

Introduction

Hello everyone. Welcome to Eyes on Gaza. Our daily gathering that is a combination of protest and learning. Today, as Israel opens another stage in this never-ending war of extermination, an operation that even the entire military leadership opposes, yet carries out its orders, we will directly address the issue of genocide. It seems that this label still arouses discomfort even among those of us who do not deny the crimes Israel is committing in Gaza, the scale of killing, starvation, and destruction. Today we will speak with Professor Itamar Mann from the Faculty of Law at the University of Haifa, an expert in international law who was also among the authors of the Genocide in Gaza report by Physicians for Human Rights, which was published in July together with the report by B’Tselem that came out simultaneously, about which Dr. Shmuel Lederman spoke here a few weeks ago. Itamar will ask and answer the question of why this is genocide and why it is important or matters. Itamar will speak for eight minutes and afterward we will leave time for a short discussion. I remind you that anyone who would like to ask a question is welcome to write it in the chat and I will read it to Itamar. Itamar, thank you for joining us, the floor is yours.

Talk

Thank you, thank you very much everyone, thank you for being here. The subject is heavy and difficult, and it took me personally a long time—throughout the entire period of the past two years—to reach this conclusion. I will try to touch briefly on three points. The first is essentially what genocide is under international law, and how it differs from other crimes under international law. The second is how the situation in Gaza relates to this definition. And the third point, as Ayelet said, is why it matters at all. And I think it does matter, but we will talk about that.

I am sharing here the definition from the Genocide Convention, the convention of 1948. This is our starting point for the question of what genocide is. And I will say first that we need to understand this convention as one which, unlike other human-rights instruments, seeks to protect people as members of a group—insofar as they belong to a particular group—and not insofar as they are individuals. Now, this is not to say that they have no protection as individuals, or that their protection as individuals is less important. Article Two states: “In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such...” [<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-prevention-and-punishment-crime-genocide>]. Note the phrasing “in whole or in part.” A “part” also constitutes such a group. This evokes motivation: I harm someone because he is a member of that group. And the means of harm can be one of the following: article 2.a – killing; article 2.b – causing serious bodily or mental harm; and article 2.c – which will interest us here: “Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.” I will stop here, but I will just add the following: “Imposing measures intended to prevent births within the group.”

What we see here is that genocide is aimed against a group, and the means are not necessarily gas chambers. It is not only killing; it is not only murder; it is the attempt to eliminate the group as a group. Raphael Lemkin, from whom these definitions are derived, thought of the world as composed of different linguistic-cultural groups that have significance as such. His original definition was not adopted. What we have instead are the definitions in the Convention.

Now I want to jump in history for a moment and say that for most years this definition was quite dormant in international law. It reemerged in the 1990s with the two tribunals on Rwanda and Yugoslavia. These were criminal tribunals—that is, the responsibility they sought to determine was the responsibility of individuals, not of states. There, indeed, the tribunals found liability for genocide—both in Rwanda and in Yugoslavia—and they developed case law on this matter. Two aspects of that case law are important here. First, intent—which is a crucial element in the definition—can be inferred from the reality on the ground, from the results on the ground. One can understand what people thought because they are deemed to have intended those results. The second issue is what constitutes a “part.”

What part is that? Is it one person? Is it 80 percent? The answer is no. There is a qualitative definition that is not numerical, and it says something along the lines of—my translation—“a part that can affect the life of the group as a group, that could have a substantial impact on the life of the group as a group.” And this, again, is in the criminal plane.

The most important case of the International Court of Justice—state versus state—was in 2007: Bosnia versus Serbia, regarding crimes that had already been adjudicated in the criminal plane. Bosnia accused Serbia of responsibility for genocide in a broad number of places in Bosnia, specifically against the Bosnian Muslim population, the Bosniaks. The Court found no genocide in this case, but an attempt at ethnic cleansing. And there is a difference between ethnic cleansing—which is against a population without regard to its identity as such—and genocide, which requires this motivation. In Srebrenica, there was the systematic killing of 8,000 members of that Bosniak group, and there was also a failure to prevent genocide, on the personal plane. That is, Serbia was found responsible for failing to prevent genocide. Thus, if today people talk about the ICJ perhaps finding responsibility of the State of Israel for genocide—this would be the first time such a finding occurred in international law.

In 1998, the ICC—the International Criminal Court—was established. Again, this concerns personal responsibility. And it includes liability for genocide. At present, there is no arrest warrant on the subject of genocide against Israeli suspects at all. There is, however, an arrest warrant regarding crimes against humanity—including a crime called extermination, that is, killing. These are extremely serious. There is no extermination charge among the suspicions against Netanyahu and Gallant, but there is the crime of starvation, which is also a very serious crime. And I want to emphasize that none of these crimes are a priori less serious than genocide. Extermination of a group—even if it is not because of its identity as members of a religious or national group—can, of course, still be extremely serious. In that sense, these crimes are different but also important.

In December 2023 South Africa filed its case at the International Court of Justice. It claims that there has been genocide since October 7, because of a chain of declarations—including references to the Palestinians in Gaza as Amalek—suggesting that the State of Israel seeks to annihilate or destroy the population of Gaza. It also claims that the acts on the ground already match this pattern. And in a chain of decisions, up to essentially May 2025, the Court issued provisional measures—interim orders—which mean that there is an initial indication that this issue is relevant to the situation in Gaza. The Court has noted this particularly in the context of starvation, which is emphasized in many of the individual opinions issued by judges.

At the same time, if we go back to October 2023, many people ask whether October 7 itself was genocide, and in that sense you can already see that I believe there is good evidence of genocide on October 7. But that is not state responsibility; that is the personal responsibility of individuals. Regarding state responsibility: if in December 2023 we spoke of declarations and some action—since then, like the paradox of the heap of straw, the evidence has accumulated, because the declarations of the State of Israel have not ceased. Since then, leaders have repeatedly spoken of expelling Gaza’s population, of eliminating and destroying Gaza—especially in the present moment, as Ayelet emphasized. But the decisive moment, for me, was February 2025. Then Trump and Netanyahu stood at the White House and said the plan is to expel the entire population of Gaza. And there was no possibility at that time to expel the entire population of Gaza. But the means by which this is carried out are killing and starvation. And in this situation, the conclusion arises—which, in my view, is unavoidable: the means are the very end.

Now, does it matter? I have already said, and the Tribunal in the Yugoslavia case also found, that there is no strict hierarchy among these crimes. It is not that one is a priori more serious than another. But I think that in order to understand what is happening in Gaza we do need to think very carefully about this category of genocide. Because today it is clear to me that the destruction of Gaza is because it is Gaza, because of those Palestinians in Gaza, as part of the Palestinian political group. And if that is what you think about the situation, then you must reach the conclusion that this is genocide. If you do not think that is the situation, and you think it is harm to a population without regard to its group affiliation, then you are in a different place.