



حكمة – مركز من أجل القانون الدولي وحقوق الانسان

Hikmah – Center for International Law and Human Rights

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Mr. Jacob Lew

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Re: Biden Administration's Endorsement of Operation Swords of Iron as a Violation of International Law

1. On 7 October 2023 Israel declared a war under the operational title Swords of Iron. Since then, it has engaged in large scale violations of international law against Palestinians, mainly in Gaza, that amount to genocide, crimes against humanity, and war crimes as defined by articles 6, 7, and 8 of the International Criminal Court's Statute that capture Israel's conduct jurisdictionally. Israel's military behavior is neither justified nor legal. It should have been opposed and halted by the Biden administration a long time ago. Its failure generates legal consequences.
2. The United States has endorsed Israel's military conduct by constantly providing military assistance and furnishing a diplomatic cover both at the U.N. Security council and publicly. These acts constitute complicity in Israel's international crimes that could attach individual criminal responsibility to the relevant American officials, particularly members of the National Security Council starting with the President, Mr. Joe Bide, who is the head of government and the commander in chief of the United States armed forces.
3. Israel's onslaught on Gaza was accompanied by genocidal intent expressed by governmental and military officials, public figures, and ordinary citizens. Children, women, journalists, aid workers, doctors, teachers, poets, were among the systematically killed and injured. Mass forcible transfer was part of the Israeli criminal and illegal plan. Israel intentionally and systematically destroyed civilian infrastructure including schools, universities, hospitals, and cultural as well as religious buildings.
4. On 24 October 2023 UNICEF declared that 2,360 children have been killed and 5,364 have been injured. 400 children killed or injured daily. On 6 November 2023 UN Secretary General described Gaza as a "graveyard for children" adding that "more journalists have 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 organization.” UN experts called on 16 November 2023 to prevent genocide against the Palestinian people given the killing of more than 11,000 persons and injuring 27,000 the vast majority of them civilians and displacing 1.6 million. Currently the casualties rate in Gaza is more than 27,000 killed and 66,000 injured that include 12,300 children and 8,400 women.

5. US Secretary of Defense Lloyd Austen stated on 2 December 2023 that civilians are the ‘center of gravity’ in Israel’s war performance.¹ The historical rate of killing and destruction by Israel in Gaza was available to American officials not only by United Nations statements, but also through reporting in American and international media.²
6. On 29 December 2023 South Africa filed an application against Israel before the International Court of Justice seeking to deter Israel from continuing to violate the 1951 Convention on the Prevention and Punishment of the Crime of Genocide.³ On 26 January 2024 the Court ordered provisional measures directed at Israel to refrain from commit the following acts: “(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; and (d) imposing measures intended to prevent births within the group.”
7. On 13 November 2023 the Center for Constitutional Rights filed a lawsuit before a U.S. Federal Court against President Biden, Secretary of State Blinken, and Secretary of Defense Lloyd for their failure to prevent and complicity in the crime of genocide that Israel has been perpetrating. The Federal judge rejected the case on 31 January 2024 for jurisdictional grounds but concluded that the commission of genocide by Israel was plausible. The Court determined that:

There are rare cases in which the preferred outcome is inaccessible to the Court. This is one of those cases...as the ICJ found it, it is plausible that Israel’s conduct amounts to genocide. This Court implores Defendants to examine the result of their unflinching support of the military siege against the Palestinians in Gaza.⁴
8. Biden administration supplied Israel with weapons used in its deliberate targeting of civilians in Gaza throughout Israel’s onslaught, despite its awareness about Israel’s grave illegal tactics and strategy.⁵At the UN Security

¹ Phil Stewart, “Civilians are ‘center of gravity’ in Gaza war: US defense secretary”, *Reuters*, 3 December 2023.

² See Lauren Leatherby, “Gaza Civilians, Under Israeli Barrage, Are Being Killed at Historic Pace”, *New York Times*, 25 November 2023; Tamara Qiblawi et al, “‘Not seen since Vietnam’: Israel dropped hundreds of 2,000- pound bombs on Gaza, analysis show”, *CNN*, 22 December 2023; Evan Hill et al, “Israel has waged one of this century’s most destructive wars in Gaza”, *Washington Post*, 23 December 2023; Jared Malsin et al, “The Ruined Landscape of Gaza After Nearly Three Months of Bombing”, *Wall Street Journal*, 30 December 2023; Julia Frankel, “Israel’s military campaign seen as among the most destructive in recent history, experts say”, *Associated Press*, 11 January 2024; Danielle Palumbo et al, “At least half of Gaza’s buildings damaged or destroyed, new analysis shows”, *BBC*, 30 January 2024.

³ Biden administration opposed the South African measure. It also sided with Israel in another International Court of Justice procedure regarding the status of Israel’s prolonged occupation in East Jerusalem, West Bank, and Gaza.

⁴ Case No. 23-cv-05829-JSW, *Defense for Children International – Palestine et al v. Joseph R. Biden et al*, Order Granting Motion to Dismiss and Denying Motion for Preliminary Injunction, 31 January 2024, p.8.

⁵ See Jordan Fabian et al, “Biden Saus 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 o 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.

Council, the US Department of State used its veto power repeatedly to prevent a resolution calling for a ceasefire while aware of Israel's illegality.⁶

9. Biden administration's failure to grasp the Gaza conflict is part of its willful miscomprehension of the Question of Palestine. President Biden's personal Zionist ideology and the structure of his administration are tailored towards eluding the rights of the Palestinian people at best or denying them at worst.⁷ During Biden's 36 years in the Senate, he was the chamber's biggest recipient in history of donations from pro-Israeli groups, taking in \$4.2 million.⁸ In February 2024 President Biden attended a fundraiser at Haim Saban's mansion in Los Angeles. Saban is one of the main financial contributors to the Democratic party who advances Israel's interests.⁹ At Hanukkah celebration in the White House in December 2023, Biden again demonstrated his Zionist ideology as part of his management of American diplomacy and security policy. He pledged constant military assistance while acknowledging that "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."¹⁰
10. Jake Sullivan's Foreign Affairs article published on 24 October 2024 is another stark example that demonstrates the Biden administration's ideological support towards Israel¹¹ and poor knowledgeability of and plain disregard for Palestine and its people.¹²
11. Together with East Jerusalem and the West Bank, Gaza is part of historic Palestine that was occupied by Israel in 1967. Israel's prolonged occupation since then is illegal. Israel has suppressed opposing its occupation in Gaza and elsewhere with grave illegality in the form of mass killings, political assassinations, systematic torture, arbitrary collective arrests including indefinite administrative detentions, and largescale destruction of civilian property.¹³ Hamas attempts to produce a reasonable form of governance even under occupation was curtailed by the US government and its proxies.¹⁴ UN agencies determined in 2020 that given the occupation and siege imposed on Gaza, the enclave became uninhabitable.¹⁵ In the entirety of historic Palestine, Israel is and has always been an apartheid, racist, and settler colonial state.

⁶ Edith Lederer, "US vetoes UN resolution condemning all violence against civilians in Israel – Hamas war", *Associated Press*, 19 October 2023; Patrick Wintour, "US defies appeals to back UN resolution for urgent Gaza ceasefire", *The Guardian*, 8 December 2023; Jacob Magid, "US vetoes Security Council resolution demanding immediate ceasefire in Gaza war", *Times of Israel*, 20 February 2024.

⁷ See AICE – Jewish Virtual Library, Jews in the Biden Administration, available at: <https://www.jewishvirtuallibrary.org/jews-in-the-biden-administration>

⁸ Matt Spetalnick et al, "'I am a Zionist': How Joe Biden's lifelong bond with Israel shapes war policy", *Reuters*, 21 October 2023.

⁹ Bill Allison, "Biden Begins California Fundraising Swing After \$42 Million Haul", *Bloomberg*, 20 February 2020. See also Alexander Zevin, "Gaza and New York", 144 *New Left Review*, (Nov/Dec 2023).

¹⁰ "I am a Zionist," says Biden at Hanukkah event, promises continued military assistance to Israel", *Times of Israel*, 12 December 2023.

¹¹ Jake Sullivan, "The Sources of American Power", *Foreign Affairs*, (Nov / Dec 2023). Sullivan placed the events of October 7th within the framework of the 'war on terror' and the ongoing crisis in Ukraine. The 7 October 2023 military operation from Gaza targeted Gaza Division of the Israeli military that sustains and enforces the Israeli occupation and siege of Gaza. Most of the civilians in Israel who were killed that day died because of the Israeli military panicked response. The Israeli captives in Gaza are held safely while some of them were killed by Israeli's indiscriminate bombardment. See also Jet Heer, "Jake Sullivan's Rewrite Can't Paper Over and Impoverished Foreign Policy", *The Nation*, 30 October 2023.

¹² For additional illustrative misconception by Biden administration regarding the Question of Palestine see Bret McGruk's lecture at the Atlantic Council on 14 February 2023; Anthony Blinken, "The Danger Within", *The Crimson*, 14 January 1983.

¹³ Baruch Kimmerling, *Politicide: Ariel Sharon's War Against the Palestinians* (Verso, 2003); Ian Cobain et al, "Lawyers seek arrest of Israeli defense minister in UK for alleged war crimes", *The Guardian*, 29 September 2009. From late 2008 until the current military campaign, Israel launched several military operations that resulted each time with significant 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 quelled Palestinian demonstrators in Gaza known as "Marches of Return" with severe lethal gunfire and absolute impunity. See Report of the Independent UN Commission of Inquiry on the 2018 Protests in the OPT, 28 February 2019.

¹⁴ David Rose, "The Gaza Bombshell", *Vanity Fair*, April 2008; Sara Roy, *Unsilencing Gaza – Reflections on Resistance* (Pluto Press, 2021); Tareq Baconi, *Hamas Contained: The Rise and Pacification of Palestinian Resistance* (Stanford University Press, 2018).

¹⁵ 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.

12. Ideologically committed to Israel, the Biden administration eagerly followed the Trump era foreign policy of utilizing America's vast economic, military, and diplomatic resources to better Israel's standing regionally and internationally on the expense of the Palestinians' rights.¹⁶ The least of these rights are: 1. sovereignty over all of East Jerusalem, West Bank, and Gaza; 2. dismantling the settlements in those territories; 3. just right of return to their homeland (in 1948 Palestine) and resolution of the Palestinian refugees issue; 4. terminating Israel's Zionist racist structure and nature in the pre- 1967 areas that would ensure equal rights for Palestinians living there; 5. reparations for Israel's injustices, including for land confiscation, control, and use.
13. Since its inception, Zionism struggled with legitimacy given Palestine's geographic location requiring intensive ideological mythology, racist practices, orchestrated violence, and blatant ethnic cleansing. The source of Zionism's purported right to sovereignty in Palestine is what undermines it: the fervent lobbying within colonial and imperial powers that attained the 1917 Balfour declaration and the 1947 UN partition plan.¹⁷ Zionism's lack of right to sovereignty in Palestine cannot be justified retroactively by any American administration.

Respectfully,



Marwan Dalal

Executive Director

¹⁶ See Jacob Magid, "Ex-US ambassador to Israel Dan Shapiro tapped as Biden's first Abraham Accords envoy", *Times of Israel*, 29 June 2023.

¹⁷ George Berlin, "Reviewed Work: *Letters of Louis D. Brandeis. Vol. IV (1916-1921): MR. JUSTICE BRANDEIS* by Melvin I. Urofsky, David W. Levy", 66(4) *American Jewish Historical Quarterly*, pp.548-551 (June 1977); Kermit Roosevelt, "The Partition of Palestine: A Lesson in Pressure Politics", 2(1) *Middle East Journal*, pp.1-17 (1948);