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Forced Displacement of Palestinians from Gaza in the October 7 War: a Case of Crime against Humanity

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Abstract

In the recent war between Israel and Hamas, actions such as extensive killing of civilians, bombing of cities and targeting non-military objectives, destruction of civilian property and infrastructure in Gaza, attacks on medical centers and hospitals, inducing hunger among the people, and restricting access to medicine and international aids in accordance to a widespread and systematic practice taken by Israel, have created critical living conditions, leading to the displacement of approximately two million people from Gaza. However, in the statement issued by the International Criminal Court Prosecutor on May 20 regarding the application for arrest warrants of Israeli political and military leaders, there was no mention of the crime of forced displacement among the charges against these individuals. The Prosecutor's attention to this crime and its inclusion in the list of charges could not only influence the determination of potential sentencing but also signify the international community's recognition of the suffering endured by the victims of the Gaza war and its commitment to achieving greater justice.

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1 Introduction

On May 20, 2024, the Prosecutor of the International Criminal Court issued a statement announcing the request for the arrest of high-ranking political and military leaders from both sides of the Gaza conflict. In this statement, the Prosecutor indicated that they had requested the Pre-Trial Chamber of the Court to issue arrest warrants for three leaders of Hamas (Yahya Sinwar, Mohammed Deif, and Ismail Haniyeh) and two political and military leaders of Israel (Benjamin Netanyahu and Yoav Gallant). The Pre-Trial Chamber agreed to the Prosecutor's request on November 21.

Although the Office of the Prosecutor has been conducting preliminary examinations since 2015 and investigations since 2021 regarding the situation of Palestine and the crimes committed in that region, the request for the arrest of the leaders of both sides, made on October 7, marks the first concrete and effective action by the Prosecutor of the International Criminal Court to prosecute criminals and establish justice. The request for the arrest of the highest political and military officials on both sides of the conflict is a commendable action by the Prosecutor and demonstrates the Court's determination to address the impunity for crimes committed during the war and the immunity of their perpetrators, regardless of political affiliations and biases.

In the Prosecutor's statement, starvation of civilians as a method of warfare, willfully causing great suffering, or serious injury to body or health, cruel treatment, willful killing or murder, and intentionally directing attacks against a civilian population are cited as examples of war crimes. Additionally, extermination and/or murder, persecution, and other inhumane acts are mentioned as examples of crimes against humanity committed by Benjamin Netanyahu and Yoav Gallant during the Gaza war. Despite the fact that all elements of the crime of deportation and forcible transfer are present in the current conditions of Gaza, there is no mention of this crime in the Prosecutor's statement.

According to article 15 of the Statute, in cases where the Prosecutor initiates the investigation regarding crimes within the jurisdiction of the Court *proprio motu*, there are no restrictions on obtaining information, and they can gather

necessary information from various sources. The second paragraph of article 15 explicitly emphasizes this point by using the term “other reliable sources.”¹

Therefore, this research aims to establish the occurrence of the crime of deportation and forcible transfer in the current situation of Gaza and to draw the Prosecutor’s attention to this crime as a reliable source. To achieve this, in the first part of the article, we will analyze the concept and contextual elements of crime against humanity and the occurrence of its elements in the current Gaza war, and in the second part, we consider forced displacement of the population as an underlying offense constituting crime against humanity in Gaza.²

1 The process of amending or adding charges occurs in one of two ways: either the Prosecutor revises the list of charges without restriction before the confirmation of charges hearing in the Pre-Trial Chamber, or the Pre-Trial Chamber requests the Prosecutor to amend a charge because the evidence submitted appears to establish a different crime within the court’s jurisdiction.

2 In fact, regarding the topic under discussion, there are two primary questions. The first question is of a substantive nature. This means how can we analyze the crimes committed against the Gaza population under international criminal law and international humanitarian law? The second question is procedural and relates to the rules of procedure, such as which court has jurisdiction to adjudicate these matters and how we can impose criminal responsibility on the perpetrators of these crimes. The following article focuses solely on the first question, as examining the second question is indeed a vast and intricate topic that merits a separate and dedicated study. Nevertheless, in here, we recommend some general resources for readers to study the topic of criminal responsibility; Kai Ambos, ‘Individual Criminal Responsibility in International Criminal Law: A Jurisprudential Analysis—From Nuremberg to the Hague,’ in Gabrielle K. MacDonald and Olivia Q. Swaak-Goldman (eds.), *Substantive and Procedural Aspects of International Criminal Law. 1. Commentary* (Brill, 2000); Kai Ambos, ‘Joint Criminal Enterprise and Command Responsibility,’ *Journal of International Criminal Justice*, vol. 5, no. 1, 2007, pp. 159–183; Kai Ambos, ‘The Fujimori Judgment: A President’s Responsibility for Crimes Against Humanity as Indirect Perpetrator by Virtue of an Organized Power Apparatus,’ *Journal of International Criminal Justice*, vol. 9, no. 1, 2011, pp. 137–158; Antonio Cassese, *Cassese’s International Criminal Law 3rd Edition* (Oxford: Oxford University Press, 2013); Jernej L. Cernic, ‘Shaping the Spiderweb: Towards the Concept of Joint Commission Through Another Person under the Rome Statute and Jurisprudence of the International Criminal Court,’ *Criminal Law Forum*, vol. 22, 2011, pp. 539–65; Allison M. Danner and Jenny S. Martinez, ‘Guilty Associations: Joint Criminal Enterprise, Command Responsibility, and the Development of International Criminal Law,’ *California Law Review*, vol. 93, no. 1, 2005, pp. 75–169; Shachar Eldar, ‘Indirect Co-Perpetration,’ *Forthcoming, Criminal Law & Philosophy*, vol. 8, no. 3, 2014, pp. 605–17; Wayne Jordash, ‘Joint Criminal Enterprise Liability: Result Orientated Justice’ in William A. Schabas, Yvonne McDermott and Niamh Hayed (eds.), *The Ashgate Research Companion to International Criminal Law* (New York: Routledge, 2016); Otto Triffterer and Kai Ambos, *The Rome Statute of the International Criminal Court: A Commentary 3rd Edition* (Beck/Hart, 2016).

2 General Overview of Crimes against Humanity and the Current Situation in Gaza

In the first part of the article, we will review crime against humanity and establish the occurrence of its contextual elements in the current war in Gaza.

2.1 *Crimes against Humanity*

We will first provide a brief history of the origins and developments of crimes against humanity, followed by an explanation of its concept and elements.

2.1.1 Origins

It appears that the term ‘crimes against humanity’ was first used by one of the French revolutionaries named Maximilien Robespierre, addressing the deposed king of France, Louis XVI. In the 20th century, after the widespread massacre of Armenians by the Ottoman Turks, the term was also utilized by Britain, France, and Russia in their declaration condemning the atrocity.³ However, the emergence of this concept as a new category of international crimes occurred after World War II with the London Charter.

This new category of international crimes can be seen as a solution to a significant shortcoming in war crimes: the exclusion of one’s own civilians. War crimes, the oldest category of international crimes, were recognized before World War II in the Hague Conventions of 1899 and 1907. The individuals protected under wartime regulations included enemy military personnel and civilians; one’s military personnel and civilians were not subjects of war crimes. Initially, there was no perceived need to protect one’s citizens under such crimes since, naturally, enemy soldiers and civilians were the primary targets. However, the extensive crimes committed by Nazis against their Jewish citizens before and during World War II highlighted this flaw in war crimes and underscored the need for new criminal provisions to protect civilians.⁴

For this reason, the victors of World War II created a new category of crimes called crimes against humanity for the first time in the London Charter, which also protected civilians. However, in the London Charter, crimes against humanity were not considered independent of armed conflicts, meaning the Nuremberg Tribunal only had jurisdiction over these crimes ‘during or

3 William A. Schabas, ‘Crime Against Humanity’ in Dinah L. Shelton (ed.), *Encyclopedia of Genocide and Crimes Against Humanity* VI (Macmillan Reference, 2005).

4 Norman Geras, *Crimes Against Humanity Birth of a Concept* (Manchester: Manchester University Press, 2011).

in connection with' armed conflicts.⁵ Later, the Statute of the International Criminal Tribunal for the former Yugoslavia also maintained the link between armed conflicts and the commission of crimes against humanity.⁶

The ratification of the Rome Statute in 1998 eliminated any connection between crimes against humanity and armed conflicts. Article 7 of the Statute does not require an armed conflict for the court to exercise jurisdiction over such crimes. Although the Rome Statute primarily defines the jurisdiction scope of the International Criminal Court, article 7 can be seen as 'crystallizing nascent notions' or 'codifying the bulk of existing customary law.'⁷

2.1.2 Definition and Elements

Article 7 of the Rome Statute defines crimes against humanity as follows: 'For the purposes of this Statute, crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder, extermination, enslavement ... '

The notable initiatives of this article are as follows: firstly, it does not establish any nexus between crime against humanity and the existence of an armed conflict; secondly, it refers to the widespread and systematic nature of the attack as required contextual elements; Thirdly, it includes knowledge of the widespread and systematic attack as a necessary mental element; and fourthly, it adds new examples to the list of underlying offenses, such as deprivation of liberty, various forms of sexual violence, and enforced disappearance.

The elements of a crime against humanity, according to this article, can be summarized as follows:

1. There must be an attack directed against any civilian population.
2. The attack must reflect a state or organizational policy.
3. The attack must be widespread or systematic.
4. The perpetrator's act must be part of this attack.
5. The perpetrator must be aware of the widescale or systematic nature of the attack.

5 Raul Hilberg, *The Destruction of the European Jews vol. 3, 3rd edition* (New Haven: Yale University Press, 2003).

6 The ICTY Statute has defined crimes against humanity in article 5 as 'The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal ... '

7 Cassese, *Cassese's International Criminal Law*, p. 92.

6. The perpetrator must know that their act is part of or related to the widespread or systematic attack.⁸

2.1.2.1 *Definition of the Attack and the Civilian Population*

The Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia, in one of Its judgments, has defined an attack as ‘a course of conduct involving the commission of acts of violence.’⁹ An appeals chamber from this Tribunal has also stated that, in relation to crimes against humanity, the concept of an attack is not restricted to the use of armed forces but includes any mistreatment of civilians.¹⁰ Additionally, according to the introduction of article 7(3) in the Elements of Crimes under the Rome Statute, an attack is not limited to military force. The Pre-Trial Chamber of the International Criminal Court (ICC) considers any campaign or operation against civilians to fall within the definition of an attack.¹¹

The term ‘civilian population’ refers to any group of individuals connected by common characteristics that make them targets of an attack.¹² There are several important points to consider regarding the ‘civilian population.’ First, according to the judgment of the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia in the Tadić case, the condition of attacking a civilian population ‘does not mean that the entire population of a given State or territory must be victimized by these acts.’¹³ It is sufficient that the attack be widespread enough to distinguish it from isolated or random acts. The second point regards identifying the individuals who fall under the category of ‘civilian population’; in other words, determining who is considered civilian and thereby would be protected. In recent decades, international criminal tribunals have broadly interpreted the term ‘population.’ The phrase ‘any civilian population’ in Article 7 indicates that not only people with common nationality but also

8 ICC Pre-Trial Chamber II, *Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya*, para 79, 31 March 2010, ICC-01/09.

9 ICTY Trial Chamber, *Prosecutor v Mladen Naletilic and Vinko Martinovic*, Judgment, para 233, 31 March 2003, IT-98-34-T.

10 ICTY Appeal Chamber, *Prosecutor v Kunarac et al.*, Judgment, para 86, 12 June 2002, IT-96-23 & IT-96-23/1-A.

11 ICC Pre-Trial Chamber II, *Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya*, para 80, 31 March 2010, ICC-01/09.

12 Gerhard Werle and Florian Jeßberger, *Principles of International Criminal Law 4th Edition* (Oxford: Oxford University Press, 2020), p. 380.

13 ICTY Trial Chamber, *Prosecutor v Dusko Tadic*, Opinion and Judgment, para 644, 7 May, 1997, IT-94-I-T.

stateless individuals and even foreign citizens are protected.¹⁴ Additionally, inactive military personnel, the wounded, or members of resistance groups not participating in the conflict at the time of the attack (*hors de combat*) fall within this definition. Lastly, according to article 50(3) of Protocol I Additional to the Geneva Conventions, the presence of individuals not classified as civilians in an area (e.g., local police) does not deprive the population of legal protection.¹⁵ Some courts consider this article a reflection of customary international law and apply it in cases concerning crimes against humanity.¹⁶

2.1.2.2 *The Widespread and Systematic Nature of the Attack*

The essence of a crime against humanity, which elevates it to an international crime beyond the jurisdiction of domestic courts, is the existence of a widespread and systematic pattern as its critical contextual element. The term 'widespread' refers to the scale and magnitude of the attack or the number of victims involved.¹⁷ However, the Pre-Trial Chamber of the International Criminal Court has argued in one of its judgments that 'widespread' should not be narrowly interpreted merely in relation to the number of victims or the geographical area of the attack. Instead, it should be interpreted considering the specific circumstances of each case.¹⁸ Therefore, the widespread condition can be met in one case by the cumulative effects of a chain of inhumane acts and the extremely destructive impact of a single act in another.¹⁹ In the Gbagbo case, the Pre-Trial Chamber identified factors such as the multiple criminal acts, the high number of victims, the persistence of the acts over more than four months, and the impact of the acts on an entire city of over three million people as indicators of the widespread nature of the crimes.²⁰

14 The term 'against any population' is also mentioned in the ICTY Statute, and the Trial Chamber in the Tadić case has similarly taken this interpretation of the term in its judgment, *ibid.*, para 635.

15 ICTY Trial Chamber, *Prosecutor v Goran Jelisić*, Judgment, para 54, 14 December 1999, IT-95-10-T.

16 ICTY Appeal Chamber, *Prosecutor v Dario Kordić and Mario Cerkez*, Judgment, para 97, 17 December 2004, IT-95-14/2-A.

17 Otto Triffterer and Kai Ambos, *The Rome Statute of the International Criminal Court: A Commentary*, p. 168.

18 ICC Pre-Trial Chamber II, *Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya*, para 95, 31 March 2010, ICC-01/09.

19 United Nations, *Yearbook of the International Law Commission 1996 vol. part 2* (1996), p. 47.

20 ICC Pre-Trial Chamber I, *Decision on the Confirmation of Charges against Laurent Gbagbo*, para 224, 12 June 2014, ICC-02/11-01/11.

The term 'systematic' refers to the organized nature of violent acts and the improbability of their occurrence being single or isolated.²¹ The Trial Chamber of the International Criminal Tribunal for the former Yugoslavia in the Blaškić case established suitable criteria to determine the systematic characteristic: the existence of a political objective or ideology aimed at destroying, persecuting, or weakening a community, committing criminal acts on a large scale against a civilian population, or the repeated and continuous committing of related inhumane acts, provision and use of public resources to achieve designated goals, and the involvement of high-ranking political or military officials in advancing these objectives.²² In the Kunarac case, the Appeals Chamber of the ICTY outlined the factors for determining the widespread and/or systematic nature of an attack, including the impact of the attack on the targeted population, the number of victims, the nature of the acts, potential involvement of officials, and the identification of tangible patterns of crime.²³

Two additional points need to be made regarding the widespread and systematic nature of an attack: First, the individual's act does not need to be widespread or systematic; the existence of an attack with these conditions in the context of the individual's conduct suffices. In other words, if there is a widespread or systematic attack, an individual's isolated act (as long as it aligns with this attack) can be considered a crime against humanity. Secondly, although the Rome Statute and the international customary law have distinguished between the two requirements of 'widespread' and 'systematic,' considering the fulfillment of only one of these two requirements to be sufficient, in practice, these two requirements are so intertwined that the widespread nature of the attack will not be revealed unless its systematic nature is established, and the systematic nature of the attack will not be revealed unless its widespread nature is established.

Regarding the mens rea, article 7 of the Rome Statute requires, in addition to knowledge of the underlying offense, knowledge of a widespread or systematic attack directed against a civilian population. However, as stated in paragraph 2 of the introduction to this article in the Elements of Crime document, the perpetrator's knowledge of all the characteristics and details of the attack is

21 ICC Pre-Trial Chamber I, *Situation in The Democratic Republic of The Congo in the Case of the Prosecutor V. Germain Katanga And Mathieu Ngudjolo Chui*, Decision on the confirmation of charges, para 394, 30 September 2008, ICC-01/04-01/07.

22 ICTY Trial Chamber, *Prosecutor v Tihomir Blaskic*, Judgment, para 203, 3 March 2000, IT-95-14-T.

23 ICTY Appeal Chamber, *Prosecutor v Kunarac et al.*, Judgment, para 95, 12 June 2002, IT-96-23 & IT-96-23/1-A.

not required; general awareness of the ongoing attack and the intent for their conduct to be consistent with it is sufficient.

2.2 *Establishing the General Elements of Crimes against Humanity in the Situation of Gaza*

Establishing the general elements of a crime against humanity generally involves two main aspects: firstly, proving the occurrence of an attack against a civilian population and then proving the widespread and systematic nature of this attack.

2.2.1 Existence of an Attack Directing against Civilian Population

The first element constituting a crime against humanity is the existence of an attack against a civilian population. While ‘attack’ does not necessarily mean an armed conflict or military force (as discussed in the first part of the article that the nexus between armed conflict and crime against humanity has been severed), in the case under discussion, the attack on civilians—both in the general sense (widespread violence and mistreatment against them) and the specific sense (armed conflict and military force)—is evident. Following Hamas’s operations against Israel on October 7, which, according to Hamas leaders, were in response to the Israeli police’s desecration of Al-Aqsa Mosque, the imprisonment of thousands of Palestinians in Israeli prisons,²⁴ and ongoing crimes against the Palestinian people,²⁵ Israel initiated retaliatory operations against Hamas. Initially, Israeli attacks on Hamas involved missile operations on Gaza, but from October 27, 2023, Israel launched extensive ground assaults aiming to occupy Gaza²⁶ and destroy Hamas.²⁷

There is substantial debate over which party initiated the aggression and is considered the aggressor. Each side provides numerous arguments. For instance, Israel accuses Hamas of starting the October 7 operations and killing Israeli civilians, while Hamas supporters accuse Israel of violating

24 Andres R. Martinez and Emma Bubola, ‘What We Know About the Hamas Attack and Israel’s Response,’ *New York Times*, <<https://web.archive.org/web/20231008143358/https://www.nytimes.com/article/israel-gaza-hamas-what-we-know.html>> accessed April 2024.

25 *Aljazeera*, ‘Why the Palestinian Group Hamas Launched an Attack on Israel? All to Know,’ <<https://www.aljazeera.com/news/2023/10/7/palestinian-group-hamas-launches-surprise-attack-on-israel-what-to-know>> accessed April 2024.

26 Barak Ravid, ‘Israel Moves to “New Phase” of War with Hamas in Major Incursion in Gaza,’ *Axios*, <<https://www.axios.com/2023/10/27/israel-hamas-ground-invasion-gaza>> accessed January 2024.

27 *Aljazeera*, ‘Fears of a Ground Invasion of Gaza as Israel Vows ‘Mighty Vengeance,’ <<https://web.archive.org/web/20231008024318/https://www.aljazeera.com/news/2023/10/7/world-is-watching-fears-grow-of-a-massive-gaza-invasion-by-israel>> accessed January 2024.

UN Security Council Resolution 181, imposing a 16-year siege on Gaza, committing violence against Palestinians, and expanding illegal settlements. Nonetheless, determining the aggressor does not alter the obligation to adhere to humanitarian and human rights laws; it merely holds the aggressor accountable for the crime of aggression. In other words, regardless of who initiated the conflict, both sides are bound to uphold the conduct of war and the rights of civilians. Even if Israel claims self-defense, it cannot use this legal status as a pretext to commit crimes against civilians.

However, Israel's war has not been limited to Hamas forces alone; all city areas and people in Gaza have been targeted. From the beginning of the war until the writing of this article, over 36,000 civilians in Gaza have been killed, and more than 82,000 others have been injured.²⁸ Thus, the first criterion for a crime against humanity—directing an attack against a civilian population—is met in the current situation in Gaza.

2.2.2 The Widespread and Systematic Nature of the Attack

The next step is to prove the widespread and systematic nature of the actions taken against civilians. The ICTY Trial Chamber in the Blaškić case outlined criteria for establishing this characteristic: the general historical conditions and political background in which the crimes occur, the general contents of political program inferred from the writings and speeches of its perpetrators, media propaganda, military movements, repeated and coordinated military attacks in terms of time and location, discriminatory actions, and scale of violent acts like murder, rape, arbitrary detention, deportation, and the destruction of civilian property.²⁹

Many of the above criteria can also be observed in the current Gaza conflict. The persistent conflict against Palestinians over the past 80 years is evident. The repeated and illegal occupation of the West Bank and Gaza by Israel since 1967, the occupation of East Jerusalem since 1980,³⁰ control over Gaza's borders since 2005, restrictions on the movement of people and goods in and out of Gaza by air and sea, control over Gaza's electricity, water, and communications networks, detentions, targeted killings, property destruction, and collective

28 Ahmed Asmar, 'Gaza Death Toll from Israeli Attacks since Oct. 7 Surges to 36,284,' *Anadolu Ajans*, <<https://www.aa.com.tr/en/middle-east/gaza-death-toll-from-israeli-attacks-since-oct-7-surges-to-36-284/3236603>> accessed June 2024.

29 ICTY Trial Chamber, *Prosecutor v Tihomir Blaskic*, Judgment, para 204, 3 March 2000, IT-95-14-T.

30 The United Nations Security Council explicitly condemned the annexation of East Jerusalem to Israel in its resolution 478, stating that Israel has violated the international laws. (UN Security Council, S/RES/478, 1980)

punishment³¹—all highlight the deep-seated conflict and discrimination against the Palestinian people.

In addition to the criteria mentioned above, the widespread and systematic nature of the attack can also be established separately. To prove the widespread nature of the attack, criteria presented by the International Criminal Court in the Gbagbo case can be used: a high number of victims,³² multiple criminal acts committed against civilians,³³ the persistence of inhumane acts over time,³⁴ and the extensive destructive consequences of these actions³⁵ all indicate a widespread pattern of attack against the civilian population.

The systematic nature of the current actions against the people of Gaza can be clearly observed in the political agendas, media, and speeches of high-ranking Israeli political and military officials, which is not commonly seen in other cases of genocide or crimes against humanity. Courts usually rely on evidence and results of the acts committed against civilians to prove intent or the systematic nature of the attack because, in few cases, the intent to commit crimes against civilians is explicitly stated by officials of the hostile state. However, in the recent Gaza war, Israeli officials openly spoke about targeting civilians. For instance, Israeli Prime Minister Benjamin Netanyahu threatened at the start of the war to turn Gaza into a 'deserted island.'³⁶ After the siege of Gaza, Israeli Defense Minister Yoav Gallant declared that electricity, food, water, and fuel would be cut off, saying, 'We are fighting animals and are acting accordingly.'³⁷

31 *Amnesty International*, 'Israel/Occupied Palestinian Territories: The Conflict in Gaza: A Briefing on Applicable Law, Investigations and Accountability,' <<https://web.archive.org/web/20090209091419/https://www.amnesty.org/en/library/asset/MDE15/007/2009/en/4c407b40-e64c-11dd-9917-ed717fa5078d/mde150072009en.html>> accessed January 2024.

32 More than 40,000 deaths and over 100,000 injuries until the twelfth month of the war.

33 Intense bombarding of non-military areas, directing attacks against civilian property, directing attacks against educational, cultural, and religious sites, imposing starvation on civilians, and depriving them of access to medicine.

34 More than 12 months have passed since the start of crimes against the people of Gaza, and it seems that it is going to continue for a significant amount of time.

35 Israel's war has not been limited to combating Hamas forces alone; the entire population of the city of Gaza, numbering over 2.3 million people, has been affected by unfavorable living conditions.

36 *The Financial Express*, 'Invasion Fears Grow as Netanyahu Promises to Turn Gaza into 'Deserted Island,' <<https://thefinancialexpress.com.bd/world/asia/invasion-fears-grow-as-netanyahu-promises-to-turn-gaza-into-deserted-island>> accessed January 2024.

37 Rushdi Abu Alouf and Oliver Slow, 'Gaza 'Soon Without Fuel, Medicine and Food'—Israel Authorities,' *BBC*, <<https://www.bbc.com/news/world-middle-east-67051292>> accessed January 2024.

Furthermore, other factors such as the extensive participation of high-ranking Israeli officials in these policies,³⁸ the existence of a political and ideological objective in designing these measures,³⁹ the use of public resources,⁴⁰ and the repeated and continuous inhumane actions against the people of Gaza⁴¹ all prove the systematic nature of the actions.

3 Deportation and Forcible Transfer

Deportation or forcible transfer is an underlying offense of crime against humanity. First, we examine its definition and elements; then, we consider the realization of the forced displacement of Gazans as a case of crime against humanity committed by Israel in Gaza.

3.1 *Definition and Basis of Criminalization*

As mentioned in the introduction, deportation and forcible transfer are listed as underlying offenses in the Rome Statute under article 7, concerning crimes against humanity, and article 8, concerning war crimes. It is essential to highlight that, in the authors' opinion, there is no difference in the nature and characteristics of deportation and forcible transfer as crimes against humanity and war crimes. What places these acts sometimes under the category of crimes against humanity and sometimes under war crimes is the different contextual elements required for the realization of crimes against humanity and war crimes. Therefore, in explaining and interpreting deportation and

³⁸ Immediately after the war, Israel's Likud and National Unity parties issued a joint statement and formed an emergency unity government. Additionally, Yair Lapid, the leader of the Israeli opposition, has been invited to join the new cabinet. Former Defense Minister Benny Gantz has also joined Netanyahu's emergency war cabinet. The involvement of political figures from various factions across Israel in planning current procedures against civilians is evident.

³⁹ As the Israeli Prime Minister stated at the beginning of the war, the goal is the total destruction of Gaza.

⁴⁰ After the Israeli army's ground forces entered Gaza, Netanyahu announced that the war had entered its second phase and urged the public to prepare for a difficult and prolonged war. Alongside these long-term war preparations, media reports indicate that the Israel government has allocated a substantial budget for this purpose. See: Alasdair Soussi, 'Israel's New \$15bn War Budget: What's It For and What Gets Cut?', *Aljazeera*, <<https://www.aljazeera.com/news/2024/1/16/israels-new-15bn-war-budget-whats-it-for-and-what-gets-cut>> accessed January 2024.

⁴¹ The crimes committed against the people of Gaza are not isolated or single acts. Over twelve months have passed since Israel's extensive attacks on the population, reflecting a policy aimed at the destruction of Gaza and the forced displacement of its people.

forcible transfer, we can also refer to their common characteristics in war crimes and the Geneva Conventions.

The basis for criminalizing deportation and forcible transfer can be seen as the protection of the right of individuals to live in their communities and homes without external interference.⁴² The illegal deportation of civilians from their homes was mentioned in the Nuremberg Charter and the statutes of the Yugoslav and Rwanda tribunals as a crime against humanity, but the forcible transfer was explicitly outlined for the first time in the Rome Statute. Although neither the statute nor the elements of the crime document distinguish between these two offenses, legal writings typically define deportation as the expulsion of individuals beyond their country's borders and forcible transfer as their relocation within the same country's territory. The lack of distinction between these offenses in the Rome Statute could be attributed to their shared purpose and nature. Both aim to protect the same value: the 'right of the victim to stay in his or her home and community and the right not to be deprived of his or her property by being forcibly displaced to another location.'⁴³ The essence of both crimes also overlaps; as noted by an ICTY appeals chamber in one case, the essence of this crime is not whether individuals are relocated within or outside the borders but the coercive actions used to forcibly move them from their homes.⁴⁴ Article 7(2)(d) of the Rome Statute defines deportation or forcible transfer as follows: 'forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.'

3.2 *Elements of the Crime*

According to the Rome Statute, regardless of whether the displacement is within or beyond borders, the elements of this crime can be described as follows: 1. The lawful presence of individuals in the area; 2. Forced displacement, and 3. The absence of justified grounds for displacement.

The first element of this crime is the lawful presence of individuals in the area from which they are displaced. Lawful presence is evaluated not only by domestic laws but also by international legal standards.⁴⁵ Otherwise, states could cite their discriminatory domestic laws to expel individuals from their

42 ICTY Appeal Chamber, *Prosecutor v Milorad Krnojelac*, Judgment, para 218, 17 September 2003, IT-97-25-A.

43 ICTY Trial Chamber, *Prosecutor v Slobodan Milosevic*, Decision on motion for judgment of acquittal, para 69, 16 June 2004, IT-02-54-T.

44 ICTY, *Prosecutor v Krnojelac*, para 218.

45 Robert Cryer; et al., *An Introduction to International Criminal Law and Procedure 2nd Edition* (Cambridge: Cambridge University Press, 2010), p. 249.

homes and evade criminal responsibility. In international law, the ‘presence’ of individuals in an area has a broader meaning than ‘legal residence.’ Lawful presence may arise from international obligations not to expel refugees, thus providing protection not only to legal residents but also to refugees, making their expulsion a matter of criminal responsibility. It is important to note that, based on a common rule in most legal systems, the continuous presence of individuals in an area over a certain period can grant them legal entitlement to the land they reside in. Therefore, expelling these individuals without a fair trial to determine their legal status constitutes criminal liability.⁴⁶ In this context, the ICTY Trial Chamber, in the Popović et al. case, elaborated on the distinction between the concepts of ‘presence’ and ‘residence’:

The Trial Chamber is of the view that the words ‘lawfully present’ should be given their common meaning and should not be equated to the legal concept of lawful residence. The clear intention of the prohibition against forcible transfer and deportation is to prevent civilians from being uprooted from their homes and to guard against the wholesale destruction of communities. In that respect, whether an individual has lived in a location for a sufficient period of time to meet the requirements for residency or whether he or she has been accorded such status under immigration laws is irrelevant. Rather, what is important is that the protection is provided to those who have, for whatever reason, come to ‘live’ in the community—whether long-term or temporary. In the view of the Trial Chamber, the requirement for lawful presence is intended to exclude only those situations where the individuals are occupying houses or premises unlawfully or illegally and not to impose a requirement for ‘residency’ to be demonstrated as a legal standard.⁴⁷

The second element of the crime of deportation or forcible transfer is the forcible displacement of individuals from their homes. Coercion can be understood as the lack of genuine consent and choice in individuals leaving their places of residence.⁴⁸ Similar to the concept of presence, coercion has been broadly interpreted in court judgments and legal writings. For instance,

46 Otto Triffterer and Kai Ambos, *The Rome Statute of the International Criminal Court: A Commentary*, p. 264.

47 ICTY Trial Chamber, *Prosecutor v Popovic; et al.*, Judgment vi, para 900, 10 June 2010, IT-05-88-T.

48 Elena. K Proukaki, ‘The Right Not to be Displaced by Armed Conflicts under International Law’ in Elena. K Proukaki (ed.), *Armed Conflict and Forcible Displacement: Individual Rights Under International Law* (London: Routledge, 2018), p 4.

the ICTY Appeals Chamber in the Stakić case did not limit coercion to its physical and direct forms. It considered threats of force and coercion through fear or violence, duress, punishment, psychological pressure, abuse of power, or coercive environment as falling within the concept of coercion.⁴⁹ In fact, as the Pre-Trial Chamber of the International Criminal Court stated in the Ruto et al. case, deportation or forcible transfer is a crime with a broad *actus reus* in which a range of different acts by perpetrators can create a situation of forcibility in victims, leading them to leave their places of residence.⁵⁰ The ICTY Trial Chamber in the Popović case outlined examples of the acts constituting forcible transfer: ‘the shelling of civilian objects, the burning of civilian property, and the commission of—or the threat to commit—other crimes calculated to terrify the population and make them flee the area.’⁵¹ Considering the recent situation in Gaza, we further examine the instances of crimes committed against the residents of this city, which have resulted in their mass displacement. In the second part of the article examining the current situation in Gaza, we further speak of criminal acts that have led to the mass displacement of the Gaza population.

The third element of this offense is the absence of justified grounds for transferring individuals according to international law standards. To elaborate, the transfer of civilians under certain circumstances is recognized as justified in customary international and treaty law. This situation, referred to as ‘civilian evacuation,’ is outlined in article 49 of the Fourth Geneva Convention and article 17 of the Second Additional Protocol to the same convention. In both articles, the justification for civilian evacuation hinges on the security of the civilians or military necessities.

The Trial Chamber of the ICTY, in one of its judgments, identified three criteria for the lawful evacuation of civilians. The first criterion is that the evacuation must be aimed at safeguarding the civilians’ security and protecting them from military operations or intense bombing. The second criterion addresses military necessities, where the presence of civilians in an area obstructs military operations. The difference between these two criteria lies in that the first focuses on the security of the civilians, while the second justifies evacuation based on strategic military interests. In addition to these two criteria, which are also outlined in the Fourth Geneva Convention, the trial

49 ICTY Appeal Chamber, *Prosecutor v Milomir Stakic*, Judgment, para 281, 22 March 2006, IT-97-24-A.

50 ICC Pre-Trial Chamber II, *Situation in Republic of Kenya in the Case of the Prosecutor v William s Ruto; et al.*, Decision on the confirmation of charges pursuant to article 61(7)(a) and (b) of the Rome Statute, para 244, 23 January 2012, ICC-01/09-01/11.

51 ICTY, *Prosecutor v Popovic; et al.*, para 896.

chamber introduces a third criterion: humanitarian reasons. According to the tribunal, specific conditions that do not necessarily have a direct connection to military operations—such as the outbreak or risk of the outbreak of epidemic diseases, natural disasters, or generally intolerable or life-threatening conditions—can justify evacuation.⁵² Regardless, even if justified, evacuation must be an exceptional and temporary measure, with civilians being returned to their homes as soon as the barriers are removed. However, there are two instances where evacuation would not have legal justification: first, if military necessities are used as a pretext for expelling civilians and asserting control over an area,⁵³ and second, if the unlawful actions of the perpetrator cause intolerable living conditions justifying evacuation for humanitarian reasons, such conditions cannot serve as a pretext for civilian evacuation.⁵⁴

Two points are crucial regarding the mental element of the crime of deportation or forcible transfer. First, the perpetrator must be aware of the prevailing contextual circumstances (a widespread or systematic attack against a civilian population) and intend for their actions to be associated with these circumstances. Second, the perpetrator must have knowledge or specific intent to commit the underlying offense of deportation or forcible transfer. In the latter case, the perpetrator must be aware of the legality of the civilians' presence in the region and intend to forcibly and unlawfully displace them within or across their national borders.

3.3 *Forced Displacement of the Gaza Population: a Case of Crime against Humanity*

As previously mentioned, forced displacement involves three elements. First, we analyze the legal presence of the Gazans in their land and the lack of grounds permitted for displacement according to international law standards. Next, we will delve into the element of coercion and its manifestations.

3.3.1 Legal Presence of the Gazans and Lack of Grounds Permitted for Displacement

According to the UN Deputy Secretary-General for Humanitarian Affairs, the war in Gaza has displaced approximately 1.9 million people, equivalent to 85%

52 ICTY Trial Chamber, *Prosecutor v Vidoje Blagojevic and Dragan Jokic*, Judgment, para 598–600, 17 January 2005, IT-02-60-T.

53 ICTY, *Prosecutor v Popovic; et al.*, para 901.

54 ICTY Appeal Chamber, *Prosecutor v Momčilo Krajišnik*, Judgment, para 308, 17 March 2009, IT-00-39-A.

of the city's population.⁵⁵ The current displacement not only echoes the first Palestinian displacement in 1948, known as 'Nakba Day,'⁵⁶ but is happening on a much larger scale. Israeli officials have explicitly expressed their intent to expel and displace Palestinians during the recent conflict. For instance, Avi Dichter, a member of Israel's security cabinet and the current Minister of Agriculture, stated, 'We are now rolling out the Gaza Nakba, Gaza Nakba 2023; that is how it will end.'⁵⁷

The first element of the crime of deportation or forcible transfer is the lawful presence of residents in the area. There is no doubt about the legality of the presence of the residents of Gaza in that area. As stated in the explanation of the elements of the crime of forced displacement, presence is interpreted according to the criteria of international law and the domestic laws of countries are not a justification for expelling people from their land. Gaza, as part of the Palestinian territories, has historically been inhabited by Muslims. Therefore, Israel's occupation of this Strip since 1967 and its siege since 2005 does not change the right of the people of Gaza to live in this land.

The next element is that the displacement must not be justified under international law. Israeli officials justify this large-scale displacement by invoking the concept of evacuation. Evacuation, as a temporary measure of last resort, is an exception to the prohibition of forced displacement, as prescribed in article 49 of the Fourth Geneva Convention. However, evacuation has specific conditions and creates obligations for the occupying power; it must be assessed whether these conditions and the requirements of justified evacuation under international law are being met.

The first issue is evaluating the legitimacy of the evacuation order. article 49 permits evacuation in two scenarios: security needs of the residents and military necessities. However, it is up to the occupying power to prove the existence of these conditions, and the mere presence of armed conflict does not justify a complete evacuation of a city. In practice, Israel, citing the war with Hamas's military wing, has ordered the evacuation of all residents of Gaza City and Khan Yunis. Consequently, the legitimacy of this order is questionable.

55 UN Press, 'As Israel's Aerial Bombardments Intensify, 'There Is No Safe Place in Gaza,' Humanitarian Affairs Chief Warns Security Council,' <<https://press.un.org/en/2024/sc15564.doc.htm>>

56 The catastrophe day: The expulsion of over 750,000 Palestinians from their land and the massacre of thousands of them by Israel to establish and strengthen their country in 1948.

57 Marjorie Cohn, 'The Forcible Transfer of 85% of Palestinians in Gaza Is a Crime Against Humanity,' *truthout*, <<https://truthout.org/articles/the-forcible-transfer-of-85-of-palestinians-in-gaza-is-a-crime-against-humanity/>> accessed February 2024.

The second issue involves the evacuation conditions and the occupying power's obligations. Assuming legal grounds for evacuation exist, the conditions and obligations of the Israeli government in the current situation in Gaza have not been met at all. The first evacuation order from the Israeli army was issued on October 12th, following the announcement of a full blockade of Gaza by the country's defense minister. Israel gave over 1.1 million residents of Gaza City 24 hours to move to the southern areas of the strip. As noted by the United Nations, moving such a large population within such a short time would have devastating consequences.⁵⁸ Another crucial matter is the destination for the displaced individuals. If evacuation becomes necessary, individuals should ideally be relocated within the borders of the occupied region. However, Israel has not allowed the transfer of Gaza residents to the West Bank or Jerusalem, essentially forcing them to leave Palestinian territory for Egypt's Sinai Desert.⁵⁹ Initially, the Israeli army's first evacuation order targeted only residents of northern Gaza, compelling them to move to southern areas. But on December 3rd, Israel deviated from the previous order and issued evacuation notices for southern regions, including Khan Yunis.⁶⁰ Since then, the Israeli army has continued issuing new evacuation orders as it advances further south in the strip. As Israel prepares for a ground invasion of Rafah (the southernmost city in Gaza and the last civilian refuge), the IDF has ordered the evacuation of many areas in Rafah as well.⁶¹ Given that Israel has taken full control of Gaza's maritime, aerial, and land borders and has closed them to the people of Gaza and that there are severe restrictions on passage at Rafah, the only land crossing with Egypt, it remains unclear how Gaza's refugees can protect themselves from Israeli attacks this time.

58 United Nations Secretary-General, 'Note to Correspondents on Gaza,' *UN Press*, <<https://www.un.org/sg/en/content/sg/note-correspondents/2023-10-12/note-correspondents-gaza>>.

59 Danny Ayalon, former Israeli ambassador to the US and former Deputy Foreign Minister of Israel, explicitly encouraged the residents of Gaza to leave their land and move to the Sinai Desert in an interview with Al Jazeera. In this interview, he stated: 'We don't tell Gazans to go to the beaches or drown themselves ... No, God forbid ... Go to the Sinai Desert. There is a huge expanse, almost endless space in the Sinai Desert just on the other side of Gaza.' *Aljazeera*, 'Palestinians in Gaza Can Go to 'Tent Cities': Former Israeli Minister,' <<https://www.aljazeera.com/news/2023/10/15/palestinians-in-gaza-can-go-to-tent-cities-former-israeli-minister>> accessed February 2024.

60 *VOA News*, 'Israel Orders New Evacuation in Southern Gaza,' <<https://www.voanews.com/amp/southern-gaza-town-under-intense-attack-/7382240.html>> accessed February 2024.

61 Aya Batrawy and Vincent Ni, 'Israel Expands Evacuation Orders in Rafah as Aid Groups Struggle to Prepare,' *NPR*, <<https://www.npr.org/2024/05/11/1250755776/rafah-gaza-evacuation-expanded-israel>> accessed June 2024.

Furthermore, an occupying government that orders the evacuation of civilians has obligations towards their safe relocation. According to the Red Cross's note on article 49 of the Fourth Geneva Convention, the occupying state is required to arrange suitable living conditions and provide food and health services for refugees. Israel has also neglected these commitments. The power outage in Gaza has made it difficult for people to access the internet and find out about safe zones and how to reach them. Even if Gazans attempt to move towards southern areas and safe zones, they face bombardment along these routes.⁶² Even upon reaching a safe zone, their situation remains dire.⁶³ Lack of access to potable water and sufficient food, poor sanitary conditions, the spread of infectious diseases, and lack of sleeping quarters have made settlement in these safe zones critical.⁶⁴

One of the consequences of failing to adhere to the legal obligations of evacuation is the separation of families. In addition to the fact that families in Gaza lose their members due to direct attacks by the Israeli army, the severe chaos resulting from multiple evacuation orders, attacks on seemingly "safe" evacuation routes, the detention of men and young boys at checkpoints by Israeli forces, and the tumultuous conditions in shelters lead to family members in Gaza becoming separated from one another. Such conditions not only have devastating effects on children but also gradually disrupt the social fabric and cohesion of the community.⁶⁵

62 Following the order to evacuate northern areas, the IDF designated Salah al-Din road and the coastal highway of Gaza as 'safe routes' for people to evacuate northern Gaza. However, numerous reports indicated that these routes were bombed by Israel. In just one of these bombings, 70 people who were evacuating the city were killed. Bethan McKernan and Sufian Taha, 'Gaza Civilians Afraid to Leave Home After Bombing of 'Safe Routes,' *The Guardian*, <<https://www.theguardian.com/world/2023/oct/14/gaza-civilians-afraid-to-leave-home-after-bombing-of-safe-routes>> accessed February 2024.

63 Since the start of the war, the only point in the Gaza Strip that Israel has designated as a safe zone is a small area near the Mediterranean Sea called Al-Mawasi. Al-Mawasi is a 6-square-kilometer Bedouin town lacking the necessary infrastructure for living and is now supposed to accommodate 1.8 million displaced Gazans.

64 James Elder, a UNICEF spokesperson, describes the conditions of safe areas in Gaza as follows: 'There are no safe zones in Gaza. These are tiny patches of barren land. They have no water, no facilities, no shelter from the cold, no sanitation.' Furthermore, refugee camps are overcrowded, accommodating more displaced people than their capacity. A UN report mentions that one of these camps, with a capacity for 2500 people, currently houses over 37,000 individuals. Li Zhou, 'The "Apocalyptic" Humanitarian Situation in Gaza, Captured by One Quote,' *vox*, <<https://www.vox.com/world-politics/2023/12/6/23990868/gaza-humanitarian-crisis-evacuate-safe-zones>> accessed June 2024.

65 BADIL Resource Center, 'Forced Displacement and Transfer as an Act of Genocide in the Gaza Strip,' <<https://www.badil.org/publications/working-papers>>.

Given all these aspects, the Gazans' movement cannot be interpreted as an evacuation in the true sense. Not only is the legitimacy of such an order in question, but there are also doubts about the occupying government's adherence to its responsibilities toward the refugees, and none of the legal conditions for evacuation have been met. Therefore, Gazans' displacement should be viewed as being forced to leave their land.

3.3.2 Coercion and Its Manifestations

Thus, we turn to examining the final element of this crime, namely the use of force and coercion in the displacement of people. Although international tribunals have interpreted coercion broadly, extending beyond just military force, even in its narrow sense, coercion is evident in this case. As we discussed in explaining the elements, forced displacement is a crime with a broad *actus reus*; it involves a series of inhumane and illegal acts committed by perpetrators that compel residents of a region to leave their homes and lands. Therefore, we will briefly review some examples of the criminal acts and inhumane behaviors by Israel in the current Gaza conflict that have forced people to abandon their homes.

- a) **Willful killing:** The willful killing of protected individuals is recognized as an underlying offense in different international crimes. In international armed conflicts, the killing of civilians is considered a grave breach of the Fourth Geneva Convention and constitutes a war crime. The *actus reus* of willful killing is the death of the victim as a result of the perpetrator's actions;⁶⁶ therefore, direct perpetration or causation in committing the crime will not affect the perpetrator's liability. The act can be committed through action or omission. The *mens rea* of this crime is established not only by intent but also by recklessness or gross negligence.⁶⁷ The widespread killing of civilians in Gaza as a result of repeated air and ground attacks on residential areas without military necessity is one of the acts that can constitute the *actus reus* of the crime of forced displacement.
- b) **Intentionally launching an attack in the knowledge that such an attack will cause damage to civilians:** According to article 8(b)(1) & (2) of the Rome Statute, intentionally directing an attack against a civilian population or civilian objects is a war crime. However, article 8(b)(4) provides for another type of war crime: an attack that is not directed at a civilian population or civilian objects but which causes incidental loss of life or

66 ICTY Trial Chamber, *Prosecutor v Delalic; et al.*, Judgment, para 424, 1998, IT-96-21-T.

67 Knut Dormann, *Elements of War Crimes under the Rome Statute of the International Criminal Court* (Cambridge: Cambridge University Press, 2003), p. 43.

injury to civilians or damage to civilian objects which would be excessive in relation to the concrete and direct overall military advantage anticipated. In the war with Hamas, Israel has repeatedly targeted residential areas of Gaza City in airstrikes, resulting in the death or injury of countless residents of northern Gaza under the pretext of targeting Hamas militants or commanders.⁶⁸

- c) **Intentionally directing attacks against hospitals:** Article 18 of the Fourth Geneva Convention explicitly protects hospitals, stating they should not be attacked under any circumstances. Similarly, article 19 of the same convention and article 13 of the First Additional Protocol to the Geneva Conventions protect medical facilities and hospitals. The only exception where medical facilities lose their protection is when they are used for purposes other than humanitarian duties and engage in acts harmful to the hostile state. In its numerous attacks on medical facilities in Gaza, Israel has claimed that Hamas uses hospitals as command centers to direct its operations. However, Israel has not provided any evidence to substantiate its claim.⁶⁹ Moreover, according to article 19 of the Fourth Convention, even if a hospital is used for purposes other than its designated function, an attack is permissible only after a warning has been given and a reasonable time limit for compliance has expired. Additionally, article 13 of the First Additional Protocol states that merely

68 For example, according to the United Nations Office for the Coordination of Humanitarian Affairs, Israel targeted the residential area of Shujaiya in Gaza City in one of its airstrikes. This attack, which, according to the IDF spokesman, was designed to target a Hamas commander, resulted in the destruction of homes and the deaths of dozens of residents. The report did not specify whether Israel's claim that the commander in question was present in the residential area was true, but even assuming it was, the casualties were clearly excessive in relation to the purported military advantage. *B'Tselem*, 'Israel Is Not Fighting against Hamas but against Civilians, Implementing a Criminal Policy of Bombings,' https://www.btselem.org/gaza_strip/20231205_israel_is_not_fighting_against_hamas_but_against_civilians_implementing_a_criminal_policy_of_bombings accessed February 2023.

69 One of the deadliest Israeli attacks on Gaza's hospitals since the beginning of the war was the attack on Al-Shifa Hospital in March 2024. According to the Euro-Med Human Rights Monitor, during the nighttime raid by Israel's army and then the following siege of the hospital, 1,500 patients and medical staff were killed and injured. *Euro-Med*, 'Gaza: Al-Shifa Medical Complex Massacre Provides Proof that the Israeli Army Engaged in Full-Fledged Crimes,' <<https://euromedmonitor.org/en/article/6263/Gaza-Al-Shifa-Medical-Complex-massacre-provides-proof-that-the-Israeli-army-engaged-in-full-fledged-crimes>> accessed June 2024.

treating wounded military personnel or medical staff possessing arms for self-defense does not strip a hospital of its legal protection.⁷⁰

- d) **Using starvation of civilians as a method of warfare:** One of Israel's main tools for imposing starvation on the people of Gaza since the beginning of the war has been the blockade and the closure of the borders of the stripe. Generally, Under the customary international law or most military manuals of states, blockading and controlling borders is not considered a crime. However, if such action is taken with the intent to exert pressure on the civilian population and deprive them of basic necessities such as access to clean water, food, and medicine, it is deemed a violation of international humanitarian law. The Israeli government has not only maintained control over Gaza's land, sea, and air borders since 2005, monitoring even the slightest movements but has also imposed stricter restrictions on the borders since the onset of the war. It not only prevents the movement of people from Gaza to the West Bank but also obstructs the entry of humanitarian aid. A severe blockade aimed at imposing hunger on the population can itself lay the groundwork for other crimes such as extermination and apartheid.⁷¹
- e) **Attacking or bombarding of towns, villages, dwellings or buildings:** Since the beginning of the war, all three major cities in the Gaza Strip have been subjected to intense bombardment by the Israeli military. Not only thousands of civilians have been killed as a result of these attacks, but the infrastructure of the Gaza Strip has also been completely destroyed. Economic, educational, cultural, religious, media,

⁷⁰ According to the Euro-Med Human Rights Monitor, since the beginning of the war until the fourth month, 235 medical centers in the Gaza Strip have been targeted by Israeli attacks, including 26 hospitals, 63 clinics, and 146 ambulances. The report further states that less than 17% of Gaza's medical centers are still able to provide services, and the rest are out of service. *Euro-Med*, 'Four Months into Gaza Genocide: Israel's Horrific Targeting of Civilians, Purposeful Destruction Continues,' <<https://euromedmonitor.org/en/article/6136/Four-months-into-Gaza-genocide:-Israel%E2%80%99s-horrific-targeting-of-civilians,-purposeful-destruction-continues>> accessed June 2024.

Also, according to the World Health Organization, in the first 6 months of the war, medical centers and personnel were attacked a total of 435 times, and only 11 out of 36 medical centers are still able to provide services. *Save the Children International*, 'Gaza: Rate of Attacks on Healthcare Higher than in Any Other Conflict Globally since 2018,' <<https://www.savethechildren.net/news/gaza-rate-attacks-healthcare-higher-any-other-conflict-globally-2018>> accessed June 2024.

⁷¹ Dora V. Velenczei, 'A Progressive Programme of Starvation: The Gaza Strip Blockade as the Crime against Humanity of Extermination,' *ELTE Law Journal*, no. 2, 2020, p. 92.

residential, and telecommunications facilities have been continuously targeted, causing catastrophic consequences for life in Gaza. The targeting of urban infrastructure has devastated Gaza's economy, wiped out livelihoods, and made it exceedingly difficult to secure food, water, and medicine. Children have been deprived of education, homes have been destroyed, and communication between Gaza's residents and the outside world has been severed.⁷² As a result, the heavy bombardment of the Gaza Strip either directly kills civilians or, through the destruction of urban infrastructure, subjects the survivors to suffering and hardship, which is nothing but a gradual death.

- f) **Deliberately creating unbearable living conditions:** Deliberately creating unbearable living conditions is the primary and ultimate tactic used by states to force people to leave their land. In rare cases, the hostile state openly declares its intention to displace the population. Instead, they employ a series of tactics to make living conditions unbearable for the target population, compelling them to leave their homes. In the Gaza War, Israel, under the policy of 'no safe place in Gaza,' has created dire conditions for civilians through extensive targeting of the civilian population and non-military targets,⁷³ widespread destruction of property,⁷⁴

72 Gökhan Ak, "Crime of the Century": Israel's State Terrorism and International Law Violations in Gaza Strip,' *Journal of Humanity, Peace and Justice*, vol. 1, no. 1, 2024, p. 80; Muath M. Alashqar, Asmar A. Rahim & Ahmad S. Abd Aziz, 'War Crimes in Gaza Strip from Year 2008 2021: Individual Criminal Responsibility under the Legal Framework of Rome Statute of the International Criminal Court,' *Journal of International Studies*, vol. 19, no. 1, 2023, p. 85.

73 According to *The Guardian*, more than 61% of those killed in Israeli airstrikes on Gaza were civilians. This rate is higher than any other armed conflict since World War II. Julian Borger, 'Civilians Make up 61% of Gaza Deaths from Airstrikes, Israeli Study Finds,' *Guardian*, <<https://www.theguardian.com/world/2023/dec/09/civilian-toll-israeli-airstrikes-gaza-unprecedented-killing-study>> accessed June 2024

74 The *Times of Israel*, citing the *Wall Street Journal*, reported that half of Gaza's buildings, equivalent to 70% of homes, were destroyed by the end of December 2023. The *Times of Israel*, 'Almost 70% of Gaza Homes Damaged or Destroyed—Wall Street Journal,' <https://www.timesofisrael.com/liveblog_entry/some-70-of-gaza-homes-damaged-or-destroyed-wall-street-journal-analysis/> accessed June 2024.

The United Nations also stated in a report estimating the extent of damage to Gaza's infrastructure and homes that such damage to residential homes and urban structures has been unprecedented since World War II. It will take until at least 2040 to rebuild the infrastructure, and the reconstruction cost will be over 40 billion dollars. Amy Peacock, 'Rebuilding Destroyed Gaza Homes Will Take at Least 16 Years Reports the UN,' *dezeen*, <<https://www.dezeen.com/2024/05/08/united-nation-rebuilding-homes-gaza/>> accessed June 2024.

destruction of Gaza's infrastructure,⁷⁵ attacks on hospitals, universities, and cultural and religious sites,⁷⁶ the siege and closure of Gaza's borders, starvation of the population,⁷⁷ restricting access to medicine and international humanitarian aid,⁷⁸ leaving them with no choice but to flee their land to survive.

4 Conclusion

In this article, we sought to establish the occurrence of forced displacement as one of the underlying offenses of crimes against humanity during the Gaza conflict. As stated in the introduction, this effort aims to include the crime of deportation and forcible transfer of population in the list of charges against Israeli political and military officials in the arrest warrants issued by the prosecutor. Adding this charge to the existing ones serves at least two purposes.

⁷⁵ The *Associated Press* reported that more than two-thirds of northern Gaza's infrastructure and a quarter of Khan Yunis' buildings in southern Gaza have been destroyed or damaged. Julia Frankel, 'Israel's Military Campaign in Gaza Seen as Among the Most Destructive in Recent History, Experts Say,' *Associated Press*, <<https://apnews.com/article/israel-gaza-bombs-destruction-death-toll-scope-419488c51f83c85baea22458472a796>> accessed June 2024.

⁷⁶ Gaza's education system has been completely disrupted since the beginning of the war, with more than 104 schools in Gaza, equivalent to 70% of all schools, destroyed so far. The remaining schools have also been turned into shelters for displaced people. Archie Bland, 'The Numbers that Reveal the Extent of the Destruction in Gaza,' *The Guardian*, <<https://www.theguardian.com/world/2024/jan/08/the-numbers-that-reveal-the-extent-of-the-destruction-in-gaza>> accessed June 2024.

Also, according to Al Jazeera, Israel has destroyed about 200 important cultural and historical sites in Gaza, an act that has been described as cultural genocide. Farazi Saber, 'A 'Cultural Genocide': Which of Gaza's Heritage Sites have Been Destroyed?,' *Aljazeera*, <<https://www.aljazeera.com/news/2024/1/14/a-cultural-genocide-which-of-gazas-heritage-sites-have-been-destroyed>> accessed June 2024.

⁷⁷ According to the World Food Program (WFP), about 90 percent of the population of the Gaza Strip is facing hunger, and of this, about a quarter of the total population is in the fifth stage of hunger, which is the most difficult and severe stage. Suzanne Fenton, 'Hunger's Border: Why Aid Trucks Taking Humanitarian Gear and Food into Gaza Face Long Waits,' World Food Programme, <<https://www.wfp.org/stories/hungers-border-why-aid-trucks-taking-humanitarian-gear-and-food-gaza-face-long-waits>> accessed June 2024.

⁷⁸ In a December 2023 interview with reporters, UN Secretary-General Antonio Guterres cited the massive obstacles created by Israel as the main reason for the lack or insufficiency of international aid to the people of Gaza. *UN News*, 'Humanitarian Ceasefire Only Way to End Gaza 'Nightmare': Guterres,' <<https://news.un.org/en/story/2023/12/1145067>> accessed June 2024.

First, it influences the determination of the potential sentence. While the Rome Statute does not specify sentencing guidelines for crimes nor provide a specific rule for concurrent offenses, Paragraph 1 of Article 78 indicates that sentencing should consider factors such as the severity of the crimes committed. Moreover, Paragraph 3 addresses concurrent offenses, stating that separate sentences will be issued for each crime, followed by a combined sentence reflecting the totality of the offenses. Therefore, if proven in court, adding a new charge could significantly impact the severity of the possible sentence.

The second purpose of this addition is to express greater attention to the victims of these crimes. If the direct killing of civilians in Gaza has thus far claimed 40,000 lives, the conditions leading to their forced displacement have affected approximately 2 million people. It should not be assumed that only actions that directly cause the death or injury of civilians result in the responsibility of the perpetrators; there are other crimes that have caused suffering and anguish to more than two million residents of Gaza. The prosecutor's focus on the crime of deportation and forcible transfer demonstrates the international community's awareness of the suffering endured by the victims of the Gaza war and its commitment to achieving justice.

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