

حكمة – مركز من أجل القانون الدولي وحقوق الانسان

**Hikmah – Center for International Law and Human Rights**

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22 September 2024

Mr. Karim Khan KC  
Prosecutor, International Criminal Court  
P.O. Box 19519  
2500 CM The Hague  
The Netherlands

Mr. Merrick Garland  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001  
United States

Re: **US Officials' Complicity in Crimes Committed by Israel in Gaza**

“U.S. President Joe Biden landed Wednesday in Israel and told Prime Minister Benjamin Netanyahu that the attack Tuesday night on the al-Ahli hospital in Gaza, in which hundreds are feared dead, it appears to have been carried out by the ‘other team, not you.’”

Pierre Emmanuel Ngendakumana “Biden on Gaza hospital strike: Looks like the ‘other team’ did it”, *Politico*, 18 October 2023.

“According to an Israeli official, Saban also helped persuade Governor Schwarzenegger to produce a letter in support of Israel during its Gaza war last year... ‘So he said, “Because I don’t sign other people’s initiatives,’ as the leader, as head of the Democratic Party.” I said, “So send a letter of your own”.’ And, Saban added, smiling, and with hesitation, as though he did not like to boast, ‘He did’”.

Connie Buck, “The Influencer”, *The New Yorker*, 3 May 2010.<sup>1</sup>

“Appearing before a new group called the Israeli American Council, both men issued a call for unity when it comes to support for the Jewish state, reminding all prospective presidential candidates of the primacy of the U.S.-Israel relationship.”

Philip Rucker, “Billionaires Adelson and Saban, at odds in campaigns, unite on Israel and hit Obama”, *Washington Post*, 9 November 2014.

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<sup>1</sup> David Remnick’s led coverage in *The New Yorker* of Israel’s genocide against Palestinians in Gaza is a lesson in self-centered journalism reminiscent of Thomas Friedman’s *New York Times* coverage of the lead up to the illegal invasion of Iraq in 2003. Both are accomplices to their country’s galactical failings. See also Ghassan Bishara, “Israel’s Power in the US Senate”, 10(1) *Journal of Palestine Studies*, pp.58-79 (1980).

## **Introduction**

1. On 7 October 2023 Israel launched unjustified and illegal war in Gaza committing genocide, crimes against humanity, and war crimes. Despite these crimes, Israel's war was not terminated by its military and diplomatic patron the American administration. Israel's crimes in Gaza are captured by the International Criminal Court's (ICC) jurisdiction.
2. On 20 May 2024 your office applied for arrest warrants against Israeli Prime Minister Benjamin Netanyahu and Israeli Defense Minister Yoav Gallant. Our letter of 22 June 2024 to your office indicated (a) Israel's grave obstruction of justice regarding the work of ICC's Prosecution by the country's former chief of the Mossad Yossi Cohen<sup>2</sup> and the need to take appropriate measures under ICC's applicable legal framework; (b) the failure to act regarding the Palestine situation since you took office despite opening an official investigation by your predecessor;<sup>3</sup> (c) the incomplete accusations filed against Israeli officials that did not include serious charges especially genocide and disregarded the individual criminal responsibility of senior Israeli military, security, and judicial officials; (d) the illegitimate allegations against the Palestinian side; and (e) the Prosecutor's miscalculated public statement about Israel's right for self-defense which is the country's traditionally refuted argument under international law and is inapplicable also in the circumstances of its war against Gaza.
3. We reiterate that the Israeli government and the Israeli military censorship prevent revealing that at least most Israeli civilians who died on 7 October 2023 were killed as a result of Israeli gunfire.
4. The purpose of this letter is to request that your office launch an investigation and apply for arrest warrants against senior American officials for their complicity in Israel's crimes. These individuals are American president Joe Biden; U.S. Secretary of State Anthony Blinken; U.S. National Security Adviser Jake Sullivan; U.S. Secretary of Defense Lloyd Austin; U.S. Director of National Intelligence Avril Haines; Commander of U.S. Central Command Gen. Michael Kurilla.
5. U.S. Attorney General Mr. Merrick Garland is an addressee of this letter because potential legal consequences to officials from his sovereign jurisdiction.

## **Israel's Crimes: Genocide, Crimes Against Humanity, and War Crimes**

### *Genocide*

6. Israel's war against Gaza constitutes genocide,<sup>4</sup> crimes against humanity, and war crimes in the meaning of articles 6, 7, and 8 of ICC's Statute. The war was launched with explicit statements by Israeli Prime Minister, Senior Ministers, Senior Military Commanders, and influential public figures that demonstrate an intent to commit genocide. This intent was blunt and public until South Africa filed its case on 29 December 2023 against Israel before the International Court of Justice (ICJ) under the Convention on the Prevention of the Crime of Genocide. Israel's genocidal policy did not change despite ICJ's proceedings and orders, but the statements by Israeli officials became less obvious. Since the inception of Israel's war against Gaza minimal to no harm was caused to Israeli civilians and civilian objects that does not warrant the attention of the ICC.<sup>5</sup>

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<sup>2</sup> Harry Davies et al, "Spying, hacking and intimidation: Israel's nine-year 'war' on the ICC exposed", *The Guardian*, 28 May 2024.

<sup>3</sup> See Oliver Holmes, "Palestine condemns Boris Johnson for opposing ICC Israel investigation" *The Guardian*, 15 April 2021. Our letter of 4 July 2021 requested the Prosecutor's recusal from considering the Palestine situation in light of the British government's opposition to the ICC's jurisdiction in this regard.

<sup>4</sup> See Anatomy of a Genocide, OHCHR the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, 5 March 2024; Genocide in Gaza: Analysis of International Law and its Application to Israel's Military Actions since October 7, 2023, 15 May 2024; Rasha Khatib et al, "Counting the dead in Gaza: difficult but essential", *The Lancet*, 20 July 2024.

<sup>5</sup> Lebanese group Hezbollah has been engaged in a heroic effort of humanitarian intervention with its limited capabilities targeting Israeli military basis in south Lebanon and northern Israel. The organization's stated objective is to end Israel's genocidal war in Gaza which has been streamed regionally and internationally.

7. On 28 October 2023 Israeli Prime Minister Benjamin Netanyahu compared Palestinians to the biblically despised people of Amalek who deserved no less than total destruction, including the women, children, and property.<sup>6</sup> At that time the first stage of Israel's war against Gaza which was led mainly by IDF's Airforce was declared over resulting in the death toll of about 8000 persons among Palestinians with almost no casualties among Israelis. The next phase of Israel's war was the ground invasion. Here is Israeli Prime Minister Netanyahu utilizing the biblical terminology and boasting a clear genocidal intent:



Netanyahu utilizing biblical terminology of Amalek demonstrating an intent to commit genocide, 28 October 2023 (video).

8. U.N. Secretary General Antonio Guterres expressed on 6 November 2023 outrage at the result of Israel's military conduct that can only be understood at the time as well as today as part of Israel's intended and carefully planned genocide:

Gaza is becoming a graveyard for children. Hundreds of girls and boys are reportedly being killed or injured every day. More journalists have reportedly been killed over a four-week period than in any conflict, in at least three decades. More United Nations aid workers have been killed than in any comparable period in the history of our organizations. We must act now to find a way out of this brutal, awful, agonizing death and destruction.



U.N. Secretary General Antonio Guterres, "Gaza is becoming a graveyard for children", 6 November 2023 (video).

<sup>6</sup> See Yonatan Ha-Levi, "Amalek: who is Amalek today, and were they destroyed in the past? all the answers on the mysterious people", *Hedavrut*, 10 March 2022 (Hebrew), available at: <https://www.hidabroot.org/article/1131942>

9. On 10 October 2023 Minister of Defense Yoav Gallant visited IDF's Gaza Division which enforces Gaza's occupation and enclavement. It was a central objective of the operation from Gaza on 7 October 2023. Gallant said to his subordinates:

I released all restraints. Attacking everything. Gloves are off...from air, land, with tanks, and bulldozers. All measures. No compromises. Gaza will not return to what it was...we will eliminate everything...we can't end this matter just like that because we will not exist in the Middle East. Without deterrence there is no existence in the Middle East.



“Gloves are off”. Gallant at IDF's Gaza Division, 10 October 2023 (video).<sup>7</sup>

10. IDF's senior command proclaimed similar statements and intent. On 12 October 2023 IDF's Chief of Staff Herzi Halevi said “the fighting spirit of the IDF is pounding Gaza with all its force and we will not stop here...Gaza shall not look the same.”<sup>8</sup> Commander of IDF's Air Force Tomer Bar said early in the war “it's a long war. We are already in the sixth day. We are after thousands of bombs, 6000 bombs dropped on Gaza...you know the Air Force, you know the IDF, no one limits us. I instructed to continue the attacks forcefully.”<sup>9</sup> On 16 November 2023 he (Tomer Bar) said “we are operating with intensity and forcefully. Gaza's face has changed.”<sup>10</sup>



Commander of IDF's Air Force Tomer Bar: “We are already in the 6<sup>th</sup> day of the war, after thousands of bombs, more than 6,000 bombs dropped on Gaza” (video).

<sup>7</sup> A longer version of Gallant's speech that includes an admission of Israeli casualties as a result of Israeli gunfire is available here: <https://www.kipa.co.il/%D7%97%D7%93%D7%A9%D7%95%D7%AA/%D7%91%D7%99%D7%98%D7%97%D7%95%D7%9F/1167736-0/>

<sup>8</sup> Ilya Egorov, “IDF Chief of Staff in a Statement: ‘Now it's Time for War – Gaza Shall Not Look the Same’”, *Yisrael Ha-Yom*, 12 October 2023 (Hebrew).

<sup>9</sup> IDF Commander of the Air Force Tomer Bar, Statement before Air Force Command, 13 October 2024, available at: [https://www.youtube.com/watch?v=-jEIF\\_TfGhI](https://www.youtube.com/watch?v=-jEIF_TfGhI)

<sup>10</sup> Yael Chekhnober, “‘Commander of the Air Force: ‘We Hit Thousands of Terrorists, Gaza's Face Has Changed’”, *Ynet*, 16 November 2023 (Hebrew).



IDF's Head of Southern Command Yaron Finkelman and IDF's Commander of the Air Force Tomer Bar in a muted video produced by IDF's spokesperson, 27 October 2023 (video).



Finkelman applauding his subordinates, 5 January 2024 (video).



Finkelman hailing the Air Force, underscoring its central role, 8 February 2024 (video).

11. The Israeli command structure is as follows:

Prime Minister Benjamin Netanyahu

Minister of Defense Yoav Gallant

Yaron Finkelman  
Commander of IDF's  
Southern Command

Herzi Halevi  
Chief of IDF's General Staff

Tomer Bar  
Commander of IDF's Air Force

Ronen Bar  
Director of Israel  
Security Agency

12. Giora Eiland is a former senior officer with the IDF, former IDF Operations Chief and former head of the Israeli National Security Council. He has been serving as an adviser to Minister of Defense Yoav Gallant during Israel's war on Gaza. Twice during the war Eiland stated his opinion publicly about the need for exceptionally aggressive military strategy that is another clear indication for Israel's intent to commit genocide against Palestinians in Gaza. At the beginning of the war, Eiland said:

Gaza is a state. You are fighting against a state, you are not only fighting against its army but against all of its capabilities, including its economy. That is why Israel should completely shut down everything that happens economically in Gaza. Goods and gas, fuel and electricity and water and food. Not only to win the battle, but also because we have so many hostages there. If we ever want to see the hostages alive, the only

way is to create a severe humanitarian crisis in Gaza. When international institutions shout about a humanitarian crisis in Gaza and bodies are piling up in the hospital and they cannot treat them, we will reply, 'We have no problem solving the real problems of Gaza, but give us back our prisoners first.'<sup>11</sup>



Giora Eiland, captured by Globes newspaper, 8 October 2023.

13. Almost a year later, in early September 2024 Eiland shared a similar plan with the press the purpose of which is again to use aggressive military pressure against Palestinian civilians to realize military objectives that were not obtained after committing monstrous genocide, crimes against humanity, and war crimes. Advocated by Eiland and other former IDF officers, the plan called for forced displacement and depopulation of north of Gaza of the remaining Palestinian residence there estimated at 300,000 and imposing a siege to defeat presumed 5,000 fighters of Israel's adversary.<sup>12</sup>
14. Haim Ramon is a former leading politician and a very influential public figure in Israel. On 10 December 2023 he appeared on Israeli Channel 14 and called for harsher military tactics and strategy criticizing Israel's purported leniency towards Palestinians in Gaza. Ramon critically claimed that Israel was not cruel enough. After the beginning of the war, he maintained, the world would have understood killing not only 20,000 Palestinians but also 40,000. He further emphasized that entering humanitarian aid to Gaza was senseless that undermines Israel's war effort. Ramon's public appearance reflected the genocidal mood that dominated Israeli officials and much of the country's population.



Haim Ramon, "we are not cruel enough", Israeli Channel 14, 10 December 2024 (video).

<sup>11</sup> Ariel Whitman, "Giora Eiland outlines plan to get hostages back", *Globes*, 8 October 2023.

<sup>12</sup> Itamar Eichner, "'Generals Plan' of tens of retired senior officer: 'siege on northern Gaza'", *Ynet*, 4 September 2024 (Hebrew), available here: <https://www.ynet.co.il/news/article/h1psjosnc>

15. Israel's Finance Minister and Member of the Security Cabinet Bezalel Smotrich called for total annihilation of Gaza.<sup>13</sup> Israeli police closed an investigation against a Rabbi head of a Yeshiva who advocated for killing all Palestinians in Gaza.<sup>14</sup> Israeli Attorney General Gali Baharav – Miara neither said nor take any measure regarding Israel's intended international criminality, but she did warn Israeli Ministers to be careful with their words as they might be used against them in a court of law and thus provide “ammunition for Israel's enemies.”<sup>15</sup> As emphasized in our letter of 22 June 2024, given Ms. Baharav – Miara role and function in the Israeli governmental structure, her actions and inactions generate international individual criminal responsibility also against her. Baharav – Miara's understanding of international law is limited and traditional in Israeli terms aimed at establishing domestic inquiry the purpose of which is to fend proceedings before international tribunals. There is no intention to uphold the rule of law, seek accountability, and counter impunity.<sup>16</sup>



Israeli Attorney General, Ms. Gali Baharav – Miara.

16. Israel's military performance in general is premised on the intentional targeting of civilians and absolute impunity.<sup>17</sup> One authoritative Israeli security commentator described IDF's tactics and strategy in Gaza in the past decade “time and again, including during operation ‘Guardians of the Walls’, the military establishment said that when the enemy would see the damage inflicted upon them, they would acknowledge their defeat and would be deterred from renewing fire.”<sup>18</sup>

17. From late 2008 until the current illegal war, Israel launched several military operations that resulted each time with significant human death toll and destruction in Gaza. OCHA produced the following statistics: Operation Cast Lead (27 December 2008 – 18 January 2009, 1385 killed, 5300 injured); operation Pillar of Defense (14 – 21 November 2012, 168 killed, 1064 injured); operation Protective Edge (8 July - 26 August 2014, 2251 killed, 11231 injured); and operation Guardian of the Walls (10 – 21 May 2021, 261 killed, 2211 injured). Israeli forces have repressed Palestinian demonstrations in Gaza known as “Marches of Return” with severe lethal gunfire enjoying absolute impunity.<sup>19</sup>

18. Israel's genocide against Palestinians in Gaza during its current onslaught was multilayered fulfilling articles 6(a) – 6(d) of ICC Statute:

<sup>13</sup> Noa Shpigel, “Israel's Far-right Minister Smotrich Calls for ‘No Half Measures’ in the ‘Total Annihilation’ of Gaza”, *Haaretz*, 30 April 2024.

<sup>14</sup> Chen Maanit, “Israeli Police Recommend Closing Case Against Yeshiva Head Who Said All Gazans Should Be Killed”, *Haaretz*, 18 June 2024.

<sup>15</sup> TOI Staff, “Attorney General said to warn ministers to be careful when talking about Hamas war”, *Times of Israel*, 14 November 2023.

<sup>16</sup> TOI Staff, “AG implores Netanyahu to cease blocking state commission of inquiry into Gaza war”, *Times of Israel*, 7 June 2024.

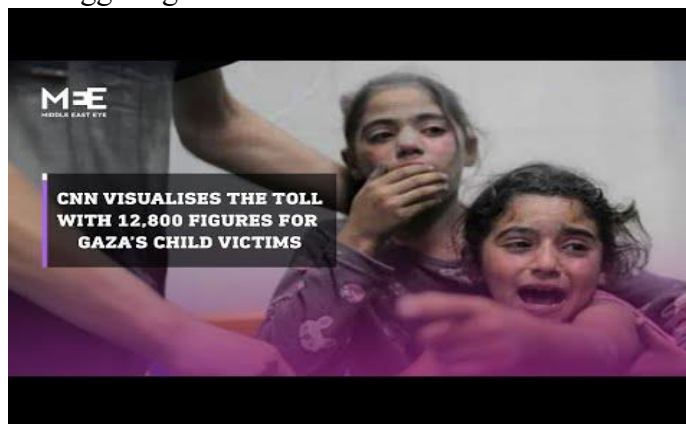
<sup>17</sup> See Amos Harel, “Plans to Use Disproportionate Force Next War”, *Haaretz*, 5 October 2008; Gabi Siboni, “Disproportionate Force: Israel's Concept of Response in Light of the Second Lebanon War”, 74 *INSS* (October 2008); Yagil Henkin, “‘A High Price for our Blood’: Israel's Security Paradigms, from Reprisal Operations until Operation Protective Edge”, 15 *Dado Center Journal*, pp.17-41 (2018); Amir Oren, “This is How Barak Proposed to Sharon to Deceive the World”, *Haaretz*, 3 October 2014 (Hebrew). See also Baruch Kimmerling, *Politicide: Ariel Sharon's War Against the Palestinians* (Verso, 2003); Avi Shlaim, “Israel's error, then and now”, *New York Times*, 4 August 2006; Edward Said, “Permission to Narrate”, 6(3) *London Review of Books* (February 1984).

<sup>18</sup> Ofer Shelah, “Escaping Maneuver Will Not Lead to Victory”, *INSS*, 12 August 2021 (Hebrew).

<sup>19</sup> Report of the Independent UN Commission of Inquiry on the 2018 Protests in the OPT, 28 February 2019.

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;

19. Israel launched its war by intentional excessive use of its air force against defenseless and densely populated Gaza. Its killing rate among children, women, and men was exceptionally atrocious.<sup>20</sup> Israel's objective was to kill and maim in the pursuit of committing genocide. By the beginning of August 2024 about 40,000 people have been killed and further 92,401 have sustained injuries as a result of Israel's egregious offensive.<sup>21</sup> In March 2024 CNN visualized Palestinian children's staggering death toll.



CNN visualization of Gaza's children death toll as a result of Israel's genocide, March 2024 (video).<sup>22</sup>

20. Israel's genocide included overwhelming destructiveness devastating civilian buildings,<sup>23</sup> the healthcare system,<sup>24</sup> water resources,<sup>25</sup> humanitarian aid,<sup>26</sup> the educational system,<sup>27</sup> and places of worship.<sup>28</sup> Starvation has been additional component of Israel's intent and actual perpetration of genocide.<sup>29</sup>

<sup>20</sup> Lauren Leatherby, "Gaza Civilians, Under Israeli Barrage, Are Being Killed at a Historic Pace", *New York Times*, 25 November 2023; Evan Hill et al, "Israel has waged one of this century's most destructive wars in Gaza", *Washington Post*, 23 December 2023; Evan Dyer, "Israel's Gaza bombing campaign is the most destructive of this century, analysts say", *CBC*, 30 December 2023; Anjana Sankar, "Many of Gaza's Medical Workers Have Been Detained or Killed", *New York Times*, 2 August 2024; Journalist Casualties in the Israel - Gaza War, Committee to Protect Journalists, 14 August 2024.

<sup>21</sup> Ben van der Merwe al, "Gaza conflict: Thousands remain unidentified as death toll reaches 40,000", *Sky News*, 5 August 2024.

<sup>22</sup> See also Sarah Ferguson, "More than 13,000 Children Reported Dead in Gaza as Famine Nears", UNICEF USA, 19 March 2024; Save the Children, Gaza: 10,000 Children Killed in Nearly 100 Days of War", 11 January 2024.

<sup>23</sup> Neils de Hoog et al, "How war destroyed Gaza's neighbourhoods – visual investigation", *The Guardian*, 30 January 2024; Daniele Palumbo et al, "At least half of Gaza's buildings damaged or destroyed, new analysis shows", *BBC*, 30 January 2024; UNOSAT Analysis of Damaged Buildings 6 July 2024 published 31 July 2024, available at: [https://unosat.org/static/unosat\\_filesystem/3904/OCHA-OPT-015\\_UNOSAT\\_A3\\_Gaza\\_Strip\\_OPT\\_CDA\\_06072024.pdf](https://unosat.org/static/unosat_filesystem/3904/OCHA-OPT-015_UNOSAT_A3_Gaza_Strip_OPT_CDA_06072024.pdf); UNOSAT Analysis of Damaged Crop Land 28 June 2024 published 5 July 2024, available at: [https://unosat.org/static/unosat\\_filesystem/3895/FAO-PAL-008\\_UNOSAT\\_A3\\_Gaza\\_Strip\\_Agricultural\\_DA\\_June2017-2024\\_v1.pdf](https://unosat.org/static/unosat_filesystem/3895/FAO-PAL-008_UNOSAT_A3_Gaza_Strip_Agricultural_DA_June2017-2024_v1.pdf); Amnesty International, Israeli military must be investigated for war crime of wanton destruction in Gaza, 5 September 2024.

<sup>24</sup> Annie Sparrow et al, "Destroying Gaza's Health Care System is a War Crime", *Foreign Policy*, 9 February 2024; Elsa Delmas et al, "How Gaza's Hospitals, Schools, and Places of Worship Have Been Destroyed", *Le Monde*, 5 April 2024; Anjana Sankar, "Many of Gaza's Medical Workers Have Been Detained or Killed", *New York Times*, 2 August 2024.

<sup>25</sup> Natasha Hall et al, "The Siege of Gaza's Water", *Center for Strategic and International Studies*, 12 January 2024.

<sup>26</sup> Amnesty International, Israel defying ICJ ruling to prevent genocide by failing to allow adequate humanitarian aid to reach Gaza; Human Right Watch, Gaza: Israel Flouts World Court Order – Aid Still Being Obstructed Despite Famine, 7 May 2024; Emma Graham – Harrison, "Humanitarian workers face deportation from Israel after freeze on visas", *The Guardian*, 29 February 2024; Human Rights Watch, Gaza: Israelis Attacking Known Aid Worker Locations – End Unlawful Attacks, Ensure Accountability, 14 May 2024.

<sup>27</sup> OHCHR, UN experts deeply concerned over 'scholasticide' in Gaza, 18 April 2024; Chandi Desai, "The War in Gaza is Wiping Out Palestine's education and knowledge systems", *The Conversation*, 8 February 2024.

<sup>28</sup> Reha Kansara et al, "Israel – Gaza war: Counting the destruction of religious sites" *BBC*, 30 January 2024.

<sup>29</sup> Nina Lakhani, "Israel is deliberately starving Palestinians, UN rights expert says", *The Guardian*, 27 February 2024.



21. Israel perpetrated crimes against humanity against Palestinians in Gaza during its unjustified and illegal war that include forcible transfer of population (article 7(1)(d) of ICC Statute); imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law (article 7(1)(e) of ICC Statute); and torture (article 7(1)(f) of ICC Statute).

22. Israel committed forcible transfer in Gaza on a colossal scale internally displacing about 90% of Gaza's more than 2 million population.<sup>30</sup> Indiscriminate bombardment as part of its genocide and arbitrary collective orders of displacement caused this horrific international crime and humanitarian tragedy. There is no justification under international law for this military strategy that coincides with Israel's calculated intention to target civilians as a central feature of its illegal warfare. Israeli Minister Avi Dichter, former head of the Israeli Security Agency (2000 – 2005) who holds a proven track record of executing illegal Israeli policies in the occupied Palestinian territories exhibited Israel's clear intent of its unlawful forced displacement strategy:

Israeli security cabinet member and Agriculture Minister Avi Dichter (Likud) was asked in a news interview on Saturday whether the images of northern Gaza Strip residents evacuating south on the IDF's orders are comparable to images of the Nakba. He replied: 'We are now rolling out the Gaza Nakba. From an operational point of view, there is no way to wage a war – as the IDF seeks to do in Gaza – with masses between the tanks and the soldiers.'

When asked again whether this was the "Gaza Nakba", Dichter – a member of the security cabinet and former Shin Bet director – said 'Gaza Nakba 2023. That's how it'll end.'<sup>31</sup>

23. Israel's crime against humanity of forcible transfer is further evidenced by its farcical plan to transfer Palestinians from Gaza to Congo and other countries.<sup>32</sup>

24. Israel engaged in illegal and degrading mass arrests and torturing detainees as part of its systematic effort to target civilians accomplishing additional crimes against humanity. Israel's policy received international attention and condemnation.<sup>33</sup> Torture has characterized the work of the Israel Security Agency for decades. In the first episode of five of a special 2012 documentary featuring several heads of this organization titled *The Gatekeepers*, the lasting deplorable practice of torture is sarcastically acknowledged and gloated.



The Gatekeepers, 2012, First Episode (video).

<sup>30</sup> AFP, "About 90% of people in Gaza displaced since war began, says UN agency", *The Guardian*, 3 July 2024; UN Press Release, As Israel's Aerial Bombardments Intensify, 'There Is No Safe Place in Gaza', Humanitarian Affairs Chief Warns Security Council, 12 January 2024; OHCHR, Gaza: Israel's dehumanization of displaced persons must end, says UN expert, 6 March 2024; OHCHR, Israel working to expel civilian population of Gaza, UN experts warns, 22 December 2023; Nadia Hardman, "Most of Gaza's Population Remains Displaced and in Harm's Way", *Human Rights Watch*, 20 December 2023.

<sup>31</sup> Michael Hauser Tov, "'We're Rolling Out Nakba 2023,' Israeli Minister Says on Northern Gaza Strip Evacuation", *Haaretz*, 12 November 2023.

<sup>32</sup> Shalom Yerushalmi, "Israel in talks with Congo and other countries on Gaza 'voluntary migration' plan", *Times of Israel*, 3 January 2024.

<sup>33</sup> See, for example, Isabel Debre et al, "Hungry, thirsty and humiliated: Israel's mass arrest campaign sows fear in northern Gaza", *Associated Press*, 14 December 2023; CNN International Investigations, "Strapped down, blindfolded, held in diapers: Israeli whistleblowers detail abuse of Palestinians in shadowy detention center", *CNN*, 11 May 2024; Amnesty International, Israel must end mass incommunicado detention and torture of Palestinians from Gaza, 18 July 2024; OHCHR, UN report: Palestinian detainees held arbitrarily and secretly, subject to torture and mistreatment, 31 July 2024.

25. Israeli soldiers regularly displayed their unlawful repulsive activities in Gaza on the internet that form war crimes in violation of articles 8(2)(b)(xxi) or 8(2)(c)(ii) of the ICC Statute.<sup>34</sup>

### **ICC Jurisdiction over US Officials**

26. American officials are subjected to the jurisdiction of the ICC notwithstanding the insistence of successive American administrations not to join the Court.<sup>35</sup> The conduct of American officials and its links to crimes under the jurisdiction of the ICC subordinate them to its powers of investigation, arrest, prosecution, and judgement.

27. ICC's Prosecutorial presumption is that its jurisdiction captures international illegality executed by American officials in relation to crimes within the Court's jurisdiction.<sup>36</sup> ICC's Appeals Chamber confirmed jurisdiction over the conduct of U.S. officials based on the structure of location and link to crimes captured ordinarily by its prerogative.<sup>37</sup>

28. ICC's jurisdiction over the Palestine situation has been established.<sup>38</sup> Israel does not accept it. The American administration has opposed exercising jurisdiction in relation to Israel's illegal conduct. This approach is another factor in Biden administration's complicity in Israel's international crimes that will be dealt with separately.

29. Pursuant to article 27 of the Court's statute official capacity does not bar exercising ICC's jurisdiction.

### **Applicable Law on Aiding, Abetting or otherwise Assisting**

30. Article 25(3)(c) of ICC's statute defines individual criminal responsibility for aiding and abetting a crime within the Court's jurisdiction:

In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

...

For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission.

31. ICC's law is not settled yet regarding the elements required to prove that an individual is liable for aiding and abetting a crime within its jurisdiction. In *Bemba* case, Trial Chamber VII articulated the existing ICC jurisprudence in this regard.<sup>39</sup> American officials satisfy these requirements as well as the standards set by other international tribunals.<sup>40</sup>

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<sup>34</sup> See Melanie Lidman, "Amid outcry over Gaza tactics, videos of soldiers acting maliciously create new headache for Israel", *Associated Press*, 13 December 2023; Yara Hawari, "Why are Israeli soldiers sharing snuff videos from their genocide in Gaza?", *Al-Jazeera English*, 24 January 2024; Samuel Forey, "Israeli soldiers deployed in Gaza post their abuses on social media", *Le Monde*, 28 February 2024; Estelle Shirbon et al, "Israeli soldiers play with Gaza women's underwear in online posts", *Reuters*, 28 March 2024; Merlyn Thomas et al, "Israel troops continue posting abuse footage despite pledge to act", *BBC*, 17 May 2024.

<sup>35</sup> U.N. Press Release, United States Will Not Sign Statute Establishing International Criminal Court in its Present Form, Sixth Committee Told, 21 October 1998; John Bolton, Letter to UN Secretary General Kofi Annan, 6 May 2002; Julian Borger, "US imposes sanctions on top international criminal court officials", *The Guardian*, 2 September 2020; Michel Martin, "The U.S. does not recognize the jurisdiction of the International Criminal Court", *NPR*, 16 April 2022.

<sup>36</sup> Case No. ICC-02/17, Situation in the Islamic Republic of Afghanistan, Prosecution's Request for authorisation of an investigation pursuant to article 15, 20 November 2017, paras.68 -71; 187-260.

<sup>37</sup> Case No. ICC-02/17 OA4, Situation in the Islamic Republic of Afghanistan, Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan, 5 March 2020, para.79.

<sup>38</sup> ICC-01/18 Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine', 5 February 2021.

<sup>39</sup> Case No. ICC-01/05-01/13 Situation in the Central African Republic, The Prosecutor v. Jean – Pierre Bemba Gombo et al, Judgment Pursuant to Article 74 of the Statute, 19 October 2016, paras.83-98.

<sup>40</sup> See Oona Hathaway et al, "Aiding and Abetting in International Criminal Law", 104(6) *Cornell Law Review*, pp.1593 – 1641 (2019).

## U.S. Officials' Complicity in Israel's Crimes

32. U.S. officials' complicity in Israel's crimes is premised on: a. total identification with Israel ideologically and militarily; b. constant supply of weapons and other military assistance throughout the conflict regardless awareness of Israel's viciousness; c. providing persistent diplomatic cover to Israel at the United Nations Security Council vetoing resolutions to halt or end Israel's calculated ruthlessness; d. opposing any attempt to apply international law to Israel, including by ICC's jurisdiction; and e. adhering to the internal American political system which is dominated by Israel's lobbyists.
33. The American president is head of state and government of the United States and commander in chief of the armed forces in accordance with article II(2) of the American constitution. The National Security Council (NSC) is the President's principal forum for national security and foreign policy decision making. It was established by the National Security Act of 1947, amended by the National Security Act Amendments of 1949. Later in 1949, as part of the Reorganization Plan, the NSC was placed in the Executive Office of the President.
34. The NSC is chaired by the President. Its regular attendees are the Vice President, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Secretary of Energy, the Attorney General, the Secretary of Homeland Security, the Representative of the United States of America to the United Nations, the Administrator of the U.S. Agency for International Development, the Chief of Staff to the President, and the Assistant to the President for National Security Affairs. The Chairman of the Joint Chiefs of Staff is the military advisor to the Council, and the Director of National Intelligence is the intelligence advisor.
35. Indication of the nature of NSC's decision making regarding Gaza was reported by the Wall Street Journal:  
But Sullivan's role, as other officials and experts said, isn't to advocate a policy, but present an analysis of the options to Biden, who listens to advice and makes the ultimate decision. One former official likened it to a debate over the color of the sky: If five people said it's blue, and Sullivan said it's red, what ultimately matters is what the president believes.<sup>41</sup>

### *Ideological Synonymity with Israel*

36. Before and after Israel's war against Gaza Biden passionately and consistently revealed unequivocal personal, convictional, ideological, and geopolitical identification with Israel. More than once he identified himself as a Zionist, propagated Israel's apartheid structure and character as a state of the Jewish people or a Jewish state, and reinforced Israel's regional colonial perception and actual role<sup>42</sup> that is supposed to safeguard America's interests in the Middle East. Biden's ideological adherence to Zionism and Israel has led him to disregard the rights of the Palestinian people throughout his career, including during Israel's genocide in Gaza enabled by American backing.
37. Biden said in 2016 before the Jewish Federations of North America "were I a Jew I would be a Zionist. My father pointed out to me I did not need to be a Jew to be a Zionist. For I am. Israel is essential to the security of Jews worldwide." On more than one occasion Biden said "were there not an Israel, the United States of America would have to invent an Israel to protect its interests in the region." Biden also explained that "people should understand by now that, this should be crystal clear that Israel, Israel is the single greatest strength America has in the Middle East. I always say to my friends...imagine our circumstance in the world were there no Israel. How many battle ships would there be? How many troops would be stationed?"

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<sup>41</sup> Vivian Salama et al, "Biden's National Security Adviser Navigates a World of Chaos", *Wall Street Journal*, 11 March 2024.

<sup>42</sup> See, for example, Wolf Blitzer, "Mossad – CIA Ties Legacy of Casey and Angleton", *Wall Street Journal*, 22 May 1987. See also, Steven Luxenberg, "The American Who Loved Israel Too Much", *Washington Post*, 21 May 1989.



Biden before Jewish Federations of North America, 2016 (video). Biden’s total support for Israel throughout his career (video).

38. Biden’s exceptional ideological commitment towards Israel led him to metaphysically denote grave support to a country who is both an illegal occupying power<sup>43</sup> and an apartheid<sup>44</sup> state faced with armed resistance. He called the Palestinian side ‘pure, unadulterated evil’ and pledged ‘swift, decisive, and overwhelming’ support for Israel’s war on Gaza.<sup>45</sup> Biden also repeatedly reverberated Israel’s lies about what took place on 7 October 2023, including Palestinians burning babies and raping of women.

39. Represented by National Security Adviser Jake Sullivan, the U.S. administration disregarded from the outset of Israel’s war against Gaza the significant human death toll and destruction and adamantly demonstrated not only ideological but also operational synonymity between Israel and the United States regarding the onslaught against Gaza. Sullivan even mentioned an idea under deliberation the objective of which is to displace Palestinians outside of Gaza under Israel’s bombardment. The U.S. administration anticipated Israel’s excessive bombardment and suggested a measure that would facilitate the forcible displacement of Palestinians. Sullivan not only externalized total misunderstanding of the plight of Palestinians and the laws of war, but also proved sharing Israel’s tactics and objectives:

The U.S. is talking with Israel and Egypt about the idea of a safe passage for Gaza civilians as Israel strikes the enclave after a deadly Hamas attack over the weekend, U.S. national security adviser Jake Sullivan said on Tuesday. ‘We are focused on this question, there are consultations going on,’ Sullivan told reporters at the White House.

‘But the details of that are something that are being discussed among the operational agencies and I don't want to share too much of that publicly at this time,’ Sullivan said.

Israel has battered Palestinians with deadly air strikes in Gaza after Palestinian Islamist group Hamas' attack on Israel on Saturday that left hundreds dead.

<sup>43</sup> See ICJ, Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem, 19 July 2024; ICJ, Legal Consequences of the Construction of a Wall in the Occupied Territory, 9 July 2004; A/HRC/56/26 Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 27 May 2024; Shane Darcey & John Reynolds, “An Enduring Occupation: The Status of the Gaza Strip from the Perspective of International Humanitarian Law”, 15(2) *Journal of Conflict & Security Law*, pp.211-243 (2010). See also, Hazem Balousha et al, “The U.N. once predicted Gaza would be ‘uninhabitable’ by 2020. Two million people still live there”, *Washington Post*, 2 January 2020; Megan O’Toole, “Gaza 2020: Has the Palestinian territory reached the point of no return?”, *Middle East Eye*, 9 December 2019.

<sup>44</sup> Human Rights Watch, A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution, 27 April 2021; Amnesty International, Israel’s apartheid against Palestinians: Cruel system of domination and crime against humanity, 1 February 2022; John Dugard & John Reynolds, “Apartheid, International Law, and the Occupied Palestinian Territory”, 24(3) *European Journal of International Law*, pp.867-913 (2013); John Quigly, “Apartheid Outside Africa: The Case of Israel”, 2(1) *Ind. Int’l. & Comp. L. Rev.* PP.221 – 251 (1991).

<sup>45</sup> Ben Samuels, “Biden: U.S. Supports Israeli ‘Swift, Decisive, Overwhelming’ Response against Hamas ‘Pure, Unadulterated, Evil’”, *Haaretz*, 10 October 2023.

Gaza's Health Ministry said at least 900 Palestinians were killed and up to 4,600 wounded in Israeli air strikes on the blockaded enclave since Saturday. The enclave, only 40km (25 miles) long by 10km (6 miles) wide, is home to 2.3 million people.

The United Nations said more than 180,000 Palestinians in Gaza had been made homeless. They have lived under an Israeli-led blockade for 16 years, since Hamas seized control of the territory in 2007....  
'We do not deliberately target civilians,' Sullivan said of the U.S. and Israel, when asked about civilian casualties in Gaza in the Tuesday press briefing.

'We work to make sure that our military operations are conducted consistent with the rule of law and the law of war,' he added.

Palestinians in Gaza have said that Israeli bombardment has been heavy and feels like a new "Nakba," the Arabic word for catastrophe that refers to the 1948 war of Israel's creation that led to their mass dispossession.<sup>46</sup>



Jake Sullivan, 10 October 2023. Image from The Nation magazine.

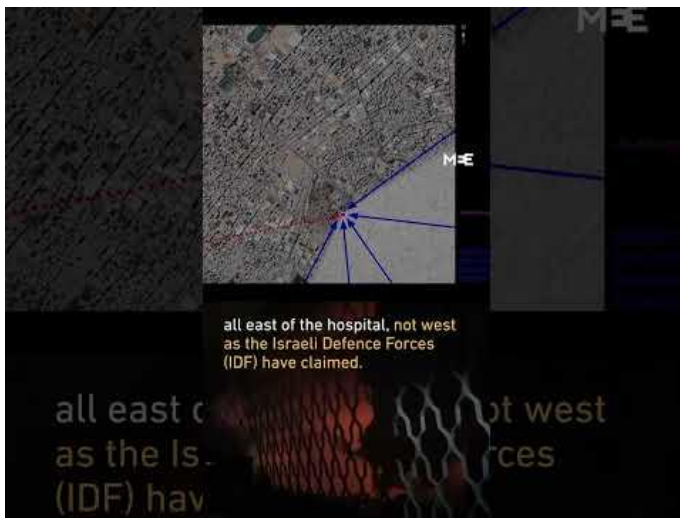
40. Biden visited Israel on 18 October 2023 when the human death toll in Gaza was more than 3,000. A day before, Al-Ahli Arab hospital in Gaza was bombed killing approximately 500 people.<sup>47</sup> Biden nevertheless asserted publicly during the meeting with Netanyahu that 'the other team' is responsible for this explosion. Israel denied responsibility and claimed that it was a failed rocket from Gaza that caused the deaths and damage. However, Palestinian armed groups do not possess weapons that can generate such harm. As already noted, throughout Israel's onslaught on Gaza, little to no harm was inflicted upon Israeli civilians and civilian buildings. Moreover, two separate investigations showed that it was the Israeli military who bombed the hospital. Given Israel's intent and overall conduct during its war on Gaza the only reasonable conclusion is that the intended bombardment was part of its genocide.



Biden blames 'other team' for hospital blast at Gaza City hospital, Associated Press, 18 October 2023 (video).

<sup>46</sup> Reuters, "US Talking to Israel, Egypt About Safe Passage for Gaza Civilians – White House", *US News & World Report*, 10 October 2023.

<sup>47</sup> Bethan McKernan, "'They believed it was safe': death toll rising after blast at Gaza hospital", *The Guardian*, 18 October 2023.



Middle East Eye reporting about forensic investigation, 21 October 2023 (video).



Al-Jazeera English investigation, 19 October 2023 (video).

41. Biden’s lifelong commitment to Zionism determined his actual war policy in absolute alignment with Israel’s international crimes:

When Joe Biden met with Prime Minister Benjamin Netanyahu and his war cabinet during his visit to Israel, the U.S. president assured them: "I don't believe you have to be a Jew to be a Zionist, and I am a Zionist."

The politicians and generals gathered in the ballroom of the Tel Aviv hotel nodded in approval, according to a U.S. official knowledgeable of the closed-door remarks, even as Israel bombarded Gaza in retaliation for a devastating attack by Palestinian Hamas militants and with a ground invasion looming.

...

In their private session with aides on Wednesday, the two leaders displayed none of the tensions that have sometimes characterized their meetings, according to a second U.S. official familiar with the talks.<sup>48</sup>

42. In another clear exhibition of Biden’s blind support for Israel, he intolerably emphasized lack of confidence in the high human death toll of Palestinians in Gaza which was nearing 8000 persons. Biden claimed that he has “no notion if Palestinians are telling the truth about how many people are killed. I’m sure innocents have been killed and it is the price of waging war. But I have no confidence in the number that Palestinians are using.”<sup>49</sup> Biden’s attempt to manipulate international humanitarian law is not sustainable factually and logically.

43. On 11 December 2023 Biden hosted Hanukkah holiday reception during which he reaffirmed his ideological devotion to Zionism and total association with Israel. At that time at least 20,000 Palestinians were killed by Israel.<sup>50</sup> Nevertheless, Biden asserted:

We continue to provide military assistance to Israel until they get rid of Hamas. But — but we have to be careful. They have to be careful. The whole world’s public opinion can shift overnight. We can’t let that happen.<sup>51</sup>

<sup>48</sup> Matt Spetalnick et al, “‘I am a Zionist’: How Joe Biden’s lifelong bond with Israel shapes war policy”, *Reuters*, 21 October 2023.

<sup>49</sup> Ryan Grim & Prem Thakker, “Biden’s Conspiracy Theory about Gaza Casualty Numbers Unravels Upon Inspection”, *The Intercept*, 31 October 2023.

<sup>50</sup> Merlyn Thomas, “Israel Gaza: What Gaza’s death toll says about the war”, *BBC*, 20 December 2023.

<sup>51</sup> Available at: <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/12/11/remarks-by-president-biden-at-a-hanukkah-holiday-reception/>



Biden reiterated his commitment to Zionism at the Whitehouse, 9 December 2023 (video).

### *Constant Supply of Weapons and other Military Assistance throughout Israel's Onslaught*

44. Despite awareness of the high death toll and destruction in Gaza as a result of Israel's calculated illegal warfare, Biden's administration wholeheartedly supplied Israel with weapons used in Israel's genocide. Any public rhetoric by Biden or other American officials about international law, limiting civilian death, and providing humanitarian aid is meaningless given the U.S. bold insistence on backing Israel's genocide and other crimes militarily and their actual execution in plain sight. Biden's closest allies and echoes of American foreign policy have admitted his grave failings.<sup>52</sup>
45. American weapons streamed regularly to Israel since the beginning of its illegal war at times in secret.<sup>53</sup> Biden administration's flow of weapons bluntly disregarded domestic regulations<sup>54</sup> and Israel's pervasive and preposterous conduct.<sup>55</sup> After the state department concluded that Israel's use of American supplied weapons was inconsistent with international law, no cessation of American military assistance took place.<sup>56</sup>
46. Biden administration persistently supplied Israel with weapons at the beginning and during Israel's perpetration of genocide, crimes against humanity, and war crimes. Despite most senior U.S. military official, Secretary of Defense Lloyd Austen, declaring on 2 December 2023 when the death toll in Gaza was more than 15,000 that "in this kind

<sup>52</sup> Hala Rharrit et al, "The State Department's Gaza Policy Has Failed", *Foreign Policy*, 9 August 2024; James Politi, "Biden's hopes for G7 foreign policy success undermined by Gaza war", *Financial Times*, 15 June 2024; Elena Schneider et al, "Foreign policy becomes a liability for Biden's campaign as he heads to France", *Politico*, 5 June 2024; Emma Ashford et al, "Is Biden Blowing it in Gaza and Ukraine?", *Foreign Policy*, 31 May 2024; H.A. Hellyer, "How Joe Biden Sabotaged the 'Rules-Based Order'", *Foreign Policy*, 10 May 2024; Nicholas Kristof, "What Happened to Joe Biden I Knew?", *New York Times*, 19 April 2024.

<sup>53</sup> See Jordan Fabian et al, "Biden Says US is Boosting Military Aid to Israel Following Hamas Attack", *Bloomberg*, 10 October 2023; Tara Copp, "The US is moving quickly to boost Israel's military. A look at what assistance it's providing", *Reuters*, 15 October 2023; Ken Klippenstein, "U.S. Weapons Transfer to Israel Shrouded in Secrecy – But not Ukraine", *The Intercept*, 7 November 2023; John Hudson, "Biden's secrecy on arms transfers to Israel uncovers some Democrats", *Washington Post*, 9 November 2023; Jonathan Gyers, "Most of Israel's weapons imports come from the US. Now Biden is rushing even more arms.", *Vox*, 18 November 2023; Humeyra Pamuk et al, "Despite Gaza death toll soaring, U.S. unlikely to rethink weapons supplies to Israel", *Reuters*, 6 December 2023; Michael Schaffer Omer – Man, "Why is the US still sending an endless supply of arms to Israel without conditions?", *The Guardian*, 7 December 2023; Natasha Bertrand et al, "Biden administration makes clear it has no plans to place conditions on military aid to Israel despite pressure from lawmakers", *CNN*, 13 December 2023; Ken Klippenstein, "Pentagon Taps 'Tiger Team' to Rush Weapons to Israel", *The Intercept*, 14 December 2023; Harry Davies et al, "Gaza war puts US's extensive weapons stockpile in Israel under scrutiny", *The Guardian*, 27 December 2023; Jacob Magid, "US bypass congressional review for month's second fast – tracked arms sale to Israel", *Times of Israel*, 30 December 2023; Jarid Malsin et al, "U.S. Plans to Send Weapons to Israel Amid Biden Push for Cease – Fire Deal", *Wall Street Journal*, 17 February 2024.

<sup>54</sup> Louisa Lovelock, "Biden's weapons sales to Israel breach legal limits, former officials say", *New York Times*, 10 May 2024.

<sup>55</sup> See John Hudson, "U.S. floods arms into Israel despite mounting alarm over war's conduct", *New York Times*, 6 March 2024; Jennifer Hansler et al, "Some in State Department don't believe Israel is using US weapons in accordance with international law, source says", *CNN*, 28 April 2024.

<sup>56</sup> Julian Borger, "US finds Israel's use of weapons in Gaza 'inconsistent' with human rights law, but will not cut flow of arms", *The Guardian*, 10 May 2024.

of a fight the center of gravity is the civilian population”,<sup>57</sup> Biden administration nevertheless continued its unwavering fevered military and diplomatic backing of Israel. A glaring example of that is Biden’s statements during the Hanukkah reception at the White House on 9 December 2023.<sup>58</sup> Biden disregarded Austin. The Secretary of Defense focused on his future.



U.S. Secretary of Defense Lloyd Austin about Israel’s conduct “the center of gravity is the civilian population”, 2 December 2023 (video).

47. Biden administration’s purported public disagreements with Israel did not affect the devastating constant American military support.<sup>59</sup> On the contrary, the U.S. military strategic assistance to Israel continued unabated notwithstanding its gravest of crimes. Commander of U.S. Central Command of the U.S. military Gen. Michael Kurilla exercised close operational cooperation with Israel’s military.<sup>60</sup>



Kurilla with IDF’s Chief of General Staff Halevi, June 2024

<sup>57</sup> Phil Stewart, “Civilians are ‘center of gravity’ in Gaza war: US defense secretary”, *Reuters*, 3 December 2024. Senior Republican Senator Lindsey Graham deplored Austin’s comments invoking clear illegal strategy. See Avery Lotz, “GOP Sen. Lindsey Graham says he’s ‘lost all confidence’ in Defense Secretary Lloyd Austin”, *CNN*, 3 December 2023.

<sup>58</sup> See also Jared Malsin et al, “U.S. Sends Israel 2,000 – Pound Bunker Buster Bombs for Gaza War”, *Wall Street Journal*, 1 December 2023.

<sup>59</sup> John Hudson, “U.S. signs off more bombs, warplanes for Israel”, *Washington Post*, 29 March 2024.

<sup>60</sup> See, for example, Phil Stewart, “Exclusive: Senior US general flies into Israel as its war with Hamas deepens”, *Reuters*, 17 October 2023; U.S. Central Command Press Release, USCENTCOM to visit Israel, 18 July 2024.



48. As Israel was intentionally killing hundreds of civilians in Gaza every day in October 2023, U.S. State Department issued on 19 October 2023 a statement underscoring America’s strategic partnership with Israel the purpose of which is to secure ‘Israel’s qualitative military edge’:

Since its founding in 1948, the United States has provided Israel with over \$130 billion in bilateral assistance focused on addressing new and complex security threats, bridging Israel’s capability gaps through security assistance and cooperation, increasing interoperability through joint exercises, and helping Israel maintain its Qualitative Military Edge (QME).<sup>61</sup>

49. Biden’s clearly hesitant declaration in May 2024 made under growing American and international popular solidarity with Palestine, that he may consider withholding<sup>62</sup> certain shipments of weapons to Israel was late, insignificant in nature,<sup>63</sup> and reversed under lobbying pressure particularly by leading democratic party pro – Israel donor Haim Saban.<sup>64</sup> American arms to Israel were a central component of international crimes committed in Gaza.<sup>65</sup> Large and smaller American bombs caused death in Gaza.<sup>66</sup> Allies of the United States suspended arms deals with Israel in the wake of its genocide and other crimes under ICC’s jurisdiction.<sup>67</sup> To this day, the United States failed to do so.

50. Moreover, publicly available evidence shows that the United States had close operational military cooperation with Israel, particularly in the form of intelligence sharing that also resulted in large numbers of dead Palestinians in Gaza.<sup>68</sup> This cooperation should also point to aiding and abetting Israel’s crimes in Gaza.

51. Secret security memorandum between the United States and Israel expanded intelligence sharing between the United States and Israel producing unprecedented intelligence collaboration that resulted in serious violations of international law by Israel in Gaza.<sup>69</sup> Israel’s operation regarding four captives in Gaza on 8 June 2024 caused the death of more than 270 Palestinians.<sup>70</sup> Biden’s National Security Adviser Jake Sullivan enthusiastically acknowledged U.S. support for this operation which can only be categorized as illegal distinctively, and as part of Israel’s unlawful war in its entirety encompassing genocide.<sup>71</sup>

52. Most probably, the Israeli operation used the humanitarian pier erected by the U.S. military to provide humanitarian aid. Yet, the military’s ‘humanitarian pier’ was not the desired one to realize this objective. On the contrary, according to U.S. Aid officials, selecting this path absolved Israel from its obligations to allow adequate

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<sup>61</sup> U.S. Department of State, U.S. Cooperation with Israel, 19 October 2023, available at: <https://www.state.gov/u-s-security-cooperation-with-israel/>.

<sup>62</sup> Peter Baker, “Biden Puts Arms Shipment to Israel on Hold Amid Dispute Over Rafah Attack”, *New York Times*, 7 May 2024.

<sup>63</sup> Dan Sabbagh, “Does Israel need more US arms for a Rafah offensive?”, *The Guardian*, 9 May 2024.

<sup>64</sup> John Hudson, “Biden advances \$1 billion in arms for Israel amid Rafah tensions”, *Washington Post*, 14 May 2024; Seema Mehta, “Hollywood mega-donor Haim Saban slams Biden’s decision to halt weapons shipment to Israel”, *Los Angeles Times*, 9 May 2024.

<sup>65</sup> See, for example, Human Rights Watch, Joint Letter to President Biden Urging Suspension of Arms Transfers to Israel, 3 September 2024; Amnesty International, USA: Israel has used US-made arms in Gaza in violation of international law, 30 April 2024; Amnesty International, US – made munitions killed 43 civilians in two documented Israeli air strikes in Gaza – new investigation, 5 December 2023.

<sup>66</sup> Lara Jakes, “A Small American Bomb Killing Palestinians by the Dozen in Gaza”, *New York Times*, 8 June 2024; Robin Stein et al, “Israel Used U.S. – Made Bombs in Strike that Killed Dozens in Rafah”, *New York Times*, 29 May 2024.

<sup>67</sup> Lara Jakes, “For Many Western Allies, Sending Weapons to Israel Gets Dickey”, *New York Times*, 13 April 2024.

<sup>68</sup> United States and Israel have a security memorandum of understanding regarding sharing of intelligence published in the Guardian in 2013, available here: [https://www.theguardian.com/world/interactive/2013/sep/11/nsa-israel-intelligence-memorandum-understanding-document?fbclid=IwY2xjawFXyxlleHRuA2FibQlXMQABHYhR87heM8JjI8BHhUOGbUeCD8ZD9z5f6W6Kr1kR0BQnNGIVQ2YwZZ5MmsA\\_aem\\_evS\\_i73-XIoSfSI\\_YLBNaQ](https://www.theguardian.com/world/interactive/2013/sep/11/nsa-israel-intelligence-memorandum-understanding-document?fbclid=IwY2xjawFXyxlleHRuA2FibQlXMQABHYhR87heM8JjI8BHhUOGbUeCD8ZD9z5f6W6Kr1kR0BQnNGIVQ2YwZZ5MmsA_aem_evS_i73-XIoSfSI_YLBNaQ). Given the nature of Israel’s use of force that insistently violates international law, and the absence of any definitions and restrictions about the scope and character of information sharing between the two parties, the risk of the NSA engaging in illegal services for Israel is more than substantial. See also Glenn Greenwald et al, “NSA shares raw intelligence including Americans’ data with Israel”, *The Guardian*, 11 September 2013.

<sup>69</sup> Warren Strobel et al, “U.S. and Israel’s ‘Unprecedented’ Intelligence Sharing Draws Criticism”, *Wall Street Journal*, 31 March 2024.

<sup>70</sup> Miriam Berger et al, “Death toll from Israeli hostage rescue adds to legal scrutiny of Gaza war”, *Washington Post*, 11 June 2024.

<sup>71</sup> The White House, Statement from National Security Adviser Jake Sullivan on the Israeli Hostage Rescue Operation, 8 June 2024; Margaret Brennan, “U.S. provided support to Israeli forces in rescue of 4 hostages in Gaza”, *CBS*, 8 June 2024.

humanitarian assistance into Gaza. Biden pushed for it nevertheless.<sup>72</sup> In July 2024 the pier’s mission was ended leaving Palestinians in Gaza and the Biden administration worlds apart.



Timothy Haugh, Head of U.S. National Security Agency



Avril Haines, Director of National Intelligence

### *Diplomatic Cover at the U.N. Security Council*

53. Biden administration’s indefensible total support of Israel’s illegal war and clear complicity in its crimes in Gaza is manifested by its obstinate diplomatic cover at the U.N. Security Council vetoing attempts to realize humanitarian pause or ceasefire. Given the perpetual flow of arms to Israel, the administration’s combative rhetoric at home and abroad, and its willful disregard of Palestinians’ rights since before the war,<sup>73</sup> Biden administration’s malicious diplomacy is conceptually the highest level of aiding and abetting verging on co-perpetration.



U.S. Secretary of State Anthony Blinken. Image from Jerusalem Post, September 2023, who placed him third on the list of most influential Jews in the world, after Netanyahu and Sam Altman.

54. Biden and his subordinates disregarded Israel’s boundless mass killing and destruction in Gaza hoping that its intimate ally will achieve victory regardless of the cost. In October 2023 Biden administration voted against draft U.N. Security Council resolution advancing an immediate humanitarian ceasefire<sup>74</sup> and vetoed a U.N Security Council resolution that would have called for humanitarian pauses.<sup>75</sup> In December 2023 the U.S. vetoed U.N.

<sup>72</sup> Ellen Knickmeyer, “Biden pushed Gaza pier over warnings it would undercut other aid routs, watchdogs say”, *Associated Press*, 28 August 2024.

<sup>73</sup> See Matt Spetalnick et al, “Blinken: U.S. will help foster further Israeli ties with Arab states”, *Reuters*, 17 September 2021; Jacob Magid, “Blinken: Saudi Arabia is a ‘critical partner’ in expanding Abraham Accords”, *Times of Israel*, 3 June 2022; Miri Weissman, “Blinken visits Saudi Arabia to expand Abraham Accords”, *Israel Ha-Yom*, 6 July 2023.

<sup>74</sup> UN Press Release, With 5 Members in Favour, 4 Against, Security Council Rejects Russian Federation’s Resolution Calling for Immediate, Humanitarian Ceasefire in Israel-Palestine Crisis, 16 October 2023.

<sup>75</sup> UN News, Israel – Gaza crisis: US vetoes Security Council resolution, 18 October 2023.

Security Council resolution seeking an immediate humanitarian ceasefire.<sup>76</sup> And in February 2024 Israel's ally vetoed U.N. Security Council resolution demanding immediate ceasefire in Gaza.<sup>77</sup>

55. Biden and his staff frequently stated that they are making every effort not to let Israel's war on Gaza spillover regionally, regularly contemplating 'the day after'.<sup>78</sup> But they never intended to stop and end Israel's genocide, crimes against humanity, and war crimes in Gaza. Only growing international public opinion made U.S. foreign policy to use its clear influence with Israel for public consumption,<sup>79</sup> although without significant effect on the ground. The only path before the Biden administration to uphold international law was to end Israel's manifestly illegal war. They failed to do so engaging in obscene levels of aiding and abetting Israel's wicked intent and cruel conduct in Gaza.

#### *Opposing Applying International Law to Israel before the ICJ, the ICC, and other International Venues*

56. Biden and his administration escalated shielding Israel from any form of international accountability for its persistent violations of the rights of Palestinians both as an occupying power and an apartheid state. The American administration opposed South Africa's case against Israel before the ICJ pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip.<sup>80</sup> Further, the United States not only opposed the case before the ICJ about the illegality of Israel's 1967 prolonged occupation in East Jerusalem, the West Bank, and Gaza, but also actively participated in the proceedings presenting arguments on behalf of Israel.<sup>81</sup>

57. Similarly, the government of the United States vehemently opposed triggering the ICC's jurisdiction regarding Israel when the Prosecutor was considering it<sup>82</sup> and after he applied for incomplete arrest warrants against Israeli officials.<sup>83</sup> U.S. Secretary of State Blinken demonstrated undeniable intent to sanction the ICC because of its application for arrest warrants against Israeli officials.<sup>84</sup> Respected international law authorities presumed Biden administration's eager identification with Israel proposing not to combat the ICC to accomplish that goal.<sup>85</sup>

58. U.S. State Department spent time and effort in December 2023 when Israel's gravest of crimes were known and streamed worldwide to circumvent a Palestinian effort to hold an international meeting in Switzerland pursuant to the Geneva Convention in order to utilize another international mechanism for accountability. The United States opposed in solidarity with its ally Israel and its appalling crimes in Gaza.<sup>86</sup> Biden administration maintained in April 2024 America's objection to admit the Palestinian Authority as a full United Nations member,<sup>87</sup> and opposed

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<sup>76</sup> UN Press Release, Security Council Fails to Adopt Resolution Demanding Immediate Humanitarian Ceasefire in Gaza on Account of Veto by United States, 8 December 2023.

<sup>77</sup> UN News, US vetoes Algerian resolution demanding immediate ceasefire in Gaza, 20 February 2024.

<sup>78</sup> See, for example, "Blinken visits Iraq in bid to prevent Gaza spillover", *Reuters*, 5 November 2023; "Blinken meets with leaders in Saudi Arabia, UAE in push to contain Israel-Hamas war", *PBS*, 8 January 2024.

<sup>79</sup> Jacob Magid, "Blinken said to warn war cabinet Israel may not have months to topple Hamas", *Times of Israel*, 1 December 2023.

<sup>80</sup> "Blinken dismisses South Africa genocide case against Israel as 'meritless'", *PBS*, 9 January 2024.

<sup>81</sup> Julian Borger, "US asks world court not to call for Israeli pullout from Palestinian territories", *The Guardian*, 21 February 2024.

<sup>82</sup> Hugh Tomlinson, "US backs Israel as ICC considers war crimes arrest warrants", *The Times*, 29 April 2024.

<sup>83</sup> Amy Wang, "Biden, lawmakers blast ICC's intent to charge Israeli leaders", *Washington Post*, 21 May 2024.

<sup>84</sup> Michael Conte, "Blinken says he wants to work with Congress to penalize International Criminal Court", *CNN*, 21 May 2024.

<sup>85</sup> See, for example, Oona Hathaway, "Don't Go to War With the ICC", *Foreign Affairs*, 24 May 2024. However, Just Security website tried to enlighten with its own explanation to Blinken's approach: Tess Bridgeman and Ryan Goodman, "Sec. Blinken's View on Sanctions Against the ICC: A More Complete Picture", *Just Security*, 22 May 2024. Inspiring actor George Clooney contacted the White House to complain about the administration's reaction to ICC Prosecutor's application for arrest warrants also because it might affect his brilliant wife attorney Amal Clooney who is a member of the Prosecutor's advisory panel. See Tyler Pager et al, "George Clooney called White House to defend wife's work on Israel warrants", *Washington Post*, 6 June 2024. This is another example of Ms. Clooney's problematic standing as a member of the Prosecutor's advisory committee. After participating in a fundraiser for Biden's presidential reelection, Clooney the husband concluded that Biden is not fit for the job which contributed to the President's decision to drop out of the elections. George Clooney, "I love Joe Biden. But We Need a New Nominee", *New York Times*, 10 July 2024.

<sup>86</sup> Akbar Shahid Ahmed, "Amid U.N. Security Council Intrigue, U.S. Privately Moves to Block Another Option for International Accountability for Gaza", *Huffington Post*, 20 December 2023.

<sup>87</sup> UN Press Release, Security Council Fails to Recommend Full United Nations Membership for State of Palestine, Owing to Veto Cast by United States, 18 April 2024.

in September 2024 a U.N. General Assembly resolution calling to implement ICJ’s advisory opinion regarding Israel’s illegal occupation in East Jerusalem, West Bank, and Gaza.<sup>88</sup>

59. Israel is not the United States. America’s foreign policy is Israel.

60. U.S foreign policy protected Israel from accountability and furnished it with complete impunity. This flagrant scheme received unstated backing by U.S. Attorney General Merrick Garland’s silence regarding Israel’s voluminous atrocities in Gaza reported and aired internationally and in the United States. Garland was vocal regarding Russia’s violations of international law,<sup>89</sup> but remained unmoved by Israel’s deliberate brutality in Gaza despite disproportionately outweighing Russia’s illegality.<sup>90</sup>



U.S. Attorney General Merrick Garland

### *Adhering to Israel’s Lobbyists in the United States*

61. In any country in the world, internal politics may affect foreign policy. However, this influence is ideally a result of healthy and transparent political process. In the United States lobbying groups and wealthy individuals may have disproportionate impact on its foreign policy. Such is the case with lobbyists on behalf of Israel who have clear dominance in both major political parties the Democratic and the Republican as well as regarding President Biden directly. Adherence to monetary patrons functioning to serve Israel’s by invoking sheer aggressive power politics can only fortify intent to aid and abet Israel’s hideous crimes in Gaza.

62. While Sheldon Adelson has dominated the Republican party’s policy regarding Israel in the 21<sup>st</sup> century,<sup>91</sup> Haim Saban did so in relation to the Democratic party.<sup>92</sup> The bi-partisan invitation to Netanyahu to give a speech before Congress despite ICC Prosecutor’s incomplete request for an arrest warrant against him and South Africa’s case before the ICJ pertaining to Israel’s genocide in Gaza was a shameless gesture of odious diplomacy projecting absurd politicians kneeling before their financial masters.<sup>93</sup>

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<sup>88</sup> UN News, General Assembly overwhelmingly passes resolution demanding end to Palestine occupation, 17 September 2024; “A UN vote on Palestine underlines America’s weakening clout”, *The Economist*, 18 September 2024.

<sup>89</sup> Ryan Lucas, “DOJ takes a stand against war crimes in Ukraine. In Gaza war, it’s been nearly silent”, *NPR*, 4 April 2024.

<sup>90</sup> See Patrick Wintour, “Why US double standards on Israel and Russia play into dangerous game”, *The Guardian*, 26 December 2023; “A UN vote on Palestine underlines America’s weakening clout”, *The Economist*, 18 September 2024 (describes European diplomats’ difficulties given Israel’s conduct and Russia’s war with Ukraine).

<sup>91</sup> Connie Bruck, “The Brass Ring”, *New Yorker*, 23 June 2008; Mike Allen, “Sheldon Adelson: Inside the mind of the mega – donor”, *Politico*, 23 September 2012; Thomas Friedman, “Is It Sheldon Adelson’s World?”, *New York Times*, 11 March 2015; Jacob Magid, “Backed by deep pockets, Adelson made his mark with unwavering focus on Israel”, *Times of Israel*, 13 January 2021; Brian Schwartz, “GOP megadonor Miriam Adelson plans to do whatever it takes to help Trump win with \$100 million PAC”, *CNBC*, 19 August 2024.

<sup>92</sup> Andrew Ross Sorkin, “Schlepping to Moguldom”, *New York Times*, 5 September 2004; Connie Bruck, “The Influencer”, *New Yorker*, 3 May 2010; Daniel Solomon, “Jewish Billionaire Haim Saban is Clinton’s Favorite Donor”, *Forward*, 4 November 2016; Gabriel Debenedetti, “Team Clinton’s favourite billionaire”, *Politico*, 4 November 2016.

<sup>93</sup> See John Nichols, “Inviting Netanyahu to Congress Is Like ‘a Bad Horror Movie’”, *The Nation*, 7 June 2024.



Haim Saban at the Center



Sheldon Adelson on the Left

63. We have illustrated above Biden’s exceptional ideological admiration of Israel. He has frequently boasted about his enduring metaphysical cherishing and commitment to that country. Biden is also the top Senator recipient of pro – Israel funding between 1990 – 2024. His pool of money from that source totals \$4,223,393 according to Open Secrets website.<sup>94</sup> Biden’s ideology has been compounded by a steady stream of finance from one of America’s most powerful lobbies. It would be naïve and unintelligible to presume that Biden’s lifelong pro-Israel funding did not affect his and the U.S. administration’s decision-making during Israel’s horrendous violations of international law in Gaza reaching at least the level of aiding and abetting genocide, crimes against humanity, and war crimes.

## Conclusion

64. Israel’s genocide, crimes against humanity, and war crimes that define its unjustified and illegal war on Gaza are consistent with its longstanding pattern of intentionally targeting civilians by its military. The country’s stature in the United States has been shaped by myths, America’s geopolitical interests in the Middle East’s natural resources, and Israel’s varied forms of lobbying in the United States not least of them the pervasive claim of victimhood by much of the American Jewish community.<sup>95</sup> Biden and his administration are a product of the erroneous political manufacturing of Israel in the United States.<sup>96</sup> Overcoming the highest levels of aiding and abetting Israel in its genocide and other destructive crimes in Gaza was therefore not a difficult mission. Total disregard for the rights of Palestinians, simple survival politics, and overdose of ideological loyalty pushed Biden and his team to the zone of obscene international criminality.

Respectfully,

A handwritten signature in black ink, appearing to read "Marwan Dalal".

Marwan Dalal

Executive Director

<sup>94</sup> Available at: <https://www.opensecrets.org/industries/summary?cycle=All&ind=Q05&recipdetail=S>.

<sup>95</sup> See A.O. Scott, “Steven Spielberg Gets Personal”, *New York Times*, 9 November 2022; Martha Minow, “The Work of Re-Membering: After Genocide and Mass Atrocity”, 23(2) *Fordham Journal of International Law*, pp.429-439 (1999).

<sup>96</sup> See, for example, Blinken’s ideological speech before AIPAC from 5 June 2023, available at: <https://www.state.gov/secretary-antony-j-blinken-at-the-2023-american-israel-public-affairs-committee-policy-summit/>