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## **Panel Discussion: Why haven't states taken steps to charge Israel with genocide in Gaza at the International Court of Justice?**

On Thursday, 21<sup>st</sup> of December 2023, Arab Organisation for Human Rights in the UK (AOHR UK) held a panel discussion titled, "[Why have countries not yet accused Israel of genocide before the International Court of Justice?](#)".

The session featured jurists, experts, activists, and human rights defenders, including Prof Dan Kovalik- American Professor and Human Rights Lawyer, Dr Lex Takkenberg- Senior Advisor with Arab Renaissance for Democracy and Development, Dr. Filiz Değer- Turkish Lawyer specialising in the International Humanitarian Law, Lamis Deek- International Lawyer, Ramy Shaath – Palestinian Egyptian Activist and Human Rights Defender, Joseph Reid Milburn- Lawyer at CAIR-Chicago, and Shahd Qaddoura- Legal Researcher and Advocacy Officer at Al-Haq Organisation

The panel aimed to illuminate the obstacles and challenges involved in lodging an accusation of genocide committed in the Gaza Strip against the Israeli occupation at the International Court of Justice.

Additionally, the session also aimed to address legal approaches and popular movements to attain justice for the victims of the alleged genocide in the Gaza Strip. The speakers discussed methods for providing legal redress to the victims and ensuring accountability for Israeli individuals accused of war crimes.



In his speech, Prof. Dan Kovalik, a renowned American professor and human rights lawyer, addressed the critical issue of Palestine, which he described as "the most pressing issue in the world today." He highlighted his recent visit to the West Bank, where he conducted research on the increased repression by Israel. Prof. Kovalik pointed out that the situation in the West Bank, despite receiving less attention than Gaza, is equally concerning.

Prof. Kovalik also addressed the reluctance of Western countries, particularly the United States and Israel, to use the term 'genocide' in relation to the situation in Gaza. He suggested that this reluctance stems from fears of international prosecution, stating, "The West, led by the United States and Israel, want to avoid the term genocide... because they have fears of prosecution." He added that figures like U.S. President Joe Biden could be prosecuted for aiding and abetting genocide.

Further, Prof. Kovalik referenced legal actions taken in the United States regarding this matter. "The Centre for Constitutional Rights in the United States has brought a lawsuit against the Biden administration alleging that they are liable for aiding and abetting genocide in Gaza," he said, emphasising the seriousness of the allegations.

Turning his attention to the international response, Prof. Kovalik questioned why states critical of Israel are hesitant to invoke the Genocide Convention. He mused, "Why aren't states that are even critical of Israel doing that? That is hard for me to fathom, except maybe they fear reciprocation."

He also criticised the International Criminal Court (ICC) for its inaction. "The International Criminal Court has utterly abdicated its role in this conflict," he declared, expressing his belief that the ICC should have indicted Israeli leaders like Benjamin Netanyahu for genocide.

Prof. Kovalik underscored the obligation of the United States, as a party to the Genocide Convention, to adhere to its stipulations under the US Supremacy Clause of the Constitution. He noted the disparity in the application of international law, stating, "International law, in its ideal form, is about reciprocity and protection for all states; however, the current system fails to uphold this principle uniformly and fairly."

In his concluding remarks, Prof. Kovalik affirmed, "What is happening in Gaza is a textbook case of genocide. And that that convention does need to be invoked." He



emphasised the urgency and moral necessity for the international community to act in accordance with international law to address the crisis in Gaza.

In her speech, Lawyer Lamis Deek delivered a compelling speech highlighting the complexities and legal challenges in addressing the Palestinian crisis. Her speech was rich in detail and analysis, and she articulated several critical points.

Deek began by addressing the inherent nature of the Zionist Israeli settler colonialism, stating, "The Zionist Israeli settler colonialism is itself inherently genocidal." She elaborated on this by noting that "The Zionist entity has engaged in the express articulation of intention to genocide, dating back to the inception of the Zionist entity in the 40s and then repeatedly again since 2009."

Highlighting the persistence of war crimes, Deek emphasised the role of the enduring legal and institutional frameworks, saying, "One of the primary reasons for the persistence of these war crimes, as stated by top Israeli commanders, is the enduring and unaltered framework that has not only allowed these crimes to commence but also to continue unabated." She further noted, "The persistent and unaltered legal and discursive frameworks have not only allowed the initiation but also the continuation of these war crimes."

Deek expressed concern over the international community's response, particularly criticising the United Nations and the International Criminal Court: "Our reliance on a recalcitrant weak, politicised, and hostage international system in everything from the UN to the ICC is a concern." She observed that the standards set by the Geneva Conventions and international humanitarian law have been compromised, appearing "to have been time-warped by 80 years."

The need for structural reform in international bodies was another point Deek raised: "For several years now, international attorneys and other interested parties have been discussing the possibility of the reformulation of the structure of the United Nations."

She highlighted the psychological and legal impact of the dominant Zionist and Israeli narrative, stating, "The dominant narrative upheld by Zionists and Israelis often leads to the psychological and legal erasure of Palestinian experiences. This includes their suffering, the oppression they face, and the realities of Palestinians facing genocide."



She pointed out that Palestinians face "a triad of challenges: legal and political criminalisation, dehumanisation, and the undermining of their resistance."

Deek emphasised the importance of integrating human rights with other sectors for effective legal action, saying, "The marriage of human rights with private, national, and regional sectors is essential for effective legal action against these injustices." She called for a broader understanding and application of the term 'terrorism', and noted, "In the private sector, we have tools to understand and pursue other forums for implementing justice, beyond traditional international bodies."

Exploring various judicial approaches was another focus of her speech: "We need to explore other judicial devices like declaratory judgments and adaptive decisions to strengthen our legal strategies." She advocated for a more assertive approach towards the International Court of Justice and looked beyond to other forums, emphasising the need to "bring all these aspects together, giving them teeth and applying them effectively in the pursuit of justice."

In his contribution, Dr. Lex Takkenberg provided a thorough analysis of the ongoing war and its legal implications.

Dr. Takkenberg began by emphasising the severity of the situation, stating, "After over 10 weeks since the war started on the 7th of October, we have an abundance of prima facie and other evidence of genocide and ethnic cleansing from the Gaza Strip and increasingly also with the West Bank." He further noted the specificity of the evidence: "We have an abundance of evidence of both genocidal intent and actions aimed at ethnic cleansing, as well as actions on the ground."

Delving deeper into the nature of these actions, he remarked, "The evidence we have gathered shows a disturbing pattern of actions that meet the definitions of genocide and ethnic cleansing, particularly in how they have been systematically executed since the beginning of this war." Dr. Takkenberg then addressed the actions of Israeli forces: "The crimes taken by Israeli forces, characterised by widespread bombing and destruction of civilian infrastructure, cannot be viewed separately from the intent of ethnic cleansing and genocidal acts."

Reflecting on his extensive experience, Dr. Takkenberg shared, "In my decades of experience in international law, rarely have we seen such clear instances where



actions on the ground so closely align with the legal definitions of genocide and ethnic cleansing as in the current situation." He expressed concern over the lack of legal response: "The continuation of these crimes without adequate legal repercussions not only speaks to the failure of international mechanisms but also emboldens the further perpetration of these crimes against humanity."

He highlighted specific examples of evidence: "The Israeli bombings, the evacuation orders, and the systemic attacks on public infrastructure, hospitals, schools, water reservoirs, solar panels, and so on, all point to this evidence." Yet, he observed a troubling delay in legal action: "Despite the horrific crimes committed by Israel, legal action seems to be slow, partly inherent in the use of courts and measures of legal action to enforce accountability."

Dr. Takkenberg then discussed the broader context of international law: "The current state of international accountability mechanisms is a significant concern. Reflecting on my studies in international law over 30 years ago, the focus was predominantly on establishing and defining legal standards. Today, the critical challenge lies in effectively enforcing these laws on a global scale."

He also commented on the limitations of international courts: "The experience of the ICC and the ICJ concerning genocide is still fairly limited, which is a structural element in our current international legal framework. The strong politicisation of these issues is another element that impedes progress."

Dr. Takkenberg emphasised the necessity of accountability: "All efforts have to be on accountability. That's the only thing that is going to stop Israel and its enablers, who are not sensitive to moral considerations and look the other way despite the evidence." He called for sustained efforts: "Ongoing pressure on the office of the Prosecutor is essential, as there has been a lot of pressure in different contexts that just needs to continue as loud and clear as possible."

Addressing international reluctance, he noted, "The ongoing pressure by the United States and Israel seems to have scared a lot of states away from taking the step that Gambia did vis-a-vis Myanmar and the Rohingya." He highlighted the role of civil society: "Pressure needs to continue, and pressure from civil society is critical in this aspect."



Dr. Takkenberg concluded with a call to action: "Certainly, the use of national courts has tremendous potential for holding perpetrators of war crimes and crimes against humanity to account and needs to be pursued more systematically." Finally, he reflected on the broader implications of the Israeli attacks: "The systematic nature of these attacks, targeting essential life-sustaining facilities, reveals a strategy that goes beyond military objectives to what can be interpreted as acts aiming at the eradication of a people's existence in their homeland."

In her speech, Dr. Filiz Değer, a Turkish lawyer specialising in International Humanitarian Law, provided a thorough analysis of the evolving crisis in Palestine. Her speech was rich with direct quotations, underscoring the legal and humanitarian issues at play.

Dr. Değer started by contrasting the situation in Palestine before and after a significant date: "Before October seven there was a humanitarian collective punishment, but after 7 October there is mass destruction in Palestine by the Israeli Forces." This observation set the stage for her deeper exploration of the conflict's nature and its implications.

She then addressed the treatment of civilians in conflict zones, noting a disturbing trend: "If civilians are seen as aligned with the enemy, they too are treated as enemies. This justification for attacking civilian areas suggests genocide, making it impossible for civilians to safely return home." This statement highlighted the severe impact of military actions on civilian populations and the underlying issues of human rights violations.

Dr. Değer emphasised the universal importance of human rights, stating, "Human rights is a common value that unites all humanity, but states and actors are destabilising the implementation of human rights." She pointed out the dichotomy between the ideal of human rights and the reality of their enforcement.

Turning her focus to the United Nations, Dr. Değer criticised the use of veto power: "The use of veto right in the UN Security Council to maintain the status quo and the UN General Assembly not recommending collective legitimate force are part of the issues." She highlighted the challenges within international governance structures that hinder effective action.



Addressing the role of the International Criminal Court, she stated, "The International Criminal Court not considering the death of thousands of people as a sufficient reason to issue an arrest exemplifies not just a humanitarian disaster, but an abuse of law." Dr. Deđer described this as not only a failure in humanitarian response but also a misuse of legal frameworks.

She further articulated this point, saying, "This is not a humanitarian disaster that the UN cannot manage, but this is called abuse of law. We can say lawfare in this situation." This terminology underscored her view of the situation as a strategic manipulation of legal systems.

Dr. Deđer concluded by addressing compliance with international legal decisions: "If states do not comply with the decisions of the courts, measures may be taken by the Security Council, as per Article 94 or Chapter 7 of the UN Charter." However, she also noted a significant obstacle: "The problem lies in the Security Council's decision-making process, where the right to veto may prevent necessary measures from being taken against violations."

In his speech, Ramy Shaath, a prominent figure in Palestinian advocacy, delivered a speech covering a range of issues related to the ongoing crisis in Palestine. His speech was marked by direct quotations, highlighting his perspectives on international justice, local legal actions, and the broader geopolitical context.

Shaath began with a critique of international institutions, stating, "Personally, I have very little faith in the ICJ and in all the institutions that were built after World War II, which are based on an imbalanced power and control." This set the tone for his argument that focused on local jurisdictions as more effective avenues for seeking justice.

He emphasised the role of local courts, saying, "I am a strong believer in local jurisdictions. Currently based in France, we're exploring many possible cases here, but this could also apply to different places in the world." Shaath highlighted the potential of using local legal systems to address international issues, particularly those concerning Palestinians with dual nationalities.

Shaath's investigation extends to various actors in the conflict: "We're looking at cases of genocide-related especially to Palestinians who have dual nationalities... We are



investigating cases regarding the thousands of mercenaries... We're examining the role of companies that facilitated Israeli recruitment of arms... Our investigations extend to NGOs that support military-related equipment in Israel."

Despite his interest in the International Court of Justice, Shaath expressed reservations about its effectiveness and impartiality, particularly referencing Mr. Khan's actions: "We've observed bias in international forums; like when Mr. Khan went to Palestine to meet survivors of genocide and gave them 10 minutes to speak, while he gave two days to an Israeli version of the story."

Shaath spoke about the need for grassroots advocacy: "We need to lay the groundwork for a stronger case; just a few days ago, FIDH was the first to declare what's happening in Palestine as genocide. We need to pressure groups like Amnesty and Human Rights Watch to do the same."

He also discussed the necessity of local efforts before approaching international courts: "There is a significant amount of groundwork and local efforts required before we can effectively pressure the ICJ for serious deliberation on this matter."

Shaath's strategy involves not just legal battles but also seeking international recognition of the situation as genocide: "Our strategies encompass... a wider push for international recognition of the atrocities as genocide, a term that accurately describes the situation in Palestine."

He concluded with a powerful statement on the situation in Palestine: "There is a clear pattern of systemic violence and oppression in Palestine, orchestrated by Israeli occupation forces... The involvement of international mercenaries... The biased international response... Our focus is on building a strong case through local courts and international platforms, to expose and challenge the ongoing genocide in Palestine and bring those responsible to justice."

Shaath's speech provided a comprehensive overview of the challenges and strategies in addressing the Palestinian crisis, emphasising the role of local and international legal mechanisms in seeking justice.

In his speech, Lawyer Joseph Reid Milburn from CAIR-Chicago delivered a speech that delved into the complexities of the Palestinian situation, particularly focusing on





Gaza. His speech, punctuated with direct quotations, addressed the legal and humanitarian aspects of the crisis.

Milburn began by highlighting the difficulties faced by Palestinians in terms of mobility: "It's very difficult for Palestinians from the West Bank to get permits to enter 48, and it's even more difficult for Palestinians from Gaza." He further emphasized the severity of these restrictions, noting, "Israel significantly restricts Palestinians from the West Bank in obtaining permits to enter 48, and it's even more stringent for Palestinians from Gaza to get permits to enter 48 or move to the West Bank."

Addressing the implications of these restrictions, Milburn observed, "Israel facilitates the movement of Palestinians from the West Bank to Gaza, but it's a near impossibility for Gazans to move to the West Bank, effectively making Gaza an open-air prison." He pointed out the intentional nature of these policies, stating, "This situation shows that Israel is intending Gaza to be an open-air prison, where it's very difficult to enter and even more difficult to leave."

Milburn then touched upon the legal paradox observed in the United States: "In America, it's considered illegal to join a foreign army, yet we see tons of Jewish Americans joining the Israeli Army... It is a common now yet overlooked phenomenon." He highlighted the inconsistency in international law enforcement: "It's amusing that countries with laws against joining foreign armies turn a blind eye when it comes to joining the Israeli army."

Discussing the plight of Gazans seeking asylum, he said, "Gaza's small size compared to cities like Chicago makes it easier for asylum seekers to demonstrate their inability to escape persecution within Gaza." He expressed frustration at the international community's response: "It's mind-boggling that the West does not consider Israel's human rights violations and allows it to be the one place where people from all over can join the army."

Milburn further emphasized the dire situation in Gaza: "If you're from Gaza, you can't move to another part of Palestine. You're essentially stuck there... It's literally an open-air prison." He concluded with a poignant question about international justice: "The mind-boggling question we're all wondering is why Israel has not been brought to the ICC yet especially considering cases like the Bosnian and Rwandan genocides. Why



no formal charges have been brought against Israel under similar circumstances is a question that needs answering."

In their final remarks, the speakers highlighted the vital need for cohesive and grassroots actions to address and halt Israeli transgressions in Palestine. The discussions unveiled creative strategies and methods of collaboration, underscoring the significance of united efforts in the quest for justice. Furthermore, the necessity of amplifying a unified global voice to advocate for and attain justice for the Palestinian victims was a key point of agreement, emphasising a collective commitment to this pressing cause.

**Arab Organisation for Human Rights in the UK**