

As US Veto Power Enables Genocide, There Are Still UN Options to Protect Gaza. Dr. Marjorie Cohn

Any party to the Genocide Convention can submit the matter to the World Court, which could make a finding of genocide.

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As Israel continues its genocide against the Palestinians in Gaza — with the death toll now exceeding 20,000 (about 70 percent women and children) — the world seems powerless to stop the slaughter.

The Biden administration, Israel's chief enabler, [defanged the resolution](#) that was ultimately passed by the UN Security Council on December 22, rendering it merely symbolic. The final resolution calls for humanitarian assistance but not for a ceasefire which would allow aid to reach the people of Gaza. The U.S. saved diplomatic face by not employing its customary veto, but it did not vote for the resolution, electing instead to abstain.

On the same day, Special Rapporteur on the human rights of internally displaced persons **Paula Gaviria Betancur** [warned](#) that Israel seeks to permanently change the composition of Gaza's population with additional evacuation orders, and systematic and widespread attacks on civilians and civilian infrastructure in areas of southern Gaza.

Calls for prosecution of Israeli and U.S. officials in the International Criminal Court (ICC) have been ignored as the chief prosecutor of the ICC demonstrates [blatant bias](#) in favor of Israel.

On November 13, the Center for Constitutional Rights [filed a lawsuit](#) on behalf of Palestinian human rights organizations, Palestinians and Palestinian Americans against **President Joe Biden, Secretary of State Antony Blinken and Defense Secretary Lloyd Austin**, charging them with failure to prevent genocide and complicity in genocide. It seeks an emergency court order to halt U.S. military and diplomatic support to the Israeli government. The suit documents how Israel is committing genocide as defined in the Genocide Convention. A hearing will take place in January.

Nevertheless, the carnage continues unabated.

The “World Court” Decides Disputes Between Countries

The ICC’s Rome Statute provides for the prosecution of individuals who commit, or aid and abet the commission of genocide. By contrast, the International Court of Justice (ICJ or “World Court”) — the judicial arm of the UN system — resolves disputes between countries.

Any of the 153 state parties to the Genocide Convention can and should submit Israel’s genocide to the ICJ. [Article IX of the Genocide Convention](#) provides:

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide . . . shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

A formal [investigation](#) of the “Situation in the State of Palestine” has been pending in the ICC for nearly three years. If the ICJ were to make a finding of genocide, the ICC would not have to determine that genocide has occurred. The ICC would just have to decide which individuals are responsible for the genocide.

In the last two months, states parties to the Genocide Convention — including South Africa, Bangladesh, Bolivia, Comoros, Colombia, Algeria and Turkey — have urged the ICC to investigate Israeli officials for genocide, war crimes and crimes against humanity committed in Gaza. Other countries critical of Israel’s actions include Pakistan, Brazil, Chile, Belize, Jordan, Ireland, Honduras, Bahrain, Venezuela, Iran and Cuba.

These countries [should be urged](#) to submit the matter of Israel’s genocide to the ICJ. If one of them does make a submission, the ICJ would have jurisdiction to hear the matter. Its decision must then go to the Security Council for enforcement, although that could be limited by political considerations.

When the Genocide Convention was invoked against Serbia by Bosnia and Herzegovina regarding the 1995 massacre at Srebrenica, the ICJ ruled against Serbia. This fed directly through to prosecutions at the International Criminal Tribunal for the former Yugoslavia.

In 2004, the ICJ issued an advisory opinion against Israel in the case involving the barrier wall it built on Palestinian land. There’s another advisory opinion case pending in the ICJ about the legality of Israel’s occupation of Palestinian territory, in which the ICJ is [expected](#) to rule against Israel.

But if a state party to the Genocide Convention were to submit the matter of Israel’s genocide to the ICJ, the court’s decision could have binding authority.

On December 12, Craig Murray, the U.K.’s former ambassador to Uzbekistan, attended a UN session in Geneva called by Palestine. More than 120 countries were represented. Murray spoke to several delegates about why no country has submitted the matter of Israel’s genocide to the ICJ.

“The answer is now clear to me,” Murray [wrote](#). “It is not that people are worried that a claim of genocide will not be successful at the International Court of Justice. It is that

everybody is quite sure it will succeed.”

A World Court Finding of Genocide Would Bind the ICC

“The problem is that once the ICJ has determined that this is a genocide, it follows that not only are [Israeli Prime Minister Benjamin] Netanyahu and hundreds of senior Israeli officials and military personally liable,” according to Murray. “[B]ut it is absolutely plain that ‘Genocide Joe’ Biden, [U.K. Prime Minister Rishi] Sunak and members of their administrations are also criminally liable for complicity, having provided military support for the genocide.”

Murray added,

“The International Criminal Court cannot ignore a judgment of genocide from the International Court of Justice and will have no choice but to issue arrest warrants.”

There is no doubt that Israel is committing genocide in Gaza. **Craig Mokhiber**, former director of the New York Office of the UN’s High Commissioner of Human Rights (who resigned in October to protest the UN’s failure to prevent Israel’s genocide) called it “unprecedented — a text book case of genocide.”

Speaking at a [December 13 webinar](#) sponsored by the Institute for Policy Studies, Friends Committee on National Legislation, and MPower Action, Mokhiber said that Israel has murdered entire bloodlines, multigenerational families and whole neighborhoods in Gaza.

Israel has destroyed the civilian infrastructure and intentionally imposed disease, hunger, thirst and a lack of medical care on the people in Gaza. This amounts to the deliberate infliction of conditions of life calculated to bring about the destruction of the Palestinians in whole or in part, Mokhiber stated, which constitutes a genocidal act.

The ICJ can infer genocidal intent from Israel’s conduct, Mokhiber noted. But, he added, the court doesn’t need to infer intent from conduct because Israel is openly declaring its genocidal intent through public statements uttered by Israeli government officials: the intent to reduce Gaza to rubble, to bury Gazans, etc. “I have never seen a case like this,” Mokhiber said.

The General Assembly Should Convene Under “Uniting for Peace”

There is also a procedure the General Assembly can follow to circumvent a U.S. veto in the Security Council. Under Uniting for Peace, a resolution passed by the General Assembly to evade the Soviet Union’s veto power during the Korean War, the General Assembly can call on its 193 UN member states to impose a trade embargo on Israel and urge them to organize a military force to intervene in Gaza. The General Assembly can also suspend Israel from its ranks.

I have joined dozens of global intellectuals in signing a [Declaration of Conscience and Concern](#), urging “national governments to embargo and halt all shipments of weapons to Israel, especially the United States and the United Kingdom, which should also withdraw their provocative naval presences from the Eastern Mediterranean.” We called on “the UN Security Council and General Assembly to so decree without delay.”

Moreover, we “unequivocally” urged “an immediate ceasefire and the initiation of

diplomatic negotiations under respected and impartial auspices, aimed at terminating Israel's long and criminally abusive occupation of Gaza, the West Bank, and East Jerusalem. This process," we wrote, "must be fully respectful of the inalienable right to self-determination of the Palestinian people and take proper account of relevant UN resolutions."

Millions of people around the world have taken to the streets to protest Israel's genocide. We must redouble our efforts to mobilize public opinion to [pressure countries](#) critical of Israel to submit the matter of its genocide to the ICJ and convene the General Assembly under Uniting for Peace. And we must support the [Boycott, Divestment, Sanctions](#) movement to compel Israel to end its occupation of Palestinian land.

The people of Gaza deserve our immediate and urgent action.

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