

International Criminal Court's Response to Palestine, Ukraine Raises Impartiality, Political Influence Concerns: Experts

ICC acted rapidly over war crimes claims in Ukraine but seems 'very slow' when it comes to Palestine, says Ben Saul, an international law expert set to take over as UN special rapporteur next month

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The devastating human cost of Israel's relentless assault on the Gaza Strip continues to mount by the hour.

More than 5,000 Palestinian men, women and children have been killed in Israeli bombardment, which has targeted all areas of the besieged Palestinian enclave.

Its aerial attacks have hit densely populated residential areas, hospitals and other civilian sites, also claiming the lives of dozens of humanitarian and health workers and journalists.

Israel has cut off basic supplies, such as water, electricity and humanitarian aid, to more than 2.2 million people in the Gaza Strip, while also ordering what some experts call the forced displacement of over 1.1 million with its evacuation warning for northern Gaza.

For Israel, all of this was a response to the Oct. 7 attack by Hamas and its subsequent rocket attacks on Israeli areas, which have now claimed more than 1,400 lives.

But many around the world have questioned the excessive and disproportionate force used by Israel, giving rise to multiple warnings of war crimes and crimes against humanity, from legal experts and even officials like Francesca Albanese, UN special rapporteur for the occupied Palestinian territories.

One of the areas of focus has been the role – or the apparent lack of it – of institutions like the UN's International Court of Justice (ICJ), or the independent International Criminal Court

(ICC), which, by its own definition, has the specific mandate of acting on “the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression.”

On Monday, the ICJ announced it will hold public hearings on the request for an advisory opinion on the “legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem.”

However, the hearings will begin on Feb. 19 next year.

Image: Ben Saul (Source: [ICCT](#))



As for the ICC, several experts have been calling on it to take immediate action over the growing escalation in Gaza.

“While the ICC responded rapidly to allegations of war crimes in Ukraine since last year, it seems to be very slow in addressing crimes in Palestine since it began its investigation in 2015,” said Ben Saul, who was recently appointed as the next UN special rapporteur on promotion and protection of human rights and fundamental freedoms while countering terrorism.

Saul, currently the Challis Chair of International Law at the University of Sydney in Australia, will take over the post this November.

He said the ICC needs to show “the same urgency and mobilization of resources, to reassure the world that it is impartial and that its legitimacy is not undermined by the geopolitical forces.”

“All states should cooperate with the court where they have information about crimes,” he told Anadolu.

He pointed out that there have been several violations by both Hamas and Israeli forces in the current escalation.

For Israel, he said the “total siege of Gaza is a violation of international law, and could constitute the war crime of starvation.”

“Israel has an obligation to allow and facilitate rapid and unimpeded humanitarian

relief, including food and medicine. Israel's warnings to civilians about impending attacks must be effective, and its order to evacuate over 1 million people in northern Gaza, under siege conditions was not sufficient," he said.

"More information is needed about Israel's targeting decisions and intelligence, but it is possible that some of the thousands of Israeli bombings in Gaza may have involved excessive civilian casualties or indiscriminate attacks."

For Hamas, Saul said the "mass killings of Israeli civilians could constitute the international crime of genocide if specifically intended to destroy part of the Israeli and/or Jewish people as such."

"They could also constitute various crimes against humanity," he said.

ICC Response Shows 'Inequality Loaded with Political Influences'

The ICC has confirmed its jurisdiction over war crimes in Palestine for all parties, according to Khalil Dewan, head of legal investigations at UK-based law firm Stoke White, which has been part of previous cases at the ICC involving Israel.

"The ICC are accepting evidence bundles of war crimes, and recently announced that the prosecutor holds jurisdiction via Palestine," he told Anadolu.

"The court's jurisdiction of war crimes includes Jerusalem, West Bank and Gaza for all parties to the conflict."

He said many law firms are gathering evidence "including current hostilities - targeting civilians, protected infrastructure and collective punishment."

"Israel's pending ground force actions will be carefully examined and submitted to the ICC," he said.

Dewan pointed out that Israel will "reject the ICC's jurisdiction," but added that "it has already been claimed by the (ICC) prosecutor.

"In any case, the ICC's lack of urgency and approach to war crimes in Palestine, compared to the response to Ukraine demonstrates inequality loaded with political influences," he asserted.

Dewan said that international law remains an "indeterminate legal system," and that "some states deploy the strategy of 'lawfare' to win military objectives, including politics and media narratives."

He said Palestinians have "exhausted all international legal and political avenues in seeking justice."

"The calls at the Organization of Islamic Cooperation to form a separate regional mechanism for peace and safeguarding security of Palestine would be a welcomed initiative," he said.

"If UN resolutions are not upheld on Palestine, then it's vital to seek decolonial approaches to international law, and weed out lawfare designed to silence and

subjugate non-Western states.”

‘ICC Can Issue Arrest Warrants’

Ahmet Necip Arslan, an Istanbul-based attorney, echoed the same views, saying that the ICC’s mechanisms are “very slow.”

“Often the decisions made, in any stage, can be under the heavy influence of governments and politics,” he told Anadolu.

Arslan pointed out that the ICC “can issue arrest warrants,” stressing that “this can be an effective method to stop an armed conflict.”

He said reports coming out of Gaza “indicate that Israel is employing prohibited weapons like white phosphorus and targeting places of worship and cultural properties, both considered war crimes.”

Israel, he continued, has been depriving civilians of essentials such as food, water, humanitarian aid, antibiotics and medical supplies, adding that these could be violations of international law that could be “potential war crimes.”

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