

The Genocidal “Civilized” vs the Erased Colonized: Gaza at the International Court of Justice



by Azeezah Kanji

WHERE IN THE HELL of Gaza is international law for Palestinians?

For months, UN experts and hundreds of international law and genocide scholars have been warning of genocide in Gaza: as schools have been transformed into field execution sites, homes and hospitals have been turned into mass gravesites, entire family lines have been annihilated, more than a million have been displaced into “safe zones” where they continue to be incinerated, and so many Palestinian children have been simultaneously orphaned and maimed that a new medical acronym – WCNSF, “Wounded Child No Surviving Family” – has had to be coined.

The intensive mass killing (“homicide”), combined with the eradication of Palestinians’ means of physical and social reproduction via attacks on their homes (“domicide”), on schools, universities, libraries, journalists, and scholars (“epistemicide”), on ancient churches, mosques, cemeteries, and arts institutions – “everything beautiful” (“culturicide” and “memoricide”), on life-sustaining lands and environments (“ecocide”), on hospitals and other essential health infrastructure (“medicide”), and on children and pregnant women (“futuricide”): all signal an attempt to destroy the Palestinian people in Gaza as a people, “genocide.” And yet, it is South Africa’s complicity to the International Court of Justice challenging the obliteration of Palestinians that is impugned, by the same “liberal democracies” whose primary expertise on genocide is as its perpetrators.

Experts in Genocide of the “Civilized World”

According to US National Security Council spokesperson John Kirby, for instance, South Africa’s 84-page submission – which is based predominantly on reports by the UN and other humanitarian organizations – is “meritless, counterproductive, and completely without any basis in fact whatsoever.” Far more “meritorious” and “productive,” apparently, to persevere in supplying Israel with billions of dollars in military “aid” – “by 4 December, at least 200 American cargo flights were reported to have delivered 10,000 tonnes of military equipment to Israel,” according to a recent study reported on by the Guardian – without even the façade of a “human rights” review.

Canada too has refused to support the “premise” of South Africa’s case, UK Foreign Secretary David Cameron has condemned it as “nonsense” and “unhelpful” (“it is for the courts to define genocide not states” – what has South Africa done but appeal to a court?!), while Germany has announced its decision to intervene on Israel’s behalf – “in light of German history and the crimes against humanity of the Shoah [Nazi Holocaust], the German government is particularly committed to the Genocide Convention [and] we stand firmly against [its] political instrumentalization.”

How symptomatic of colonial modernity’s grotesquely inverted morality: “their” atrocities are a sign of their backwardness and inhumanity, while “ours” are a source of our superior enlightenment and

moral authority.

Incredibly, even with this self-identified special genocide expertise, Germany's Foreign Minister has **professed herself** incapable of "detecting any [genocidal] intention by Israel." This despite the relentless stream of incitement from Israeli leaders referring to Palestinians in paradigmatically genocidal terms such as "**human animals**" and calling for Gaza to be "**erased**," "**eliminated**," "**flattened** [...]" just like Auschwitz," etc. in Israel's "battle of civilization against barbarism," as documented in eight full pages of **South Africa's submission**. (The **updated database** of statements in this eradictory vein compiled by Europe-based NGO Law for Palestine is now up to over 500). Just the day before the ICJ proceedings commenced, the Deputy Speaker of Israel's Knesset **reiterated his recommendation** that Gaza be "burned."

Precisely how the Canadian, British, and German governments' positions on Gaza square with their own recent **Declaration to Intervene** in the ICJ Rohingya genocide case – which states, for example, that "the Genocide Convention extends to [...] acts causing serious bodily or mental harm, including torture and forced displacement," and that "evidence that children have been targeted on a significant scale would be likely to preclude a defense that members of a protected group were targeted solely for certain other reasons, such as that they posed a "security threat" – remains unexplained.

Evidently, this "axis of civilization's" preferred fate for Palestinians is to be consigned to the same graveyard of oblivion as the casualties of their own colonial atrocities, shrouded in impunity for centuries: the Indigenous nations of the "Americas," **genocided** in the millions, who continue to be **refused reparations** or were even **required by colonial legal systems** to pay "reparations" themselves for their "depredations" against settlers; the enslaved Africans, whose descendants are also **denied restitution**, because their abduction, torture, and treatment as "property" was not illegal according to the "international" law at the time as formulated by Europeans; the **Herero and Nama Namibians** and the **Tanzanians**, Germany's "first genocides of the 20th century," deprived not only of **legal redress** but even **the return of the remains** of their dead interned in German institutions; the Marshall Islanders, involuntarily conscripted to serve as the US's **sacrificial testing zone** for

its nuclear weaponry, whose case to the ICJ was rejected in 2016 on preliminary technical grounds even as they **testified** that "women of the island have [been giving] birth to babies [with] no arms, no legs, no heads [...] that look like blobs"; to name only some of the inhabitants of this graveyard of "civilized" barbarities.

How to Defend a Colonial Genocide

Far from being an aberration, the condoned devastation of Gaza is an expression of the colonial present's violent foundations: discursively erased and legally denied.

Encapsulated in Israel's **arguments** during the first round of hearings on the Gaza genocide at the ICJ (held on January 11 and 12), are the various forms of epistemic violence required to project coloniality's alternative facts as "reality."

Atomization – isolating and dissociating particular events from the structure of domination as a whole: ex. "[South Africa] declares that: 'it is important to place the acts of genocide in the broader context of Israel's conduct towards [the] Palestinians during its 75-year-long apartheid.'" Leaving aside the outrageous nature of that statement [...] the immediate and proximate context for the specific allegations of genocide claimed by South Africa lies in the events of 7 October." It is only by deleting Israel's 75 years of **apartheid**, 57 years of **illegal occupation**, and 17-year-long **strangulation of Gaza** – implemented by **blockade**, in itself an **act of war** under international law – that the current onslaught could be presented as an act of "self-defense" against Palestinian aggression.

Minimization – obfuscating the scale of destruction: ex. "The Court is told of over 23,000 [Palestinian] casualties, as [South Africa] repeats; as many have, unverified statistics provided by Hamas itself – hardly a reliable source." In fact, the damning death figures have not only been **validated as reliable** by **UN agencies**, **Human Rights Watch**, and **estimates from within** Israel's own military, but if anything are **an undercount** – **impeded** by Israel's incapacitation of **Palestinian health facilities**, **pending the identification** of bodies **immolated and mutilated** beyond recognizability, and excluding deaths from the "**slow violences**" of **siege-induced starvation, dehydration, suffocation under the**

rubble, and **disease** (predicted to **far exceed** even the bombing fatalities). Just 20 days into Israel's campaign – more than 80 days ago – the Associated Press **reported** that “each Gaza governorate” already had “at least two mass graves.”

Fabrication – obscuring severe international legal violations: ex. “Hospitals have not been bombed.” Gaza's Indonesian Hospital, for instance, has been bombed **35 times**; **other hospitals** v by Israeli airstrikes include the **Turkish-Palestinian Friendship cancer hospital**, **Al-Awda hospital** (killing three doctors), **Al-Nasr children's hospital** ... when rescuers were able to return to Al-Nasr several weeks later they **found** the dead bodies of babies decomposing in their incubators. As **affirmed** by Human Rights Watch, “**no evidence** put **forward** [by Israel] would justify depriving hospitals and ambulances of their protected status under international humanitarian law.”

Inversion – reversing the balance of violence between the occupier and the occupied: ex. “What Israel seeks by operating in Gaza is not to destroy a people, but to protect a people, its people, who are under attack on multiple fronts.”

Therefore, Hamas “proudly filming” its acts of violence against individual Israelis is “barbarism”; while Israeli soldiers posting videos **celebrating** their detonation of entire Palestinian villages and **chanting** annihilatory slogans are simply ignored. Hamas's attack, **which killed 1,200**, is decried as “unprecedented” and “genocidal”; Israel's military operations – which have killed **more than 25,000** as of writing, including **more children** in three weeks alone than in all the world's wars combined annually, more **UN aid workers** than ever before in the UN's history, and **several times more** people per day in total than any other “conflict” in the 21st century, with a **70% civilian death rate** praised as “**tremendously positive**” by a spokesperson for Israel's military – are merely the “harsh realities” of war.

Even Palestinians' statelessness – which Israeli PM Benjamin Netanyahu has **repeatedly reconfirmed** his dedication to maintaining – is represented as an anti-Israel weapon! Armed with the weapon of their mass dispossession (the only “WMD” Palestinians have, unlike **their occupiers**), Palestinians evade the inter-state jurisdiction of the ICJ as non-state actors, declaims Israel;

yet Israel **simultaneously denounces** any recognition of Palestinian statehood in international institutions.

Whether as a state or non-state, Palestinians are damned either way. The nefariousness of the Palestinian “other” is enshrined as an “unfalsifiable” hypothesis: a hallmark of genocidal ideology.

Demonization – expelling the victims from humanity: ex. “[Israel] is committed, as it must be, to demonstrate humanity, but it does so in the face of Hamas' utter inhumanity.” As in colonial genocides of **decades past**, the inherent “inhumanity” of the colonized “enemy” is used to **rationalize** deploying inhumane means of virtually unlimited violence against them. Yet again, genocidal logic is reproduced, in the very submissions purporting to disprove Israel's genocidal intent.

Projection – displacing responsibility onto the occupied for their own suffering: ex. “Yes – damage and harm have occurred [...] But always as a direct result of Hamas' abhorrent method of warfare.” Perversely, Palestinians' “humanity” and “agency” is recognized only to blame them for their own deaths as Hamas's “human shields.” Israel's assertion that it is Hamas that forces them to bomb homes, churches, markets, and refugee camps by using them for military purposes is directly refuted by **reports from** Amnesty International, which “in a number of cases [examined] found no evidence of the presence of fighters or other military objectives in the vicinity at the time of the attacks.”

The demonization of Palestinians is so complete in Israel's submissions, that mere insinuation suffices to paint them as the authors of their own demise: ex. “the Court is told of widespread damage to buildings, but it is not told, for example [...] how many buildings were struck by over 2,000 indiscriminate terrorist rockets that misfired and landed in Gaza itself.” Israel does not bother to tell us how many, either; nor how “2,000 terrorist rockets” could possibly account for more than a mere fraction of the more than **300,000 homes, schools, hospitals, food production** facilities, and **universities** – also known in Israeli military lexicon as “**power targets**” – that have been fully or partially destroyed. Even to describe this as the “decimation” of Gaza is a euphemism, for decimation literally means a 10% destruction, while approximately

70% of Gaza has by now been laid to waste.

Self-Sanctification – extolling the superior humanity of the occupiers: ex. “Israel’s practice of mitigating civilian harm – such as by forewarning civilians of impending action by the unprecedented and extensive use of telephone calls, leafletting and so forth – coupled with the facilitation of humanitarian assistance, all demonstrate the precise opposite of any possible genocidal intent.”

In reality, Israel’s **grossly partial** “humanitarianism” has been the continuation of domination and elimination by other means – as apartheid in South Africa, **French colonization** in North Africa, and **genocidal residential “schools”** in the US and Canada also advertised themselves as exercises in “care,” “sincere love,” and “charity” for Indigenous populations. In Gaza, **24-hour “evacuation” orders, leaflets** instructing Palestinians to leave or be presumed “terrorist” sympathizers, and water supplies **strategically directed** to corral and “super”-concentrate Palestinians dying of dehydration into ever-shrinking areas: all have served as **instruments** of ethnic “cleansing” and forcible transfer.

Mere hours after Israel’s representatives boasted to the ICJ of having “co-ordinated the entrance of a United Nations delegation into northern Gaza,” UN Relief Coordinator Martin Griffiths **recounted** to the Security Council the “scenes of utter horror” witnessed there by the few aid convoys permitted through: “Corpses left lying in the road. People with evident signs of starvation stopping trucks in search of anything they can get to survive [...] Our efforts to send humanitarian convoys to the North have been met with delays, denials, and the imposition of impossible conditions [...] There is no safe place in Gaza.”

Legalization – “law-washing” impunity: ex. “Israel’s legal system ensures accountability. The IDF [“Israel Defense Force”] has a robust law enforcement system.” (See also Fabrication above). Particular accomplishments of this “robust” apparatus for “accountability” include a **>99% non-punishment rate** for soldiers accused of murdering, torturing, or otherwise harming (i.e. “self-defending” themselves against) Palestinians, as well as the **sole conviction** for Israel’s previous mass-casualty incursion on Gaza, Operation Protective Edge: of three soldiers for stealing the equivalent of \$900.

Externally, Israel exalts the superior capabilities of its own “justice” system to avoid coming under international courts’ jurisdiction; while **domestically, claiming** a lack of resources and capacity to justify the absence of prosecutions: a brazen contradiction. Yet, it is supposedly the Palestinians and South Africans who, by appealing to the Genocide Convention in a desperate attempt to curtail the current carnage, are the ones “weaponizing” and “abusing” the law.

Legal Ways of (Not) Seeing

Cultural critic John Berger famously elucidated the “**ways of seeing**” that structure our perception. Illuminated in the fires of the Gaza genocide are the equally powerful ways of *not* seeing, that sustain (selectively) organized ignorance even in the face of overwhelming evidence.

The systematic invisibilization of structural brutalization has been **accomplished** through international law itself. From the Nuremberg Trials, where Allied prosecutors **avoided setting precedents** against the Nazis that could also be applied to their own white supremacism; to the Genocide Convention, **drafted at the impetus** of Global South states to rectify Nuremberg’s limitations, **yet restricted by colonial powers** to preserve their prerogative to forcefully inaugurate the “primitive and backwards” into “civilization”; to the Apartheid Convention, which **remains unsigned** by settler states like the US and Canada, **warned** by the Afrikaners that they would be considered guilty of apartheid too “as a result of the existence of Indian reservations”: the shielding of colonial state violence is the predictable result, when it is the criminals who define the crime.

As Congo’s representative to the UN **remarked** in 1968: “[we are] not surprised to note the zeal with which the United States, the United Kingdom, France and the other colonialist countries were attempting to exclude apartheid from the draft convention [on crimes against humanity], for the African delegations had no illusions about the real motives behind the negative attitude of those countries.”

Echoing in the denigrations of South Africa’s case to uphold the most basic protections for Palestinians, denounced as a “**subversion** of the rules-based international order” and “**legal absurdity**,” is the international legal system’s deeply-entrenched history of **anti-Blackness** and **anti-Indigeneity** – relegating those on the “other” side of

the **global colour line** to a position of “**legal subalternity**.”

However, those resisting this subjugation are the inheritors of another tradition: of an **internationalist solidarity across the undersides** of colonial modernity, premised on an understanding that our liberations are inextricably intertwined. This includes knowing, as **Nelson Mandela said**, that “our freedom is incomplete without the freedom of the Palestinians.”

And so, it is the South Africans, survivors and rememberers of apartheid’s horrors, who have taken up the task of legally challenging Israel’s genocide of Palestinians in Gaza. As before them, it was Haiti, Liberia, Ethiopia and other Global South states that **bore the mantle** of the long struggle against South Africa’s apartheid in international institutions – prevailing eventually in spite of the **obdurate opposition** by apartheid’s **European, North American,** and **Israeli** allies, and the apartheid regime’s **accusations** of “anti-European bias.”

In 1946, the Black South African president of the African National Congress, Dr Alfred Bitini Xuma, **implored** the United Nations to counter apartheid and “adopt as their motto” not “Might is Right” but “Right is Might.” It took 48 years more for apartheid in South Africa to be formally abolished: a justice **delayed** by at least a decade, in the estimation of eminent international law expert John Dugard, by the ICJ’s dismissal of Liberia’s and Ethiopia’s complaint against the apartheid state.

For the Palestinians, now, how much longer will the illegal occupation and obliteration to which they have been subjected be permitted to endure?

The ICJ is **expected** to deliver a preliminary decision this Friday on South Africa’s request for emergency “provisional measures”; but the final judgement on the genocide is still many years away. The ICJ Statute claims as one of its sources the laws of “civilized nations”; how many more colonial genocides and apartheids, before international law lives up to the “standard of anti-colonial civilization” expressed, for example, in Indigenous concepts of care “for all our relations,” in the South African principle of ubuntu, the interconnectedness of all people, in Palestinian sumud,

steadfast dedication to opposing injustice and oppression?

Even as the hearings on the Gaza genocide were occurring at the ICJ’s “Peace Palace,” “**intense Israeli bombardments** from air, land, and sea continued,” **hundreds more** Palestinians were killed and injured – sequestered behind the shutters of yet another **telecommunications blackout** – while **four more Palestinian Red Crescent ambulance workers** were mourned and buried. In a recent press conference on the case, South Africa’s High Commissioner to Canada asked only for Palestinians’ forgiveness, for having allowed their suffering to go on for so long before this intervention. As for those who persist in perpetrating and facilitating the butchery, how can there ever be any absolution?

CITATION

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