign Affairs about their connection with “serious violations of humanitarian law”, exports remained unchanged. According to Martje van Nes, Director of PAX, the Netherlands has a specific framework for assessing arms exports that strictly prohibits the sale of military equipment that could contribute to serious violations of human rights and humanitarian law. Therefore, it was “incomprehensible” that the government was consciously deviating from its own rules, despite the warnings received. All this made it “partially responsible for the use of this military equipment.” For her part, Dagmar Oudshoorn, the director of the Dutch section of Amnesty International, noted that while the Netherlands wants to present itself as “champions of international law”, they were now “losing all their credibility.” By exporting arms to Israel, the Netherlands risked becoming “complicit in violations of international humanitarian law.”⁸⁸

(33) On December 15, 2023, the district court of The Hague determined that it had no jurisdiction to stop the export of F-35 aircraft components, with the same argument that was later taken by the Federal Court of California: the judges considered that they could not interfere with a decision that, in their opinion, was “mainly political”.⁸⁹ Once again, it is considered political to violate the internal and international norms that should guide the conduct of the government under the rule of law. We have to ask ourselves, is this the policy that we, the citizens, want? Is war and collaboration with the war, or even worse with the risk of genocide, an area in which politics and policy wishes to shirk the boundaries of the rule of law? However, on 12 February 2024 the Court of appeal before which the plaintiffs sought a reversal of the first instance decision has determined that there is a clear risk that the parts of the F-35 fighter jet that the Netherlands exports to Israel could be used in the bombing of the Gaza Strip and in the commission of “serious violations of international humanitarian law”. Therefore, by order of the Court, the Dutch government must stop the delivery of such parts to Israel. The government has announced that it will appeal the decision before the Supreme Court, because, in its assessment, the aircraft pieces are an integral part of Israel's ability to protect itself against “the threats [posed] in the region [by countries such as], for example, Iran, Yemen, Syria and

Montipó Spagnoli, Maurizio (12 February 2024). *The Global South and civil society seek international and domestic jurisdictional remedies to prevent and punish actions leading to the imminent risk of genocide in Gaza*. Madrid: Demospaz (UAM), <https://demospaz.org/the-global-south-and-civil-society-seek-international-and-domestic-jurisdictional-remedies-to-prevent-and-punish-actions-leading-to-the-imminent-risk-of-genocide-in-gaza-by-maurizio-montipo/>

Lebanon.” The state’s lawyers also argued that, if Israel does not receive them from the Netherlands, it will be able to supply itself in another way.⁹⁰

(34) The likely genocide of the Palestinian people of Gaza exposes the deep moral schizophrenia and contradiction of the Global North. On the one hand, it recognizes itself deeply guilty for the Holocaust and the historical persecutions of the Jewish people in the Christian Europe and maintains a policy of indefinite symbolic reparation towards them; on the other, it does not recognize itself equally responsible for addressing and repairing the damage and historical injustice that its colonialism continues to produce on the occupied Palestinian and Saharawi peoples. In this context, through Naledi Pandor, Minister of International Relations and Cooperation of South Africa,⁹¹ an African, black woman and survivor of apartheid, the Global South speaks to the Global North and gives it a lesson in moral dignity, international law, justice and solidarity. Similarly, Afaf Al-Najjar, a Palestinian journalist who reports from Gaza at the risk of her own life, wonders if the promise of no repetition of the Holocaust that gave rise to the Convention applies to the genocide of her people: “Where is the ‘never again’ for Gaza?”⁹²

References and endnotes

¹ <https://icj-cij.org/home>.

² https://icj-cij.org/sites/default/files/case-related/192/192-20230110-pre-01-00-en.pdf?_cf_chl_tk=.NpX6lrSk1x1EvnCmJxcHnbujfRqzY6wUu0Q9XTtBqk-1704932681-0-gaNycGzNC1A (Official English language version); <https://docs.google.com/document/d/1XOJboGZ-I2uzzsXts4S1WtcikXWptWdLLaCbMROYKJo/edit> (Unofficial Spanish language translation, without the original document’s footnotes).

³ <https://www.ohchr.org/es/instruments-mechanisms/instruments/convention-prevention-and-punishment-crime-genocide>.

⁴ Following the events of 7 October 2023, Israel has begun a full-scale military assault by land, air and sea against the Gaza Strip ('Gaza'), a narrow strip of land of approximately 365 square kilometers, one of the most densely populated places in the world. Israel is the occupying colonial power. It has occupied Gaza with military and settler presence from 1967 to 2005, and since 2007 has held it under an absolute and airtight blockade and control of its borders (access and exit of people, goods, commodities and essential services), airspace and sea. Gaza is home to approximately 2.3 million Palestinians, 47% of whom are children, and 75% of whom are surviving refugees or descendants of the 750,000 Palestinians who were expelled from their native territory during the formation of the State of Israel in 1948. As of 2 February 2024, the Israeli offensive, one of the most intense conventional bombing campaigns in the history of modern warfare, has displaced more than 85% of the population, killed 27,131 (including 11,500 children and 8,000 women) and injured 66,287 people (including 8,633 children and 6,327 women). It is estimated that at least 17,000 children (1% of the displaced population) were orphaned, or are living unaccompanied or separated from their parents. More than 8,000 people are missing, mostly under the rubble of daily bombardments which, in addition to the ground and sea offensive, have destroyed or damaged more than half of Gaza's homes (360,000 housing units), 378 schools and universities, 221 places of prayer, 11 bakeries, 122 ambulances, and destroyed or rendered inoperative 21 hospitals and in precarious and partial operation 14. It is estimated that in Gaza, since the beginning of the war, 42 bombs fall every hour, 15 people are killed (six of them children), 35 are wounded, and 12 buildings are destroyed. Nowhere is safe. While electricity and internet outages are frequent, long and unpredictable, the Israeli army has published an online map dividing the enclave into 600 numbered blocks. Survivors must identify their area and evacuate every time they are ordered to do so by leaflets dropped by airplanes, phone calls or the often contradictory information that appears on the internet, generating confusion and mistrust. Often the supposedly safe areas are the target of bombings or military ground attacks. Much of the population has taken refuge in the south of the Strip, crammed into tents or makeshift shelters, between repeated displacements, and without adequate access to water, food, sanitation, electricity, clothing, health care, and medicine, at risk of famine and epidemics. Source: <https://www.aljazeera.com/news/longform/2023/10/9/israel-hamas-war-in-maps-and-charts-live-tracker>;

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<https://www.unicef.org/press-releases/stories-loss-and-grief-least-17000-children-are-estimated-be-unaccompanied-or>.

⁵ https://icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf?_cf_chl=tk=.q0QtMw_itokyFzs.y3c4rM.rYk9OnFWsdgCzF4_mZk-1706888299-0-gaNycGzNDvs.

⁶ On 7 October 2023 the military wing of Hamas (Izz ad-Din al-Qassam Brigades) and Palestinian Islamic Jihad, carried out a military action in Israel killing 1,139 Israelis and foreigners (including 36 children) and wounding 8,730. Approximately 240 including civilians, elderly, women, children and Israeli soldiers were taken hostage in Gaza. Source: <https://www.aljazeera.com/news/longform/2023/10/9/israel-hamas-war-in-maps-and-charts-live-tracker>.

⁷ <https://www.amnesty.org/en/latest/news/2022/02/israels-apartheid-against-palestinians-a-cruel-system-of-domination-and-a-crime-against-humanity/>.

Amnistía Internacional (2022). *El apartheid israelí contra la población palestina. Cruel sistema de dominación y crimen de lesa humanidad*. Londres: Amnistía Internacional.

Source: <https://www.amnesty.org/es/documents/pol10/5670/2023/es/>

<https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>

https://www.btselem.org/publications/fulltext/202101_this_is_apartheid

<https://contendingmodernities.nd.edu/global-currents/israeli-apartheid-and-its-apologists/>

⁸ <https://www.britannica.com/place/Palestine/Palestine-and-the-Palestinians-1948-67>.

⁹ In August 2005, the Israeli armed forces withdrew from Gaza 38 years after capturing its territory from Egypt, abandoning the illegal settlements and leaving it under the control of the Palestinian National Authority. In January 2006, Hamas, a political movement that practices armed resistance to the occupation, won the majority of seats in the last Palestinian legislative elections and gained political and administrative control of the Gaza Strip. In June 2006, Hamas captured an Israeli soldier, Gilad Shalit, during an incursion into Israeli territory, to which the Israeli army responded with air strikes and a ground incursion into Gaza. In December 2008, Israel launched a 22-day military offensive against Gaza after Hamas fired a missile attack on the city of Sderot. This resulted in 1,400 Palestinian and 13 Israeli fatalities. In the month of November 2012, Israel killed Hamas military chief of staff Ahmad Jabari followed by 8 days of air raids in Palestine. In the month of November 2012, Israel killed Hamas military chief of staff Ahmad Jabari, followed by 8 days of air raids in Palestine. Between July and August 2014, the kidnapping and execution of three Israeli youths by Hamas sparked a seven-week war that resulted in the deaths of 2,100 Palestinians in Gaza and 73 Israelis (67 soldiers). In the month of March 2018, Palestinians in Gaza began a series of protests in the vicinity of the Gaza-Israel separation barrier and Israeli troops opened fire. During several months of protest Israeli armed forces killed more than 170 Palestinians, and there was fighting between Hamas and the Israeli army. On May 20, 2022, after weeks of tension during the Muslim holy month of Ramadan, Israeli security forces injured hundreds of Palestinians inside the Al Aqsa Mosque compound in Jerusalem. Hamas demanded the withdrawal of Israeli security forces from the compound. Israel launched air strikes on Gaza in response to alleged rocket fire from Gaza. During 11 days of fighting, 260 people were killed in Gaza and 13 in Israel. On August 20, 2022, more than 30 Palestinians, including women and children, were killed during new airstrikes carried out by the Israeli air force. The Palestinian Islamic Jihad, whose two commanders were killed in the airstrikes, fired dozens of rockets at Israel in response. On January 20, 2023, from Gaza the Islamic Jihad fired two rockets into Israel after Israeli troops had stormed a refugee camp, killing seven armed Palestinians and two civilians. The rockets set off alarms in Israeli communities near the border, but caused no casualties. Israel responded with airstrikes on Gaza. Source:

<https://www.aljazeera.com/news/2022/8/7/timeline-israels-attacks-on-gaza-since-2005>;

<https://www.reuters.com/world/middle-east/conflict-between-israel-palestinians-gaza-2023-10-07/>.

¹⁰ <https://icj-cij.org/sites/default/files/case-related/192/192-20240111-ora-01-00-bi.pdf>; <https://icj-cij.org/sites/default/files/case-related/192/192-20240112-ora-01-00-bi.pdf>.

¹¹ <https://www.aljazeera.com/opinions/2024/1/14/intent-in-the-genocide-case-against-israel-is-not-hard-to-prove>.

¹² <https://law4palestine.org/wp-content/uploads/2024/01/Database-of-Israeli-Incitement-to-Genocide-15th-January-2024-.pdf>.

Montipó Spagnoli, Maurizio (12 February 2024). *The Global South and civil society seek international and domestic jurisdictional remedies to prevent and punish actions leading to the imminent risk of genocide in Gaza*. Madrid: Demospaz (UAM), <https://demospaz.org/the-global-south-and-civil-society-seek-international-and-domestic-jurisdictional-remedies-to-prevent-and-punish-actions-leading-to-the-imminent-risk-of-genocide-in-gaza-by-maurizio-montipo/>

PROVISIONAL MEASURES REQUESTED BY SOUTH AFRICA	PROVISIONAL MEASURES GRANTED BY THE COURT
(3) The Republic of South Africa and the State of Israel shall each, in accordance with their obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the Palestinian people, take all reasonable measures within their power to prevent genocide.	(1) The State of Israel shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to Palestinians in Gaza, take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention , in particular: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and (d) imposing measures intended to prevent births within the group;
(4) The State of Israel shall (...) desist from the commission of any and all acts within the scope of Article II of the Convention , in particular: (a) killing members of the group; (b) causing serious bodily or mental harm to the members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and (d) imposing measures intended to prevent births within the group.	(2) The State of Israel shall ensure with immediate effect that its military does not commit any acts described in point 1 above;
(1) The State of Israel shall immediately suspend its military operations in and against Gaza;	NOT GRANTED
(2) The State of Israel shall ensure that any military or irregular armed units which may be directed, supported or influenced by it, as well as any organisations and persons which may be subject to its control, direction or influence, take no steps in furtherance of the military operations referred to point (1) above;	NOT GRANTED
(5) The State of Israel shall (...) desist from, and take all measures within its power including the rescinding of relevant orders, of restrictions and/or of prohibitions to prevent : (a) the expulsion and forced displacement from their homes; (b) the deprivation of: (i) access to adequate food and water; (ii) access to humanitarian assistance, including access to adequate fuel, shelter, clothes, hygiene and sanitation; (iii) medical supplies and assistance; and (c) the destruction of Palestinian life in Gaza.	PARTIALLY GRANTED (4) The State of Israel shall take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip;
(6) The State of Israel shall, in relation to Palestinians, ensure that its military, as well as any irregular armed units or individuals which may be directed , supported or otherwise influenced by it and any organizations and persons which may be subject to its control, direction or influence, do not commit any acts described in (4) and (5) above, or engage in direct and public incitement to commit genocide, conspiracy to commit genocide, attempt to commit genocide, or complicity in genocide, and insofar as they do engage therein, that steps are taken towards their punishment pursuant to Articles I, II, III and IV of the Convention (...) .	(3) The State of Israel shall take all measures within its power to prevent and punish the direct and public incitement to commit genocide in relation to members of the Palestinian group in the Gaza Strip;
(7) The State of Israel shall take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II of the Convention (...) ; to that end, the State of Israel shall not act to deny or otherwise restrict access by fact-finding missions, international mandates and other bodies to Gaza to assist in ensuring the preservation and retention of said evidence .	PARTIALLY GRANTED (5) The State of Israel shall take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II and Article III of the Convention (...) against members of the Palestinian group in the Gaza Strip;
(8) The State of Israel shall submit a report to the Court on all measures taken to give effect to this Order within one week, as from the date of this Order, and thereafter at such regular intervals as the Court shall order, until a final decision on the case is rendered by the Court.	(6) The State of Israel shall submit a report to the Court on all measures taken to give effect to this Order within one month as from the date of this Order .
(9) The State of Israel shall refrain from any action and shall ensure that no action is taken which might aggravate or extend the dispute before the Court or make it more difficult to resolve.	NOT GRANTED

¹⁴ Statement by the South Africa’s Minister of International Relations and Cooperation, Naledi Pandor, following the Court’s decision on 26 January 2024: <https://www.youtube.com/watch?v=BN32kKHguG8>.

¹⁵ Mokhiber: <https://www.youtube.com/watch?v=Kj7mqGVg554&t=6419s>.

¹⁶ Finkelstein: <https://www.youtube.com/watch?v=Kj7mqGVg554&t=6419s>.

Montipó Spagnoli, Maurizio (12 February 2024). *The Global South and civil society seek international and domestic jurisdictional remedies to prevent and punish actions leading to the imminent risk of genocide in Gaza*. Madrid: Demospaz (UAM), <https://demospaz.org/the-global-south-and-civil-society-seek-international-and-domestic-jurisdictional-remedies-to-prevent-and-punish-actions-leading-to-the-imminent-risk-of-genocide-in-gaza-by-maurizio-montipo/>

¹⁷ Outside intervention by Craig Mokhiber during the Katie Halper Show, Special GAZA Update (w/ Norm Finkelstein, Mouin Rabbani, Katie Halper & More), 23 January 2024, broadcast time, 50' y 33"). Source: https://www.youtube.com/watch?v=2sEfEW-JVf4&list=PLo9JXZawe6KxapQCJg0oyI-Lv_OPZKJD7&index=51&t=410s.

¹⁸ <https://history-maps.com/story/History-of-Myanmar/event/Myanmar-Civil-War>.

¹⁹ ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004. Source: <https://icj-cij.org/case/131>.

²⁰ “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security” (United Nations, 1945, UN Charter, Article 51). Source: <https://www.un.org/en/about-us/un-charter/full-text>.

²¹ Mokhiber y Finkelstein: <https://www.youtube.com/watch?v=Kj7mqGVg554&t=6419s>.

²² Rabbani: <https://www.youtube.com/watch?v=maseYgI2R1I>.

Mokhiber y Finkelstein: <https://www.youtube.com/watch?v=Kj7mqGVg554&t=6419s>.

²³ Rabbani: <https://www.youtube.com/watch?v=maseYgI2R1I>.

²⁴ Mokhiber: <https://www.youtube.com/watch?v=Kj7mqGVg554&t=6419s>.

Rabbani: <https://www.youtube.com/watch?v=maseYgI2R1I>.

²⁵ Mokhiber: <https://www.youtube.com/watch?v=Kj7mqGVg554&t=6419s>.

²⁶ Individual Statement of Judge Xue: <https://icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-01-en.pdf>; Individual Statement of Judge Bhandari: <https://icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-03-en.pdf>; Individual Statement of Judge Nolte: <https://icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-04-en.pdf>.

²⁷ Separate Opinion of ad hoc Judge Barak: <https://icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-05-en.pdf>.

²⁸ Dissenting Opinion of Judge Sabutinde: <https://icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-02-en.pdf>.

²⁹ Regarding the individual statement of Judge Nolte, see the comments made by Rabbani in: <https://www.youtube.com/watch?v=maseYgI2R1I>.

South Africa's application devotes an extensive section and offers numerous pieces of documentary evidence about expressions of genocidal intent against the Palestinian people by Israeli state officials. It argues: “Evidence of Israeli State officials’ specific intent (‘dolus specialis’) to commit and persist in committing genocidal acts or to fail to prevent them has been significant and overt since October 2023. Those statements of intent — when combined with the level of killing, maiming, displacement and destruction on the ground, together with the siege — evidence an unfolding and continuing genocide” (Application, Section, 101).

³⁰ Finkelstein: <https://www.youtube.com/watch?v=Kj7mqGVg554&t=6419s>.

³¹ ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004. Source: <https://icj-cij.org/case/131>.

³² UN General Assembly (25 September 2009). *Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, A/HRC/12/48. New York: Human Rights Council, Twelfth session, Agenda Item 7, Human rights in Palestine and other occupied arab territories. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/12/48&Lang=S>
<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/12/48&Lang=E>.

³³ Wilde, Ralph (09.11.2023). Israel’s War in Gaza is Not a Valid Act of Self-defence in International Law. <https://opiniojuris.org/2023/11/09/israels-war-in-gaza-is-not-a-valid-act-of-self-defence-in-international-law/>.

³⁴ <https://opiniojuris.org/2023/11/09/israels-war-in-gaza-is-not-a-valid-act-of-self-defence-in-international-law/>.

Montipó Spagnoli, Maurizio (12 February 2024). *The Global South and civil society seek international and domestic jurisdictional remedies to prevent and punish actions leading to the imminent risk of genocide in Gaza*. Madrid: Demospaz (UAM), <https://demospaz.org/the-global-south-and-civil-society-seek-international-and-domestic-jurisdictional-remedies-to-prevent-and-punish-actions-leading-to-the-imminent-risk-of-genocide-in-gaza-by-maurizio-montipo/>

³⁵ <https://www.sabcnews.com/sabcnews/netanyahu-says-icj-wont-stop-israel-fighting-until-victory-in-gaza/>.

³⁶ https://www.timesofisrael.com/liveblog_entry/after-icj-ruling-pm-says-israel-in-just-war-against-hamas-will-fight-until-total-victory/.

³⁷ <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-103>; <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-110>.

³⁸ In the first two days after the order alone, Israel has killed 373 Palestinians in Gaza, 345 of them civilians, and wounded more than 643. Incessant shelling continued unabated, causing the destruction of residential homes over the heads of their residents and the killing of forcibly displaced persons despite their compliance with illegal Israeli evacuation orders. Israel continues to attack what remains of Gaza's healthcare system. The Nasser and Al-Amal hospitals in Khan Yunis (south of the Strip) are on the verge of closure due to the ongoing siege and frequent attacks. The Israeli armed forces show no signs of commitment to fundamental Court-imposed measures to address the horrific living conditions in the Strip and preserve evidence of possible genocidal acts. The systematic and widespread destruction of civilian property, such as homes, residential communities, entire neighborhoods and specific areas that had been the scene of horrendous crimes is one of the ways of destroying this evidence. In those two days alone, more bodies had been buried in the courtyard of the Nasser Hospital in Khan Yunis, and at least four new mass and random burial sites had been discovered in the squares, schools and streets of Khan Yunis. As hunger increases, the number of humanitarian aid trucks entering Gaza dropped from an average of 100 (covering only 10% of the needs) to 87 per day. The Israeli army continued to fire on groups of civilians waiting for humanitarian aid on the Salah Al-Din road, killing and wounding several on both days. The shelling injured dozens of displaced persons in a shelter in Al-Amal neighborhood, while the Israeli army prevented relief teams and ambulances from accessing the site. Occupying troops continue to restrict the space where the displaced can settle, seek shelter or escape in case of evacuation orders, shelling or attacks. In the eastern part of the Strip, it has demolished all structures located between 1,000 and 1,500 meters from the border fence. In addition, it has razed entire residential squares to create a buffer zone that would cover more than 15% of the Gaza Strip. In Al-Bahr Street, west of the Khan Yunis refugee camp, they have established a security checkpoint and closed all side streets that residents were using to evacuate the area in recent days. All these actions seem to correlate directly with the statements of the Israeli Prime Minister and Minister of Finance. The former claims that "the decision of the International Court of Justice did not support the order for Israel to declare an immediate ceasefire (e) (...) Israel will act in accordance with what our security requires" (January 27), and the latter has spoken of the formation of a military government in Gaza responsible for civilian issues. Source: <https://euromedmonitor.org/en/article/6126/Two-days-after-ICJ-ruling,-Euro-Med-Monitor-says-Israel-has-maintained-its-rate-of-killing-in-Gaza>.

³⁹ <https://www.nytimes.com/2024/01/26/world/middleeast/un-aid-israel-oct-7-attacks.html>.

⁴⁰ <https://www.reuters.com/world/middle-east/israeli-intelligence-accuses-190-gaza-un-staff-hamas-islamic-jihad-roles-2024-01-29/>.

⁴¹ <https://www.wsj.com/world/middle-east/at-least-12-u-n-agency-employees-involved-in-oct-7-attacks-intelligence-reports-say-a7de8f36>.

<https://www.haaretz.com/world-news/2024-01-29/ty-article/wsj-about-10-percent-of-unrwa-employees-in-gaza-have-ties-to-hamas-islamic-jihad/0000018d-5565-d8cc-a1fd-576f89eb0000>.

⁴² Chris Gunness, former UNRWA spokesperson: https://www.youtube.com/watch?v=LA_xtBh3eLw.

⁴³ <https://www.unrwa.org/newsroom/official-statements/serious-allegations-against-unrwa-staff-gaza-strip>.

⁴⁴ <https://www.middleeasteye.net/news/war-gaza-un-secretary-general-calls-unrwa-funding-be-restored>.

⁴⁵ As of 29 January 2024 a total of 18 countries, including the European Union had suspended their funding to UNRWA (figures in millions of US \$): (1) United States (343,9); (2) Germany (202,1); (3) European Union (114,1); (4) Sweden (61); (5) Japan (30,2); (6) France (28,9); (7) Switzerland (25,5); (8) Canada (23,7); (9) United Kingdom (21,2); (10) The Netherlands (21,2); (11) Italy (18); (12) Australia (13,8); (13) Austria (8,1); (14) Finland (7,8); (15) New Zealand (0,568); (16) Island (0,558.7); (17) Romania (0,210.7); (18) Estonia (0,90). Source: <https://unwatch.org/updated-list-of-countries-suspending-unrwa-funding/>.

⁴⁶ <https://www.unrwa.org/resources/reports/unrwa-situation-report-70-situation-gaza-strip-and-west-bank-including-east-jerusalem>.

⁴⁷ Chris Gunness, former UNRWA spokesperson: https://www.youtube.com/watch?v=LA_xtBh3eLw.

<https://www.middleeasteye.net/news/war-gaza-un-secretary-general-calls-unrwa-funding-be-restored>.

Montipó Spagnoli, Maurizio (12 February 2024). *The Global South and civil society seek international and domestic jurisdictional remedies to prevent and punish actions leading to the imminent risk of genocide in Gaza*. Madrid: Demospaz (UAM), <https://demospaz.org/the-global-south-and-civil-society-seek-international-and-domestic-jurisdictional-remedies-to-prevent-and-punish-actions-leading-to-the-imminent-risk-of-genocide-in-gaza-by-maurizio-montipo/>

48 <https://www.unrwa.org/resources/reports/unrwa-situation-report-70-situation-gaza-strip-and-west-bank-including-east-Jerusalem>.

49 <https://www.unrwa.org/newsroom/news-releases/gaza-strip-humanitarian-crisis-deepens-time-funding-suspensions-put-unrwa-aid>.

50 <https://www.middleeasteye.net/opinion/gaza-war-defunding-unrwa-western-countries-complicity-genocide>.

51 <https://www.aljazeera.com/program/upfront/2024/2/2/its-immoral-un-special-rapporteur-on-unrwa-funding-cuts>.

52 <https://www.aljazeera.com/opinions/2024/1/31/defunding-unrwa-is-worse-than-collective-punishment>.

53 <https://www.middleeasteye.net/opinion/defunding-unrwa-step-towards-eliminating-palestinians>.

54 <https://www.middleeasteye.net/opinion/war-gaza-defunding-unrwa-war-palestinians>.

55

<https://english.wafa.ps/Pages/Details/141125#:~:text=Albanese%20said%20in%20a%20tweet,obligations%20under%20the%20Genocide%20Convention.%E2%80%9D>.

56 <https://www.middleeasteye.net/news/war-on-gaza-unrwa-mission-must-be-terminated-netanyahu>.

57 <https://www.middleeasteye.net/opinion/gaza-war-why-west-falling-israel-plan-destroy-unrwa>.

58 <https://www.middleeasteye.net/opinion/gaza-war-why-west-falling-israel-plan-destroy-unrwa>.

59 General Assembly resolution 377(V) is known as the "United for Peace" resolution. Adopted in 1950, the resolution provides that if the Security Council, for lack of unanimity of the permanent members, fails to exercise its primary responsibility to act as required to maintain international peace and security..., the General Assembly will consider the matter immediately with a view to making recommendations to Members... in order to restore international peace and security. If not in session, the General Assembly may meet using the emergency special session mechanism. To date, 11 emergency extraordinary sessions have been convened. Source: <https://ask.un.org/faq/177134>.

60 <https://www.latimes.com/opinion/story/2023-12-02/israel-gaza-palestinian-american-history>.

61 <https://m.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawNationState.pdf>.

62 <https://www.latimes.com/opinion/story/2023-12-02/israel-gaza-palestinian-american-history>.

63 <https://ccrjustice.org/>.

64 Defence for Children International - Palestine (DCIP) and Al-Haq are palestinian organizations engaged in protecting and promoting the human rights of the Palestinian people in the Occupied Palestinian Territories of the West Bank, including East Jerusalem, and Gaza.

65 <https://ccrjustice.org/plaintiff-profiles-defense-children-international-palestine-v-biden>.

66 https://ccrjustice.org/sites/default/files/attach/2023/11/Complaint_DCI-Pal-v-Biden_ww.pdf.

67 <https://ccrjustice.org/home/what-we-do/our-cases/defense-children-international-palestine-v-biden>.

68 <https://ccrjustice.org/home/what-we-do/our-cases/defense-children-international-palestine-v-biden>.

69 <https://ccrjustice.org/home/what-we-do/our-cases/defense-children-international-palestine-v-biden>.

70 <https://ccrjustice.org/home/press-center/press-releases/us-court-concludes-israel-s-assault-gaza-plausible-case-genocide>.

71 <https://ccrjustice.org/home/press-center/press-releases/us-court-concludes-israel-s-assault-gaza-plausible-case-genocide>.

72 <https://www.uscourts.gov/cameras-courts/defense-children-international-palestine-v-biden>.

73 <https://www.youtube.com/watch?v=264VAGH9MmM>.

74 <https://www.youtube.com/watch?v=JF9qBh83ul8&t=160s>.

75 <https://www.euronews.com/2023/11/03/europe-aiding-and-assisting-israels-war-in-gaza-with-vital-weapons>.

76 <https://www.euronews.com/2023/11/03/europe-aiding-and-assisting-israels-war-in-gaza-with-vital-weapons>.

77 https://caat.org.uk/data/exports-eu/overview?origin=germany&destination=israel&year_from=2015&year_to=2020.

Montipó Spagnoli, Maurizio (12 February 2024). *The Global South and civil society seek international and domestic jurisdictional remedies to prevent and punish actions leading to the imminent risk of genocide in Gaza*. Madrid: Demospaz (UAM), <https://demospaz.org/the-global-south-and-civil-society-seek-international-and-domestic-jurisdictional-remedies-to-prevent-and-punish-actions-leading-to-the-imminent-risk-of-genocide-in-gaza-by-maurizio-montipo/>

⁷⁸ <https://pagellapolitica.it/articoli/commercio-armi-italia-israele>.

⁷⁹ <https://www.euronews.com/2023/11/03/europe-aiding-and-assisting-israels-war-in-gaza-with-vital-weapons>.

⁸⁰ United Nations, Arms Trade Treaty, adopted on 3 June 2013 and entered into force on 24 December 2014 (see: <https://thearmstradetreaty.org/treaty-text.html?templateId=209884> and <https://comercio.gob.es/ImportacionExportacion/Regimenes/Paginas/tratado-comercio-armas.aspx>). Article 6 of the Treaty forbids transfer of conventional arms and arm parts and components that would violate embargoes or other peace and security measures ordered by the UN Security Council or that would be used in the commission of acts of genocide, crimes against humanity, or war crimes. Article 7 sets forth criteria for assessing the legality of any arms' export. Specifically, State Parties shall not authorize export if the potential exists that the arms would be used to undermine peace and security; commit or facilitate a serious violation of international humanitarian law and/or international human rights law; commit or facilitate acts of terrorism, organized crime, serious acts of gender-based violence or violence against women and children. The Treaty defines as conventional arms the following categories: (a) Battle tanks; (b) Armoured combat vehicles; (c) Large-calibre artillery systems; (d) Combat aircraft; (e) Attack helicopters; (f) Warships; (g) Missiles and missile launchers; and (h) Small arms and light weapons (art. 2). The Treaty also regulates the "transfer" (export, import, transit, trans-shipment and brokering) of ammunition/munitions (art. 3) and parts and components of arms (art. 4). See the web page: <https://disarmament.unoda.org/convarms/att/>.

⁸¹ https://www.lavozdegalicia.es/noticia/vigo/2023/10/22/legal-vender-armas-israel-comete-crimenes-guerra/0003_202310V22C12991.htm.

⁸² https://comercio.gob.es/ImportacionExportacion/Informes_Estadisticas/Paginas/Historico_Material_Defensa.aspx.

⁸³ Ministerio de Economía, Comercio y Empresa (2023). *Exportaciones españolas de material de defensa, de otro material y de productos y tecnologías de doble uso en el primer semestre de 2023*. Madrid: Ministerio de Economía, Comercio y Empresa. Fuente:

https://comercio.gob.es/ImportacionExportacion/Informes_Estadisticas/Paginas/Historico_Material_Defensa.aspx.

⁸⁴ <https://www.lavanguardia.com/nacional/20240123/9503957/albares-afirma-gobierno-bloqueo-venta-armas-israel-7-octubre-agenciaslv20240123.html>.

⁸⁵ <https://www.publico.es/politica/espana-autorizo-venta-44-millones-material-militar-israel-seis-meses-previos-guerra-gaza.html>.

⁸⁶ <https://www.ochaopt.org/data/casualties>.

⁸⁷ <https://www.aljazeera.com/news/longform/2023/12/12/know-their-names-palestinians-killed-by-israel-in-the-occupied-west-bank-2>.

⁸⁸ <https://nltimes.nl/2023/11/14/human-rights-organizations-sue-dutch-state-arms-sales-israel-amid-war-gaza>

⁸⁹ <https://www.aljazeera.com/news/2023/12/15/dutch-court-dismisses-case-against-delivery-of-f-35-parts-to-israel>.

⁹⁰ <https://www.aljazeera.com/news/2024/2/12/court-orders-netherlands-to-halt-delivery-of-fighter-jet-parts-to-israel>.

⁹¹ South Africa's Minister of International Relations and Cooperation, Naledi Pandor: <https://www.youtube.com/watch?v=BN32kKHguG8>.

⁹² Afaf Al-Najjar: <https://www.aljazeera.com/opinions/2024/1/21/where-is-the-never-again-for-gaza>.