

National Lawyers Guild, other Legal Organizations urge International Criminal Court to Investigate War Crimes by Israeli, U.S. Leaders in Gaza

By [Prof. Marjorie Cohn](#)

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The National Lawyers Guild (NLG), Center for Constitutional Rights, International Association of Democratic Lawyers, Arab Lawyers Union, and American Association of Jurists (Asociacion Americana de Juristas) sent a letter [<https://www.nlg.org/sites/default/files/Letter%20to%20ICC%20Prosecutor%20Gaza%20FINAL.pdf>] on Friday, August 22 to Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), urging her to initiate an investigation of war crimes, genocide, and crimes against humanity committed by Israeli leaders and aided and abetted by U.S. officials in Gaza. Under the Rome Statute, the ICC has the power to hold individuals criminally accountable for the most serious of crimes.

"In light of the extreme gravity of the situation in the occupied Gaza Strip, in particular the large number of civilian casualties and large scale destruction of civilian property, including schools, mosques and hospitals, and the ongoing incitement to genocide perpetrated by Israeli political figures and leaders, the [NLG] and endorsing organizations strongly urge the Office of the Prosecutor to use its power under Article 15 of the Rome Statute to initiate a preliminary investigation" of crimes within the ICC's jurisdiction.

"[Under the Rome Statute, an] individual can be convicted of a war crime, genocide or a crime against humanity . . . if he or she 'aids, abets or otherwise assists' in the commission or attempted commission of the crime, 'including providing the means for its commission'," the letter reads.

"By transferring financial assistance, weapons and other military aid to Israel, members of the U.S. Congress, President Barack Obama and Defense Secretary Chuck Hagel have aided and abetted the commission of war crimes, genocide and crimes against humanity by Israeli officials and commanders in Gaza."

The letter states that on July 20, 2014, in the midst of criminal behavior, Israel requested, and the U.S. Defense Department then authorized, the transfer to Israel of ammunition from the War Reserve Stockpile Ammunition. And in August 2014, Congress overwhelmingly approved, and Obama signed, a \$225 million payment for Israel's Iron Dome missile defense system.

"Israel's clearly disproportionate use of force against the 1.8 million residents of Gaza appears to have little to do with any claim of security," the organizations wrote, "but seems to be calculated to exact revenge against Palestinian civilians." The letter quotes

statements of Israeli officials advocating vengeance against “the entire Palestinian people” and “calling for the internment of Palestinians in concentration camps in Sinai and the destruction of the civilian infrastructure in Gaza.”

Allegations of War Crimes

The letter lists the following war crimes, and cites supporting factual allegations for each crime:

- willful killing* (over 2,000 Palestinians, 80% civilians)

- willfully causing great suffering or serious injury* (wounding nearly 10,000 Palestinians, 2,200 children)

- unlawful, wanton and unjustified extensive destruction and appropriation of property* (tens of thousands of Palestinians lost homes, severe damage to infrastructure)

- willful deprivation of fair trial rights* (450 Palestinians held without charge or trial);
- intentional attacks against civilians or civilian objects or humanitarian vehicles, installations and personnel* (bombing of numerous schools, UN places of refuge, hospitals, ambulances, mosques)

- intentionally launching unjustified attacks, knowing they will kill or injure civilians, damage civilian objects, or cause long-term and severe damage to the natural environment* (use of ‘Dahiya Doctrine’ to apply “disproportionate force” and cause “great damage and destruction to civilian property and infrastructure, and suffering to civilian populations,” as defined in UN Human Rights Council [Goldstone] Report)

(Israel virtually flattened town of Khuza’a).

Allegations of Genocide

Article 6 of the Rome Statute defines “genocide” as the commission of any of the following acts with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group: (a) killing members of the group; (b) causing serious bodily harm to members of the group; or (c) deliberately inflicting on the group conditions of life calculated to bring about its destruction in whole or in part.

The letter says, “In light of the fact that Palestinians in Gaza had no ability to flee for safety, it must be assumed the responsible Israeli officials knew that huge casualties and destruction of civilian property and infrastructure were certain during the massive bombardment by land, air and sea of the occupied Gaza Strip.” The letter also lists “the repeatedly inciting public statements made by Israeli officials before and during the course of Operation Protective Edge and the history of Israel’s repeated bombardment of Palestinian refugee camps and populations in Lebanon and in Gaza” as evidence that “Israeli officials may be implementing a plan to destroy the Palestinian population, at least in part.”

Allegations of Crimes against Humanity

Article 7 of the Rome Statute defines “crimes against humanity” as the commission of any

of the following, when part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Persecution against a group or collectivity based on its political, racial, national, ethnic or religious character; or (c) The crime of apartheid (inhumane acts committed in the context of an institutional regime of systematic oppression and domination by one racial group over another racial group, with the intent to maintain that regime).

The letter states, “Israeli forces have killed, wounded, summarily executed and administratively detained Palestinians, Hamas forces and civilians alike. Israeli forces intentionally destroyed the infrastructure in Gaza.” It also says Israel keeps Palestinians caged in “the world’s largest open air prison,” and “controls all ingress and egress to Gaza, and limits ... access to medicine and other essentials.” Finally, the letter cites arbitrary arrest and administrative detention; expropriation of property; destruction of homes, crops and trees; separate areas and roads; segregated housing, legal and educational systems for Palestinians and Jews; the illegal barrier wall encroaching on Palestinian territory; hundreds of illegal Jewish settlements on Palestinian land; and denying the right of Palestinians to return to their homeland because they are not Jews.

The signatories to the letter conclude that “[t]he initiation of an investigation would send a clear message to all involved either in committing or in aiding and abetting of the aforementioned crimes that they stand to be held personally accountable for their actions.”

It remains to be seen whether the ICC will exercise jurisdiction in such a case since neither Israel nor the United States is a party to the Rome Statute. But if the ICC determines that Palestine can accede to the Rome Statute, the ICC could take jurisdiction over crimes committed by Israelis and Americans in Palestinian territory.

Marjorie Cohn is a professor at Thomas Jefferson School of Law and former president of the National Lawyers Guild. She is also deputy secretary general of the International Association of Democratic Lawyers and the U.S. representative to the American Association of Jurists (Asociacion Americana de Juristas). Her next book, ‘Drones and Targeted Killing: Legal, Moral and Geopolitical Issues,’ will be published in September 2014.

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