

## **The Genocide of the Palestinian People: An International Law and Human Rights Perspective**

While there has been recent criticism of those taking the position that Israel is committing genocide against Palestinians, there is a long history of human rights scholarship and legal analysis that supports the assertion. Prominent scholars of the international law crime of genocide and human rights authorities take the position that Israel's policies toward the Palestinian people could constitute a form of genocide. Those policies range from the 1948 mass killing and displacement of Palestinians to a half-century of military occupation and, correspondingly, the discriminatory legal regime governing Palestinians, repeated military assaults on Gaza, and official Israeli statements expressly favoring the elimination of Palestinians.

Genocide is a term that has both sociological and legal meaning. The term genocide was coined in 1944 by a Jewish Polish legal scholar, Raphael Lemkin. For Lemkin, "the term does not necessarily signify mass killings." He explained:

*More often [genocide] refers to a coordinated plan aimed at destruction of the essential foundations of the life of national groups so that these groups wither and die like plants that have suffered a blight. The end may be accomplished by the forced disintegration of political and social institutions, of the culture of the people, of their language, their national feelings and their religion. It may be accomplished by wiping out all basis of personal security, liberty, health and dignity. When these means fail the machine gun can always be utilized as a last resort. Genocide is directed against a national group as an entity and the attack on individuals is only secondary to the annihilation of the national group to which they belong.<sup>1</sup>*

Since Lemkin's first invocation of the term, it has gained political, social, and legal meaning. For political scientists, historians, and sociologists, genocide is "understood as a major type of collective violence, with a distinctive place in the spectrum of political violence, armed conflict, and war, of which it is usually seen as a part."<sup>2</sup>

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<sup>1</sup> Raphael Lemkin, *Genocide – A Modern Crime*, 4 Free World 39 (1945), available at: <http://www.preventgenocide.org/lemkin/freeworld1945.htm> (emphasis added).

<sup>2</sup> Martin Shaw, *Genocide*, Oxford Bibliography, September 30, 2013, available at: <http://www.oxfordbibliographies.com/view/document/obo-9780199756384/obo-9780199756384-0029.xml>.

From a legal perspective, genocide, like the crime against humanity of persecution, is an international crime distinguished by the specific intent to discriminate against a group on recognized grounds through a series of acts or omissions often reflected in and achieved through State policies. While different in degree, both genocide and persecution “[reduce] a person to their identification with or membership in a group,” but also “[attack] the group itself.”<sup>3</sup> Persecution criminalizes the denial of fundamental rights for members of the group, and genocide criminalizes the most extreme stage of discrimination: efforts to actually destroy the group.

According to the Convention on the Prevention and Punishment of the Crime of Genocide,<sup>4</sup> genocide includes various acts “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group” as such, including:

- (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.<sup>5</sup>

This definition is reflected in Article 6 of the Statute of the International Criminal Court (ICC), which has jurisdiction over crimes occurring on the territory of the State of Palestine since June 13, 2014.<sup>6</sup>

The Genocide Convention was written in the aftermath of World War II and the horrors of the Holocaust, especially to deter and prevent such horrors in the future

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<sup>3</sup> Helen Brady and Ryan Liss. *Historical Origins of International Law Vol. 3*, “The Evolution of Persecution as a Crime Against Humanity,” FICHL Publication Series No. 22 (2015) p. 554, available at [https://www.ficlh.org/fileadmin/ficlh/FICHL\\_PS\\_22\\_web.pdf](https://www.ficlh.org/fileadmin/ficlh/FICHL_PS_22_web.pdf). Notably, “some scholars suggest[ ] that any distinction [between genocide and persecution] has effectively disappeared,” with the two crimes “offer[ing] two different but related visions of the same harm: in short, a crime against the individual as a member of a group (persecution) or a crime against the group itself (genocide).” *Id.* at 491.

<sup>4</sup> Convention on the Prevention and Punishment of the Crime of Genocide, Adopted by the General Assembly of the United Nations on December 9, 1948 as General Assembly Resolution 260, and entered into force on 12 January 1951, available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-I-1021-English.pdf>. The Genocide Convention has 147 signatories, including the United States, Israel and Palestine.

<sup>5</sup> Genocide Convention, Article II.

<sup>6</sup> Declaration Accepting the Jurisdiction of the International Criminal Court, Mahmoud Abbas, President of the State of Palestine, Dec. 31, 2014, available at [http://www.icc-cpi.int/iccdocs/PIDS/press/Palestine\\_A\\_12-3.pdf](http://www.icc-cpi.int/iccdocs/PIDS/press/Palestine_A_12-3.pdf). On January 6, 2015, the United Nations Secretary General, acting in his capacity as depositary for the Rome Statute, accepted Palestine’s accession to the Rome Statute. United Nations, Depository Notification, Ref: C.N.13.2015.TREATIES-XVIII.10, 6 Jan. 2015, available at <https://treaties.un.org/doc/Publication/CN/2015/CN.13.2015-Eng.pdf>. On January 16, 2015, the Prosecutor of the ICC, Mrs. Fatou Bensouda, opened a preliminary examination into the situation of Palestine.

and, failing that, to punish those responsible. The Convention thus provided a legal framework that clearly identifies the essence of the crime of genocide, regardless of the political, social, or cultural permutations in which the crime may be attempted or carried out and regardless of the specific qualities, stage, or scale of the genocidal process. The Holocaust set the terms by which a form of general or pervasive violence against a group might be legitimately termed “genocide” as a general sociological concept as it need not “imply a comparison to any other specific case.”<sup>7</sup>

Scholars of genocide have distinguished it as a crime different from other forms of war, killing, violence, discrimination, and repression. “Genocidal action aims not just to contain, control, or subordinate a population, but to shatter and break up its social existence. Thus genocide is defined, not by a particular form of violence, but by general and pervasive violence.”<sup>8</sup> They note that settler colonial regimes are structurally prone to genocide, and may indulge in “genocidal moments” when they become frustrated by the resistance of a colonized or occupied people.<sup>9</sup>

The term “genocide” has been used to describe the mass murder of Armenians by the Ottomans, Stalin’s expulsion of Chechens, Ingush Tartars, and Jews from the U.S.S.R., the removal of Jews and Hungarians from Romania, and Italy’s efforts to clear Slovenes and Croats from the Dalmatian coast.<sup>10</sup> There have been successful prosecutions of individuals for genocide arising out of efforts to destroy the Tutsi population in Rwanda in 1994<sup>11</sup> and Srebrenica in Bosnia-Herzegovina in 1995.<sup>12</sup>

Numerous prominent human rights authorities, advocates, and scholars have claimed that Israel’s policies and actions with respect to the Palestinian people have amounted to a form of genocide.

### **Expulsion and Killing of Palestinians in 1948**

With respect to the creation of the Israeli state in 1948, there has been a robust scholarly debate about whether the settlement of Jews and the expulsion of Palestinians in Mandate Palestine could be described as genocide. Sociologist Martin Shaw, one of the most distinguished modern scholars of genocide, has written, “We can conclude that

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<sup>7</sup> Martin Shaw in Martin Shaw & Omer Bartov, *The Question Of Genocide In Palestine, 1948: An Exchange Between Martin Shaw And Omer Bartov*, 12 *Journal of Genocide Research* 243, 244 (2010).

<sup>8</sup> Martin Shaw, *Palestine In An International Historical Perspective On Genocide*, 9 *Holy Land Studies* 1, 5 (2010).

<sup>9</sup> [A. Dirk Moses](#), *An Antipodean Genocide? The Origins Of The Genocidal Moment In The Colonization Of Australia*, 2 *J. of Genocide Research* 89, 90 (2010).

<sup>10</sup> Martin Shaw, *Palestine In An International Historical Perspective On Genocide*, 9 *Holy Land Studies* 1, 9 (2010).

<sup>11</sup> See, e.g., *Prosecutor v. Jean-Paul Akayesu*, ICTR, [http://www.icty.org/x/cases/karadzic/tjug/en/160324\\_judgement.pdf](http://www.icty.org/x/cases/karadzic/tjug/en/160324_judgement.pdf).

<sup>12</sup> See, e.g., *Prosecutor v. Radovan Karadžić*, ICTY, [http://www.icty.org/x/cases/karadzic/tjug/en/160324\\_judgement.pdf](http://www.icty.org/x/cases/karadzic/tjug/en/160324_judgement.pdf).

pre-war Zionism included the development of an *incipiently genocidal mentality* towards Arab society.”<sup>13</sup> “Israel entered without an overarching plan, so that its specific genocidal thrusts developed situationally and incrementally, through local as well as national decisions. On this account, this was a partly decentred, networked genocide, developing in interaction with the Palestinian and Arab enemy, in the context of war.”<sup>14</sup>

In 2010, the Journal of Genocide Studies hosted a conversation between Martin Shaw and another prominent scholar of genocide, Omer Bartov, on whether the term “genocide” could be reasonably applied to the Israeli treatment of Palestinians, particularly the expulsion and killing of Arabs in 1948.<sup>15</sup> The two scholars took very different positions on the question, but the journal rejected complaints from some quarters that it was an illegitimate, or worse, a bigoted question to pose and debate at all.<sup>16</sup>

Francis Boyle, a professor of international law, testified in 2013 that “The Palestinians have been the victims of genocide as defined by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.”<sup>17</sup> He argued that:

For over the past six and one-half decades, the Israeli government and its predecessors in law – the Zionist agencies, forces, and terrorist gangs – have ruthlessly implemented a systematic and comprehensive military, political, religious, economic, and cultural campaign with the intent to destroy in substantial part the national, ethnical, racial, and different religious group (Jews versus Muslims and Christians) constituting the Palestinian people.<sup>18</sup>

### **Long-Term Military Occupation of Palestinian People**

When the international community ratified legal rules that would regulate the actions of occupying powers while also protecting the rights of occupied peoples and nations/states, it was understood that military occupation would be a short-lived necessity attendant to armed conflict, and that occupying forces would be withdrawn at the end of

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<sup>13</sup> Martin Shaw, *Palestine In An International Historical Perspective On Genocide*, 9 Holy Land Studies 1, 13 (2010), noting the comments of the President of the Zionist Organization Chaim Weizmann’s comment in 1941 “if half a million Arabs could be transferred, two million Jews could be put in their place.”

<sup>14</sup> *Id.* at 19.

<sup>15</sup> Martin Shaw in Martin Shaw & Omer Bartov, *The Question Of Genocide In Palestine, 1948: An Exchange Between Martin Shaw And Omer Bartov*, 12 Journal of Genocide Research 243, 244 (2010).

<sup>16</sup> See Gal Beckerman, *Top Genocide Scholars Battle Over How To Characterize Israel’s Actions*, Forward, February 16, 2011, available at: <http://forward.com/news/135484/top-genocide-scholars-battle-over-how-to-character/>.

<sup>17</sup> Professor Francis A. Boyle, *The Palestinian Genocide by Israel Before The Kuala Lumpur War Crimes Tribunal*, August 21-24, 2013, available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2339254](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2339254).

<sup>18</sup> *Id.* at 3.

the conflict.<sup>19</sup> Israel's prolonged belligerent occupation of the West Bank, including East Jerusalem, and Gaza for 50 years far exceeds the kind of occupation that animated the creation of legal rules of occupation contained in international law. Given the seemingly permanent nature of the Israeli occupation of the West Bank and Gaza, some human rights experts, including Israeli historian Ilan Pappé, have warned of an "incremental genocide" of Palestinians and the ultimate destruction of Palestinians as a national group.<sup>20</sup> This "incremental genocide" through the policies and practices that have both sustained and served as the hallmarks of Israel's occupation is accomplished, they argue, by a normalization of the Israeli annexation of Palestinian territory and the exile or absorption of the national group of people who identify as Palestinian. International law is clear that an occupying power may not annex the people or territory it occupies.<sup>21</sup>

The late human rights lawyer and Center for Constitutional Rights Board President Michael Ratner also charged Israel with committing "incremental genocide" against the Palestinian people: "There's no doubt again here this is 'incremental genocide,' as Ilan Pappé says. It's been going on for a long time, the killings, the incredibly awful conditions of life, the expulsions that have gone on from Lydda in 1947 and '48, when 700 or more villages in Palestine were destroyed, and in the expulsions that continued from that time until today. It's correct and important to label it for what it is."<sup>22</sup> He argued further, "I want to emphasize today [that] these killings are part of a broader set of inhuman acts by Israel constituting international crimes, carried out by Israel over many years, going back to at least 1947 and 1948. They include crimes that aren't talked about that much in the media or the press, the crimes of genocide, crimes

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<sup>19</sup> See [Geneva Convention III: Articles 1-4](#); [Geneva Convention IV 1907: Section Three – Occupied Territories – Articles 47-56](#); [Geneva Convention IV 1949: Section Three – Occupied Territories – Articles 47-78](#); [Additional Protocols I and II](#).

<sup>20</sup> Ilan Pappé, *A Brief History of Israel's Incremental Genocide*, in ON PALESTINE (Noam Chomsky and Ilan Pappé ed.; Haymarket 2015) pp. 147-154. See also, Steve Lendman, *Israel's Slow-Motion Genocide in Occupied Palestine*, in THE PLIGHT OF THE PALESTINIANS (William A. Cook ed., Palgrave 2010).

<sup>21</sup> Article 2(4) of the United Nations Charter states that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." See also: Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 Section III, Art. 47, "Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory."

<sup>22</sup> Michael Ratner, *UN's Investigation of Israel Should Go Beyond War Crimes to Genocide*, The Real News, July 27, 2013, available at: [http://therealnews.com/t2/index.php?option=com\\_content&task=view&id=31&Itemid=74&jumival=12155](http://therealnews.com/t2/index.php?option=com_content&task=view&id=31&Itemid=74&jumival=12155).

against humanity, and apartheid. These crimes can be prosecuted in the International Criminal Court and are defined there.”<sup>23</sup>

The Russell Tribunal on Palestine, a nongovernmental “people’s body” made up of prominent international human rights experts and advocates, convened between November 2010 and September 2014 to investigate the question of human rights violations in the context of the Israeli occupation of the West Bank, including East Jerusalem, and Gaza.<sup>24</sup> It took testimony and deliberated specifically on the question of whether Israel may have committed genocide in relation to the Palestinian people. The jury concluded that some Israeli citizens and leaders may have been guilty in several instances of the separate crime of *incitement* to genocide, which is specified in Article 3(c) of the Genocide Convention. “The cumulative effect of the long-standing regime of collective punishment in Gaza appears to inflict conditions of life calculated to bring about the incremental destruction of the Palestinians as a group in Gaza. The Tribunal emphasises the potential for a regime of persecution to become genocidal in effect.”<sup>25</sup>

### **Military Assaults on Gazan Population**

With respect to Israel’s most recent military offensive, the so-called “Operation Protective Edge” launched against Gaza in the summer of 2014, prominent human rights authorities expressed concern that the campaign constituted a violation of international humanitarian law as contained in the Geneva Conventions:

- Amnesty International issued a statement proclaiming “an International Criminal Court (ICC) investigation is essential to break the culture of impunity which perpetuates the commission of war crimes and crimes against humanity in Israel and the Occupied Palestinian Territories. The case for such action is made all the more compelling in the light of the ongoing serious violations of international humanitarian law being committed by all parties to the current hostilities in the Gaza Strip and Israel.”<sup>26</sup>
- The ICC has jurisdiction over genocide, and the U.N. Special Advisers on the Prevention of Genocide issued a statement two weeks into the 2014 offensive that they were “disturbed by the flagrant use of hate speech in the social media, particularly against the Palestinian population,” finding that “individuals have disseminated messages that could be dehumanising to the Palestinians and have

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<sup>23</sup> *Id.* See also Saree Makdisi, Palestine Inside Out: An Everyday Occupation (Norton 2010) for the notion of a “slow motion” extension and consolidation of the genocidal aspects of 1948.

<sup>24</sup> Russell Tribunal On Palestine, “About,” <http://www.russelltribunalonpalestine.com/en/about-rtop>.

<sup>25</sup> <http://www.russfound.org/RToP/RToP.htm>.

<sup>26</sup> Israel and Occupied Palestinian Territories: The International Criminal Court must investigate war crimes, August 1, 2014 <http://www.amnesty.org/en/documents/MDE15/019/2014/en/>.

called for the killing of members of this group,” while “remind[ing] all that incitement to commit atrocity crimes is prohibited under international law.”<sup>27</sup>

- Al-Haq, the oldest Palestinian Human Rights organization, found that serious violations of international law were committed in the course of the 2014 Israeli offensive against Gaza.<sup>28</sup> Al-Haq, along with other Palestinian human rights organizations the Palestinian Center for Human Rights, Al-Mezan, and Aldameer, submitted a legal file to the International Criminal Court urging it to open an investigation and prosecution into the crimes against humanity and war crimes committed during the course of Israel’s 2014 Gaza offensive.<sup>29</sup> The crimes suggested for prosecution by these human rights organizations include genocide.
- Dozens of Holocaust survivors, together with hundreds of descendants of Holocaust survivors and victims, accused Israel of “genocide” for the deaths of more than 2,000 Palestinians in Gaza during the 2008-2009 Israeli military offensive against Gaza, “Operation Cast Lead.”<sup>30</sup>
- Others who have charged that Israel committed genocide during Operation Cast Lead include Bolivian President Evo Morales, who recalled that country’s ambassador from Israel. He stated, “What is happening in Palestine is genocide.”<sup>31</sup>

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<sup>27</sup> UN, Department of Public Information, *Statement by the Special Advisers of the Secretary-General on the Prevention of Genocide, Mr. Adama Dieng, and on the Responsibility to Protect, Ms. Jennifer Welsh, on the Situation in Israel and in the Palestinian Occupied Territory of Gaza Strip*, July 24, 2014, available at

[www.un.org/en/preventgenocide/adviser/pdf/24.07.2014%20Special%20Advisers%20Statement%20on%20the%20situation%20in%20Israel%20and%20the%20occupied%20Gaza%20strip.pdf](http://www.un.org/en/preventgenocide/adviser/pdf/24.07.2014%20Special%20Advisers%20Statement%20on%20the%20situation%20in%20Israel%20and%20the%20occupied%20Gaza%20strip.pdf).

<sup>28</sup> *See*, Divide and Conquer: A Legal Analysis of Israel’s 2014 Military Offensive Against the Gaza Strip, 2015, available at: <http://www.alhaq.org/publications/publications-index/item/divide-and-conquer>.

<sup>29</sup> Palestinian Human Rights Organisations Deliver Submission to the International Criminal Court on Alleged Israeli War Crimes and Crimes against Humanity during 2014 Gaza offensive, Nov. 23, 2015, available at: <http://www.alhaq.org/advocacy/targets/international-criminal-court-icc/998-palestinian-human-rights-organisations-deliver-submission-to-the-international-criminal-court-on-alleged-israeli-war-crimes-and-crimes-against-humanity-during-2014-gaza-offensive>.

<sup>30</sup> Zachary Davies Boren, *Holocaust survivors and their descendants accuse Israel of 'genocide'*, The Independent, August 24, 2014, <http://www.independent.co.uk/news/world/middle-east/holocaust-survivors-and-their-descendants-accuse-israel-of-genocide-9687994.html>.

<sup>31</sup> *Bolivian president: Israel air strikes on Gaza is 'genocide'*, July 16, 2014, <http://www.itv.com/news/update/2014-07-16/bolivian-president-israel-air-strikes-of-gaza-is-genocide>.

- Author and activist Naomi Wolf wrote, “I mourn genocide in Gaza because I am the granddaughter of a family half wiped out in a holocaust and I know genocide when I see it.”<sup>32</sup>

### **Israeli Government Statements Targeting Palestinians**

Finally, prominent Israeli politicians have publicly called for action against the Palestinian people that unequivocally meets the definition of genocide under the 1948 Convention. For instance, in February 2008, Matan Vilnai, Israel’s deputy defense minister, declared that increasing tensions between the Israelis and Palestinians in the Gaza Strip could bring on themselves what he called a *shoah*, or holocaust, “The more Qassam [rocket] fire intensifies and the rockets reach a longer range, they will bring upon themselves a bigger shoah because we will use all our might to defend ourselves.”<sup>33</sup>

Israeli Justice Minister Ayelet Shaked posted a statement on Facebook in June 2014 claiming that “the entire Palestinian people is the enemy” and called for the destruction of Palestine, “including its elderly and its women, its cities and its villages, its property and its infrastructure.” Her post also called for the killing of Palestinian mothers who give birth to “little snakes.”<sup>34</sup>

In August 2014, Moshe Feiglin, then-deputy speaker of the Israeli Knesset and member of Prime Minister Benjamin Netanyahu’s ruling Likud Party, called for the destruction of Palestinian life in Gaza and offered a detailed plan for shipping Palestinians living in Gaza across the world. Specifically, he envisioned a scenario where the Israeli Defense Forces (IDF) would find areas on the Sinai border to establish “tent encampments...until relevant emigration destinations are determined.” He further suggested that the IDF would then “exterminate nests of resistance, in the event that any should remain.”<sup>35</sup> He subsequently wrote in an op-ed, “After the IDF completes the ‘softening’ of the targets with its fire-power, the IDF will conquer the entire Gaza, using all the means necessary to minimize any harm to our soldiers, with no other considerations.”<sup>36</sup> He continued, “Gaza is part of our Land and we will remain there

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<sup>32</sup> Naomi Wolf walked out of synagogue when they had nothing to say about Gaza massacre, July 22, 2014, <http://mondoweiss.net/2014/07/synagogue-nothing-massacre.html>.

<sup>33</sup> Israeli minister warns of Palestinian ‘holocaust’, The Guardian, February 29, 2008, <https://www.theguardian.com/world/2008/feb/29/israelandthepalestinians1>.

<sup>34</sup> Text of Shaked’s Facebook post (in Hebrew), since deleted, is available here: [https://electronicintifada.net/sites/default/files/styles/original\\_800w/public/2014-07/ayelet-shaked-facebook-post-30-june-2014-genocide.jpg?itok=k5yvVqOp&timestamp=1448949295](https://electronicintifada.net/sites/default/files/styles/original_800w/public/2014-07/ayelet-shaked-facebook-post-30-june-2014-genocide.jpg?itok=k5yvVqOp&timestamp=1448949295).

<sup>35</sup> Jill Reilly, *Israeli official calls for concentration camps in Gaza and ‘the conquest of the entire Gaza Strip, and annihilation of all fighting forces and their supporters’*, Daily Mail, August 4, 2014, available at: <http://www.dailymail.co.uk/news/article-2715466/Israeli-official-calls-concentration-camps-Gaza-conquest-entire-Gaza-Strip-annihilation-fighting-forces-supporters.html>.

<sup>36</sup> Moshe Feiglin, *My Outline for a Solution in Gaza*, Arutz Sheva, August 15, 2014, available here: <http://www.israelnationalnews.com/Articles/Article.aspx/15326#.VCLjPldXT0>.

forever. Liberation of parts of our land forever is the only thing that justifies endangering our soldiers in battle to capture land. Subsequent to the elimination of terror from Gaza, it will become part of sovereign Israel and will be populated by Jews. This will also serve to ease the housing crisis in Israel. The coastal train line will be extended, as soon as possible, to reach the entire length of Gaza.”

## **Conclusion**

Prominent human rights advocates and scholars have argued that the killings of Palestinians and their forceful expulsion from mandate Palestine in 1948, the Israeli occupation of the West Bank, East Jerusalem, and Gaza, and the violence and discrimination directed at Palestinians by the Israeli government have violated a number of human rights protections contained in international human rights law, genocide being among them.