

## Preventing genocide in Gaza<sup>©</sup>

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What is happening in Gaza can be considered tantamount not only to war crimes and crimes against humanity, but even more pertinently, to attempted genocide



A Palestinian man carries the body of a child into a van holding the corpses of people killed in overnight Israeli

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airstrikes on the grounds of Gaza City's Al-Ahli Arab Hospital. Photo: AFP

Genocide is not a term that should be used lightly. It can all too easily become a political slogan, a term to weaponise against an opponent, or – so characteristic of our times – part of a culture of cultivating extremes and irreconcilable opposites.

Genocide is the most notorious of the atrocity crimes in international criminal law, which also include war crimes and crimes against humanity. It should solely be used when the acts committed fall within its very restrictive definition, as per the Convention on the Prevention and Punishment of the Crime of Genocide of 1948.

It is therefore only after careful consideration and deliberation that we, as scholars of international law and international relations, argue that what is currently happening in Gaza can be considered tantamount not only to war crimes and crimes against humanity but, even more pertinently, to attempted genocide.

This, in fact, is the subject of current proceedings before the International Court of Justice, the primary judicial organ of the United Nations.

According to the Genocide Convention 1948 (to which Malta, together with another 152 states, is party) two elements are necessary for a genocide to be present: the attempted eradication of a people, in whole or in part, on the one hand, and the intent to do so, on the other.

The attempted eradication can take various forms, from the prevention of births and removal of children from the group, to systematic violence, causing of deaths and active killings. The intent element means that the state must clearly display that it wishes to eliminate a group.

At present in Gaza, both the actions and the intent can be reasonably suspected: the refusal to admit humanitarian aid while cognisant and warned about the situation of famine in

the territory, as proclaimed by competent institutions. A group of 11 UN experts already in July 2024 had declared that famine had spread throughout Gaza.

Moreover, the fact that, in its interim order of January 2024, the International Court of Justice referred to “the catastrophic humanitarian situation in the Gaza Strip” is in itself revealing. Since then, we have seen further proclamations of members of the Israeli government and a series of actions that seem to indicate that there is both intent and measures tantamount to the definition of genocide in the 1948 convention.

*“Eradicating Hamas as an armed opponent is a licit military target. Destroying the Palestinians in the process is not. It is genocide”*

The public conscience regarding genocide often focuses on concentration camps, gas chambers or forced marches of starving and sick men, women and children in inhospitable conditions, as were the case in the Holocaust and the Armenian genocide.

But genocides in history – unfortunately not as uncommon as we might think – have involved different tools of killing and different methods of ensuring that a population does not survive: in Rwanda, bladed weapons were mainly used to kill Tutsis and moderate Hutus; in Congo, under King Leopold, genocide involved slavery and forced labour in unspeakably harsh conditions, combined with corporal punishments leading to deaths; and in Cambodia, under Pol Pot, starvation, forced labour and direct killings were combined to take the lives of “undesirable” parts of the population. So each genocide has some unique elements.

We also sometimes think that a genocide must kill an entire people – but while this is, of course, the intent, this rarely succeeds, fortunately: the genocide will stop before everyone belonging to the group is eradicated. The Genocide Convention itself recognises that one of the modes in which genocide may be committed is “deliberately inflicting on the

group conditions of life calculated to bring about its physical destruction in whole or in part [emphasis added by authors].”

The Genocide Convention is clear on the responsibility of states in the face of genocide: states have the obligation to prevent and punish genocide. Furthermore, according to the International Court of Justice, states have a corresponding duty to act in this regard “at the instant that the state learns of, or should have normally learned of, the existence of a serious risk that genocide will be committed” (*Bosnia and Herzegovina v Serbia and Montenegro*, 2007). The first step in this regard is to recognise the situation in Gaza as genocide.

We, thus, call on all the authorities concerned to see and treat the situation in Gaza for what it is: babies, children, women and the elderly are dying because of an intentional policy on the part of the Israeli government.

In a situation where neither Israel nor the dictatorial Hamas show any humanity, it is up to outside states to do so. Eradicating Hamas as an armed opponent is a licit military target. Destroying the Palestinians in the process is not. It is genocide.