

Aicha Elbasri*

The United Nations Early Warning Mechanism for the Prevention of Genocide and its Obstruction in the Case of Palestine**

تعطيل آلية إنذار الأمم المتحدة لمنع الإبادة الجماعية في حالة فلسطين

Abstract: This study addresses a major research gap concerning the exclusion of Palestine from the UN's early warning mechanism for genocide prevention since its establishment in 2004. It examines the disruption of the mechanism and the failure of the UN Secretary-General and his Special Adviser on the Prevention of Genocide to relay to the Security Council experts' warnings about the risk of genocide being committed by Israel against Palestinians in Gaza. The study identifies five primary factors contributing to this failure: the mechanism's lack of independence and its subordination to the Secretary-General's authority; the absence of an independent expert committee to oversee the Special Adviser's work; the vulnerability of UN Secretaries-General to pressure from Israel and its allies; the lack of UN accountability; and the failure of the Palestinian Authority and Arab states to include Palestine in the early warning mechanism, in contrast to Israel and its allies' successful use of the mechanism to suppress critiques of Israeli policies under the guise of combating "the new anti-Semitism". The study proposes recommendations to address these institutional flaws and reform the mechanism.

Keywords: United Nations Secretariat; Early Warning Mechanism for the Prevention of Genocide; Genocide; Settler Colonialism; New Anti-Semitism; the Gaza Strip; Palestine.

ملخص: تحاول الدراسة سد فجوة بحثية مهمة، تتمثل في عدم وجود أي دراسة تناولت مشكلة إبقاء فلسطين خارج إطار عمل آلية الأمم المتحدة للإنذار المبكر لمنع الإبادة الجماعية منذ إنشائها في عام 2004، وتبحث في أسباب تعطل هذه الآلية، وفشل الأمين العام للأمم المتحدة ومستشارته المعنية بمنع الإبادة الجماعية في نقل التحذيرات من مخاطر ارتكاب إسرائيل جريمة إبادة ضد الفلسطينيين في غزة، إلى مجلس الأمن، وفقاً لولايتيهما. واستنتجت الدراسة أن أسباب تعطل الآلية في فلسطين عمومًا وغزة تحديدًا، تتلخص في خمسة عوامل رئيسية؛ وهي: عدم استقلالية آلية الإنذار المبكر وخضوعها لسلطة الأمين العام؛ غياب لجنة خبراء مستقلة تراقب عمل المستشار الخاص واستقلاليته؛ خضوع الأمين العام لضغوطات إسرائيل وحلفائها؛ غياب مساءلة الأمم المتحدة؛ وفشل السلطة الفلسطينية والدول العربية في تفعيل الآلية في حالة فلسطين، في مقابل نجاح إسرائيل وحلفائها في تسخير آلية الإنذار المبكر لمكافحة ما يسمى «معاداة السامية الجديدة» الهادفة إلى إسكات أي انتقاد لسياسات إسرائيل وممارساتها. ولتجاوز هذه العيوب المؤسسية، تقدم الدراسة بعض التوصيات للمساهمة في إصلاح هذه الآلية التابعة للأمانة العامة للأمم المتحدة.

كلمات مفتاحية: الأمانة العامة للأمم المتحدة؛ آلية الإنذار المبكر لمنع الإبادة الجماعية؛ الإبادة الجماعية؛ الاستعمار الاستيطاني؛ معاداة السامية الجديدة؛ قطاع غزة؛ فلسطين.

* Researcher, Arab Centre for Research and Policy Studies.

Email: aicha.elbasri@dohainstitute.edu.qa

** This study was originally published in Arabic in: "Ta'īl Āliyyat Indhār al-Umam al-Muttaḥida li-Man' al-Ibāda al-Jamā'iyya bi-Sha'n Filasṭīn," *Hikama*, no. 8 (Spring 2024). *Hikama* is a bi-annual peer-reviewed journal dedicated to public administration and public policy.

Introduction

The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the United Nations General Assembly (UNGA) on 9 December 1948, and known as the “Genocide Convention”, identifies the prevention of the crime of genocide as one of its goals.¹ Article 8 of the Convention authorizes competent United Nations (UN) organs to take appropriate measures to prevent and suppress acts of genocide, conspiracy to commit such acts, direct and public incitement thereto, and even attempts to commit or participate in this crime. However, UN organs failed to prevent genocide in Cambodia (1975-1979), Rwanda (1994), and Bosnia (1995). Additionally, the International Court of Justice (ICJ) is currently examining the possibility that the governments of Myanmar and Israel have committed genocide, the former against the Rohingya Muslims (2017), and the latter against the Palestinian people in the Gaza Strip since October 2023.

While the United Nations Security Council (UNSC), as the organ responsible for international peace and security, is usually blamed for the failure to prevent genocide, UN investigations indicate that other organs, particularly the Secretariat, also contribute to this failure. The independent investigation into the measures taken by the UN before and during the genocide in Rwanda concluded that responsibility for the Organization’s failure to stop the genocide in that country “lies with a number of different actors, in particular the Secretary-General, the [UN] Secretariat, the Security Council, UNAMIR [the UN Assistance Mission for Rwanda], and the broader membership of the United Nations”.² The order in which the parties were cited above indicates that the responsibility of the Secretary-General and the Secretariat precedes that of the UNSC. The investigation attributes this to the fact that members of the UNSC had not received information from the Secretariat officially warning them of the occurrence of genocide in Rwanda, due to the absence of direct communication between the Secretariat and the UNSC.³

In a similar vein, UN investigations into the Organization’s failures in Bosnia-Herzegovina and Sri Lanka have demonstrated that the offices and departments of the Secretariat and UN organizations had received confirmed reports of civilians being exposed to, or about to be exposed to, serious international crimes, but they failed to communicate this information to decision-makers.⁴ In response to these failures, UN Secretary-General Kofi Annan launched a five-point action plan to prevent genocide in 2004, including the appointment of a Special Adviser on the Prevention of Genocide.⁵ The Special Adviser was charged with the following tasks: a) collect existing information related to grave violations of international law that might lead to genocide; (b) act as an early warning mechanism for the Secretary-General and, through him, the UNSC; (c) present recommendations to the UNSC to prevent or stop genocide; (d) strengthen the capacity of the UN system to analyse and manage information relating to genocide or related crimes.⁶

Since its establishment in 2004, the Office of the Special Adviser on the Prevention of Genocide has issued dozens of reports and statements warning of the risk of genocide in many countries. However, not once have these reports included Palestine. Moreover, neither UN Secretary-General António Guterres, nor the Special Adviser on the Prevention of Genocide, Alice Wairimu Nderitu, issued an alert to the UNSC

¹ “Convention on the Prevention and Punishment of the Crime of Genocide,” UN General Assembly Resolution 260 A (III), 9/12/1948, accessed on 19/5/2024, at: <https://bit.ly/3UKCV5T>

² United Nations, General Assembly, Report of the Independent Inquiry into the actions of the United Nations during the 1994 Genocide in Rwanda, S/1999/1257, 16/12/1999, p. 30, accessed on 16/5/2024, at: <https://bit.ly/4aDIYjT>

³ *Ibid.*, p. 33.

⁴ General Assembly, “Report of the Secretary-General submitted pursuant to Resolution 53/35, The Fall of Srebrenica,” 15/11/1999, p. 106, paragraph 474, accessed on 5/2/2024, at: <https://bit.ly/493R18o>; Charles Petrie, “Report of the Secretary-General’s Internal Review Panel on United Nations Action in Sri Lanka” (November 2012), p. 28, accessed on 5/2/2024, at: <https://bit.ly/3Sxr5L4>

⁵ “10 years after Rwanda genocide, Annan unveils plan to stop future massacres,” *UN News*, 7/4/2004, accessed on 5/2/2024, at: <https://bit.ly/3Uvmmw5>

⁶ Letter dated 31 August 2007 from the Secretary-General addressed to the President of the Security Council, S/2007/721, accessed on 21/3/2024, at: <https://tinyurl.com/6s3fvbm3>

conveying the warnings of experts and international human rights organizations regarding the risk of Israel carrying out a genocide in its war on the Gaza Strip in the wake of the attack launched by Al-Qassam Brigades, the military wing of the Islamic Resistance Movement (Hamas), on 7 October 2023.

This study draws on two types of analysis to understand the reasons for the failure of the UN's early warning mechanism to prevent genocide in the Gaza Strip and in the Occupied Palestinian Territories at large, and to address the institutional flaws in the mechanism. The first type entails a legal examination of the definition and substantive components of genocide, as well as an exploration of its operational processes, drawing on international documents, agreements and reports, as well as the relevant literature on international law. The second is a descriptive analysis of the Israeli occupation's policies toward the Palestinian people that have been identified as genocidal and how they were kept out of the UN's early warning mechanism for genocide prevention; using reports from the UN, its offices, UN Independent Experts, and other relevant reports and studies.

The study addresses a major research gap concerning the exclusion of Palestine from the UN's early warning mechanism since its establishment in 2004. To understand why this mechanism failed in the case of Palestine, it looks at five key dimensions: (1) limitations in the Genocide Convention's definition of genocide; (2) shortcomings in the warning mechanism itself in terms of its institutional structure, operational methods, and the performance of those responsible for its management in the Secretariat; (3) the extent to which the Palestinian Authority (PA) and the Arab countries have, or have not, made use of this UN mechanism; (4) the potential involvement of Israel and its allies in undermining the mechanism; and (5) responsibility and accountability within the UN and its correlation with the Secretariat's failure to issue warnings of genocide in the context of Palestine, including Gaza. By scrutinizing these factors and their interplay, this study aims to elucidate the dysfunctions and deficiencies of the UN's early warning mechanism for genocide prevention, thereby generating preliminary conclusions and recommendations. It is hoped that these findings will pave the way for further in-depth studies.

Genocide and Settler Colonialism

Article 2 of the Genocide Convention defines genocide as a crime committed with the intent to destroy a specific group:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such: (a) Killing of 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; (e) [and] Forcibly transferring children of the group to another group.⁷

According to Article 3 of the Convention, "the following acts shall be punishable: (a) genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; [and] (e) Complicity in genocide". The Convention stipulates that Contracting Parties commit to both preventing and punishing the crime of genocide (Article 1), by enacting relevant legislation (Article 5). It also authorizes any Contracting Party to "call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide" (Article 8). In the event of a dispute between the Contracting Parties relating to the "interpretation, application or fulfilment" of the Convention, they are entitled to bring the dispute before the ICJ (Article 9).

⁷ "Convention on the Prevention and Punishment of the Crime of Genocide."

The definition of genocide as outlined in the Genocide Convention was adopted by the most important international instruments, including the Rome Statute of the International Criminal Court (ICC) (1998), the Statutes of the ad hoc tribunals for the former Yugoslavia and Rwanda (1993 and 1994 respectively), and many UN instruments. While the Convention is of considerable importance, it is not immune to criticism. This includes its emphasis on establishing the intent to destroy a particular group in whole or in part.⁸ Additionally, responsibility for preventing, stopping, and punishing genocide falls on the Contracting Parties in the absence of any mechanism to enforce it, or even to monitor the Parties' compliance with their commitments.⁹ Moreover, if a state fails to fulfill its obligations under the Convention, responsibility for holding it to account lies with the other Contracting Parties. This implies that efforts to prevent genocide and pursue its perpetrators are influenced by considerations of interstate relations, which are further shaped by power dynamics within UN organs, especially the UNSC.

The Convention has also faced criticism for its narrow definition of genocide, which limits it to physical extermination. During the first stage of drafting the Convention, the Secretariat presented a draft prepared by Polish-born Jewish lawyer Raphaël Lemkin, along with Vespasian V Pella and Henri Donnedieu de Vabres, who proposed three classifications of the crime: physical, biological and cultural genocide. However, the Sixth Committee of the UNGA voted to remove cultural genocide from the Convention's purview.¹⁰ As noted by William Schabas, as a result of this exclusion, genocide "remains confined to the intentional physical destruction of the group, rather than attacks on its existence involving persecution of its culture or the phenomenon of 'ethnic cleansing'".¹¹

Another major critique is the Convention's failure to draw a connection between settler colonialism and genocide; a connection initially articulated in late 1944, in Lemkin's book: *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. Lemkin coined the term "genocide", derived from the Greek word "genos", meaning race or tribe, and the Latin suffix "cide", meaning killing.¹² He developed this concept based on his study of the history of European settler colonialism, and concluded that genocide was a colonial process rooted in the destruction of Indigenous Peoples, which were subsequently replaced by the colonialists' national pattern. According to Lemkin's thesis, genocide takes place in two phases, the first being the "destruction of the national pattern of the oppressed group"; and the second being "the imposition of the national pattern of the oppressor".¹³ Given the complexities and prolonged nature of the settlement process, Lemkin stressed in his definition that:

Generally speaking, genocide does not necessarily mean the immediate destruction of a nation [...] It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves.¹⁴

The absence of what Pauline Wakeham calls "settler colonial genocide"¹⁵ from the Genocide Convention is one of its most significant deficiencies. However, the correlation between settler colonialism

⁸ See: Katherine Goldsmith, "The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge-Based Approach," *Genocide Studies and Prevention: An International Journal*, vol. 5, no. 3 (2010).

⁹ William Schabas has noted that unlike most other major human rights treaties, the Genocide Convention does not establish a monitoring mechanism. There have been periodic calls for the establishment of a special body associated with the Convention, which could be done through an additional protocol to the Convention, or simply through a resolution adopted by the General Assembly. William Schabas, "Convention for the Prevention and Punishment of the Crime of Genocide," *Audiovisual Library of International Law, United Nations*, p. 5, accessed on 5/2/2024, at: <https://tinyurl.com/mvew3d92>

¹⁰ *Ibid.*, pp. 1-2.

¹¹ *Ibid.*, p. 3.

¹² Raphaël Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (New York: Carnegie Endowment for International Peace, 1944), p. 79.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Pauline Wakeham, "The Slow Violence of Settler Colonialism: Genocide, Attrition, and the Long Emergency of Invasion," *Journal of Genocide Research*, vol. 24, no. 3 (2022), p. 37.

and genocide perpetrated against Indigenous Peoples remains present in UN instrument. Article 7/2 of the UN Declaration on the Rights of Indigenous Peoples, adopted by the UNGA in 2007, stipulates that “indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence”.¹⁶ Based on the rights of Indigenous Peoples in international law, subjecting these groups to killing or other forms of violence falls within the scope of the Genocide Convention.¹⁷

It is beyond the scope of this study to address the academic debate that has been taking place since the 1990s around Israeli settler colonialism. Prominent historians and scholars have engaged in debates about Israel’s purported goals of exterminating Palestine’s Indigenous population.¹⁸ The risk of Israel committing genocide against Palestinians has been the subject of a number of independent international investigations. This includes the investigation conducted by the MacBride Commission, which was informally established by prominent international lawyers to look into Israeli violations of international law during its invasion of Lebanon. In its April 1983 report titled “Israel in Lebanon”, the Commission presented extensive evidence suggesting that Israel had committed genocide, and recommended the establishment of a competent international body to clarify the concept of genocide in relation to Israeli policies and practices toward the Palestinian people.¹⁹ Also, UNGA Resolution 37/123 of 1982 resolved that the massacre carried out against the Palestinians in the Sabra and Shatila refugee camps “was an act of genocide”.²⁰ Based on this resolution, the Palestinian Liberation Organization (PLO) petitioned the President of the UNSC in May 1984 to stop the genocidal policy that Israel had been pursuing since the Nakba:

This latest act of barbarism can only be viewed as a further link in the chain of Israel’s campaign of genocide against Palestinians, from Deir Yassin in 1948, to Kafr Kassem, Qibya, to the Sabra/Shatilla massacres in September 1982. The President of the Security Council is called upon to take immediate and effective measures not only to put an end to Israel’s genocidal policy against the Palestinian people, but also to guarantee the safety and security of all Palestinians living in areas under Israeli military occupation.²¹

Commissioned by the League of Arab States to investigate Israel’s invasion of the Gaza Strip from 27 December 2008 to 18 January 2009, the report prepared by an independent team led by South African judge John Dugard concluded that Israeli soldiers had committed acts that amounted to war crimes, crimes against humanity, and possibly genocide. The possibility that Israel had committed genocide was attributed to the individual behaviour of some soldiers under the influence of rabbis who encouraged them to believe that the Holy Land should be “cleansed” of non-Jews.²² The report refrained from accusing the State of Israel of committing genocide, as it could not verify its intention to destroy the Palestinians. However, it did not rule out charging it with genocide in the future, should be established that the soldiers had committed genocidal acts under orders from the Israeli government.²³

¹⁶ United Nations, “United Nations Declaration on Indigenous Peoples” (2008), accessed on 5/2/2024, at: <https://tinyurl.com/4d6fuem3>

¹⁷ Bonnie St. Charles, “You’re on Native Land: The Genocide Convention, Cultural Genocide, and Prevention of Indigenous Land Takings,” *Chicago Journal of International Law*, vol. 21, no. 1 (2010), p. 227.

¹⁸ For a discussion among prominent historians and researchers about “genocide and ethnic cleansing”, see: Haifa Rashed & Damien Short, “Genocide and Settler Colonialism: Can a Lemkin-Inspired Genocide Perspective Aid Our Understanding of the Palestinian Situation?,” *The International Journal of Human Rights*, vol. 16, no. 8 (2012), pp. 1142–1169.

¹⁹ “Israel in Lebanon: Report of the International Commission to Enquire into Reported Violations of International Law by Israel during Its Invasion of Lebanon,” *Journal of Palestine Studies*, vol. 12, no. 3 (Spring 1983), p. 132.

²⁰ General Assembly Resolution 37/123, 16 December 1982, A/RES/37/12.

²¹ Letter dated 17 May 1984 from the Permanent Observer of the Palestine Liberation Organization to the United Nations addressed to the President of the Security Council, S/16570, accessed on 5/2/2024, at: <https://bit.ly/42tW1df>

²² “No Safe Place,” Report of the Independent Fact-Finding Committee on Gaza Presented to the League of Arab States, 30 April 2009, para. 30.

²³ *Ibid.*, para. 33.

The intent to destroy the Palestinians as an Indigenous Peoples to make way for Israelis has become evident since Israel imposed a siege on the Palestinians in Gaza Strip in 2007, and initiated a series of wars against them thereafter. Following the 2014 war on Gaza (8 July-26 August), the American National Lawyers Guild (NLG) called on the ICC to investigate crimes committed by Israel, including genocide.²⁴

On 24 September 2014, the Russell Tribunal on Palestine (RtoP), an international citizen-based Tribunal of conscience, convened an emergency session in Brussels during which it heard a number of survivors' testimonies.²⁵ It concluded that "the cumulative effect of the long-standing regime of collective punishment in Gaza appears to inflict conditions of life calculated to bring about the incremental destruction of the Palestinians as a group in Gaza".²⁶ It also noted that racist rhetoric which constituted incitement to genocide was recorded in the summer of 2014. However, investigations, warnings, and academic studies received no response from the UN, which continued to exclude Palestine from the early warning mechanism to prevent the crime of genocide and other atrocities.

The Early Warning Mechanism and the Genocidal Rhetoric Against the Palestinians

Researchers generally agree that in order for the international community, represented by the UN, to succeed in preventing genocide, at least three main elements must typically be in place: a) intelligence capability through early warning and planning; b) preventive measures, including the capacity for intervention; and c) the political will to utilize the two aforementioned elements.²⁷ The early warning element includes three interrelated components: a) information gathering; b) information analysis; c) and relaying information to decision-makers.²⁸ Since the late 1980s, the UN Secretariat has coordinated early warnings of conflicts.²⁹ The UN Headquarters in New York, accommodates most offices and departments tasked with collecting and analysing information from various UN agencies and missions for early warning purposes. Cases involving risks of imminent conflict or serious international crimes are then referred to the Office of the Secretary-General.³⁰

In 2004, the Office of the Special Adviser on the Prevention of Genocide was established with the approval of the UNSC.³¹ The main objective of the office is to serve as an early warning mechanism aimed at alerting the Council when there is a risk of genocide. The Office is responsible for collecting and analysing information available within the UN system and reporting to the UNSC, through the Secretary-General, on situations involving the risk of atrocity crimes and making relevant recommendations. The Office of the Special Adviser currently consists of approximately

²⁴ "NLG and Other Legal Groups Send Letter to ICC Urging an Investigation into Potential War Crimes Committed by Israel and US in Gaza under 'Operation Protective Edge'," *National Lawyers Guild*, 24/8/2014, accessed on 5/2/2024, at <https://bit.ly/4bl9PBs>

²⁵ The "Russell Tribunal" was named after the British philosopher and scholar Bertrand Russell, who worked with the French philosopher Jean-Paul Sartre and a number of major thinkers and intellectuals to form a people's tribunal in 1966 to investigate the conduct of the US in the Vietnam War. The tribunal also investigated other wars in which international justice was not achieved, including the US war on Iraq, and Israel's wars on Gaza, as a symbol of the conscience of the peoples of the world. The tribunal was staffed by an elite group of judges and legal and human rights experts from around the world. For more on the Russell Tribunal, other people's tribunals, and their relationship with international law, see: Andrew C. Byrnes & Gabrielle Simm, "Peoples' Tribunals, International Law and the Use of Force," *University of New South Wales Law Journal*, vol. 36, no. 2 (2013).

²⁶ "Russell Tribunal on Palestine," Emergency Session, Brussels, 24/9/2014, p. 36, accessed on 5/2/2024, at: <https://bit.ly/3w7XaBN>

²⁷ A. Walter Dorn & Jonathan Matloff, "Preventing the Bloodbath: Could the UN have Predicted and Prevented the Rwandan Genocide?," *Journal of Conflict Studies*, vol. 20, no.1 (Spring 2000), p. 10, accessed on 19/5/2024, at: <https://bit.ly/3V75FqX>

²⁸ Stephen McLoughlin, Jess Gifkins & Alex J. Bellamy, "The Evolution of Mass Atrocity Early Warning in the UN Secretariat: Fit for Purpose?," *International Peacekeeping*, vol. 30, no. 4, (2023), p. 478.

²⁹ *Ibid.*, p. 471.

³⁰ *Ibid.*, p. 479.

³¹ The Office has been headed by four advisers: Juan Mendez (Argentina, 2004-2007), Francis Deng (Sudan, 2007-2012), Adama Dieng (Senegal, 2012-2020), and Alice Wairimu Nderitu (Kenya, 2020-present).

13 staff members and operates with a budget of approximately \$2.8 million.³² It relies on the reports issued by the Secretariat and UN departments and agencies that monitor human rights violations, each according to its mandate. These include the Department of Political Affairs (DPA), the Department of Peace Operations (DPO), the Office of the UN High Commissioner for Human Rights (OHCHR), the UN High Commissioner for Refugees (UNHCR), the Office for the Coordination of Humanitarian Affairs, and the United Nations Development Programme.³³

In analysing the indicators of the risk of genocide, the Office uses the “Framework of Analysis for the Prevention of Atrocity Crimes”; a tool developed in 2009, and expanded in 2014 to include “atrocity crimes”.³⁴ These crimes encompass genocide, crimes against humanity, and war crimes as defined by international law according to the Genocide Convention, the Geneva Conventions of 1949 and their Additional Protocols of 1977, and the Rome Statute of the ICC.³⁵ The term “atrocity crimes” was later expanded to include ethnic cleansing, although the latter is not recognized as an independent crime under international law.³⁶

Genocide Indicators According to the UN Framework of Analysis

The UN Framework of Analysis emphasizes that genocide is not a spontaneous or accidental event, but rather a process preceded by signs, indicators, and careful planning.³⁷ The Framework consists of two analytical tools for assessing the risk of atrocity crimes. The first one assesses the 14 risk factors for the commission of genocide and other atrocity crimes, while the second includes indicators for each of the risk factors.

The crime of genocide is characterized by two specific risk factors (9 and 10). The first includes signs of a history of serious discrimination and bias that would provide an environment that enables committing genocide against a national, ethnic, racial, or religious group protected under the Genocide Convention. The first factor is monitored through the following six indicators that target these groups:

- a. The existence of dangerous practices, policies or laws that discriminate, segregate, restrict or exclude them;
- b. Denial of their existence or refusal to recognize certain elements of the groups’ identity;
- c. A history of atrocity crimes committed against them with impunity;
- d. Serious tensions or conflicts between these groups and the state regarding their rights and aspects of their identity;
- e. The presence of serious tensions or conflicts between other groups in the society that could develop on national, ethnic, racial or religious grounds;
- f. The lack of national mechanisms to deal with identity-related tensions or conflicts.³⁸

The second factor looks at signs that indicate an intent to destroy, in whole or in part, a protected group on the basis of its national, ethnic, racial, or religious identity, based on nine non-exhaustive indicators:

³² General Assembly, “Seventy-eighth Session, item 139 of the preliminary list, proposed program budget for 2024, Part II,” 12/5/2023, A/78/6 (Sect. 3) Ladd. 2, p. 24, accessed on 27/3/2024, at: <https://tinyurl.com/5xsds8sz>

³³ United Nations, “Framework of Analysis for Atrocity Crimes: A Tool for Prevention” (2014), p. 4.

³⁴ Adama Dieng & Jennifer Welsh, “Assessing the Risk of Atrocity Crimes,” *Genocide Studies and Prevention: An International Journal*, vol. 9, no. 3 (2016), p. 4.

³⁵ United Nations, “Framework of Analysis for Atrocity Crimes: A tool for prevention,” p. 1.

³⁶ *Ibid.*, p. 5.

³⁷ *Ibid.*, p. iii.

³⁸ Letter dated 22 January 2016 from the Secretary-General of the United Nations and addressed to the President of the General Assembly and the President of the Security Council, A/70/741-S/2016/71, pp. 14-15, accessed on 21/3/2024, at: <https://tinyurl.com/bdd4hexv>

- a. The existence of official documents or other records that either explicitly or implicitly indicate an intent, or incitement, to target a protected group;
- b. Targeted physical elimination of members of a protected group with the aim of ultimately destroying the entire group;
- c. Widespread discriminatory practices or acts of violence that target the life of the group even if not yet reaching the level of elimination;
- d. Development of policies or measures that seriously undermine women's reproductive rights or seek to forcibly separate or transfer children from their families;
- e. Violent practices that dehumanize the group and reveal the intent to cause humiliation, fear or terror, or to divide the group and alter its identity;
- f. Resorting to extreme means of violence against the group, including weapons prohibited under international law;
- g. Publicly expressing euphoria at dominating the group and controlling its existence;
- h. Attacking or destroying the group's homes, farms, shops, or other means of livelihood and/or its cultural or religious symbols and property.³⁹

Since adopting this analytical Framework, the Office of the Special Adviser on the Prevention of Genocide has monitored conflicts and issued statements and reports warning of genocide and other atrocity crimes in various parts of the world, from Asia to Latin America, through Europe and Africa. However, despite the clear applicability of most of the aforementioned genocide indicators to the Palestinians, Palestine has not been included on the Office's early warning list. This is notwithstanding the data available to the Office from both inside and outside the UN system. It is worth noting that Palestine stands out as a unique case, as the UNGA has been receiving the reports of the "Special Committee on Israeli Practices" for over fifty-five years. Since its establishment in 1968 under UNGA Resolution 2443, the Committee has been scrutinizing the crimes of the Israeli occupation against Palestine, Syria, and Lebanon. Furthermore, the Adviser's Office has access to a vast array of reports regularly provided by the aforementioned UN offices and organizations, along with reports of international investigations commissioned by the UNSC or the Secretary-General. Together, these reports facilitate the identification of the risk of genocide based on the Framework of Analysis' indicators, especially indicator 10.5, due to its association of the dehumanization of the protected group with genocide.⁴⁰

Genocidal Rhetoric Against the Palestinians Outside the Monitoring and Reporting Mechanism

Dehumanization of groups protected under the Genocide Convention falls within the framework of what the UN calls "hate speech", although the implications of genocidal speech extend beyond the Organization's definition of hate speech.⁴¹ The Office of the Special Adviser on the Prevention of

³⁹ Ibid., pp. 15-16.

⁴⁰ The indicator 10.5 reads: "Resort to methods or practices of violence that are particularly harmful against or that dehumanize a protected group, that reveal an intention to cause humiliation, fear or terror to fragment the group, or that reveal an intention to change its identity", United Nations, "Framework of Analysis for Atrocity Crimes: A tool for prevention," p. 19.

⁴¹ UN definition of hate speech: "To provide a unified framework for the United Nations to address the issue globally, the UN Strategy and Plan of Action on Hate Speech defines hate speech as... 'any kind of communication in speech, writing, or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor.' However, to date there is no universal definition of hate speech under international human rights law. The concept is still under discussion, especially in relation to freedom of opinion and expression, non-discrimination and equality". "Understanding Hate Speech," *United Nations*, accessed on 5/2/2024, at: <https://tinyurl.com/4apde6nz>

Genocide oversees the implementation of the “United Nations Strategy and Action Plan on Hate Speech”, launched by Guterres in 2019 to address the danger of this rhetoric, which has paved the way for genocide and other crimes over the past seventy-five years.⁴² Secretary-General Guterres often articulates the connection between hate speech and genocide in his speeches: “The Holocaust did not start with the gas chambers, nor did the genocides in Rwanda, Srebrenica or Cambodia start with mass killings. They were all preceded by discrimination, hate speech, incitement to violence and the dehumanization of ‘the other’”.⁴³

The calls for the elimination of the Palestinian people seem to be rooted in the Zionist project, initiated in the late nineteenth century based on denying the existence of the Palestinian people.⁴⁴ In the context of the Israeli siege and wars on the Gaza Strip and of the resistance pursued by Hamas and other Palestinian factions, such calls have become increasingly prevalent in Israeli society, while genocidal rhetoric has spread among political and military leadership. In February 2008, then-Israeli Deputy Defence Minister, General Matan Vilnai, threatened Palestinians in Gaza with “a greater *shoah* Holocaust” if they continued to fire rockets at Israel.⁴⁵ In late September 2008, before Israel’s launch of Operation Cast Lead, Israeli Interior Minister Meir Sheerit urged the army to “decide on a neighbourhood in Gaza and level it” if the Palestinians fired another rocket.⁴⁶

In early July 2014, following the discovery of the bodies of three young settlers abducted earlier in the West Bank, Netanyahu tweeted: “They were abducted and murdered in cold blood by human animals”.⁴⁷ Netanyahu’s dehumanizing characterization of Palestinians as “human animals” was echoed nearly ten years later by Israel’s Defense Minister, Yoav Gallant, following the 7 October attack, when genocidal rhetoric had become normalized in Israeli society.

In August 2014, amid Israel’s third war on Gaza, Ayelet Shaked, an Israeli MK from the Jewish Home Party, explicitly called for the extermination of the Palestinians. She asserted that the entire Palestinian people constituted the enemy and that Gaza should be destroyed, “including its elderly and its women, its cities and its villages, its property, and its infrastructure”.⁴⁸ Similarly, Moshe Feiglin, Deputy Speaker of the Israeli Knesset and a member of the ruling Likud Party at the time, published a detailed plan, calling for an assault on Gaza with no consideration for “human shields” or “environmental damage”.⁴⁹ The plan aimed to push Palestinians out of Gaza and replace them with Jewish settlers. As the extreme right rose to power with Netanyahu’s sixth government coalition, formed in December 2022, genocidal rhetoric has become pervasive within the leadership of the Israeli society, extending to its military, political, and religious elites.⁵⁰

The file submitted by the South African government to the ICJ in December 2023 charging Israel with genocide against the Palestinians included nearly seven pages of genocidal statements calling for the genocide of the Palestinian people in Gaza. These statements were made by senior officials of the Israeli

⁴² “The United Nations Strategy and Plan of Action on Hate Speech,” *United Nations*, accessed on 5/2/2024, at: <https://bit.ly/3ugeNXt>

⁴³ “Amid Alarming Surge of Xenophobia, Racism, Secretary-General Calls on States to Urgently Heed Genocide Warning Signs, in Message for International Day,” *United Nations*, 9/12/2019, accessed on 14/2/2024, at: <https://tinyurl.com/3t6czrnn>

⁴⁴ Joseph Massad, “‘Palestinians don’t exist’: Smotrich only repeats what Zionists have always said,” *The Middle East Eye*, 23/3/2023, accessed on 14/2/2024, at: <http://tinyurl.com/yz854jw3>

⁴⁵ “Israeli minister warns of Palestinian ‘holocaust’,” *The Guardian*, 29/2/2008, accessed on 5/2/2024, at: <https://bit.ly/3OymoQ4>

⁴⁶ See: Norman Finkelstein, “Foiling Another Palestinian ‘Peace Offensive’: Behind the Bloodbath in Gaza,” *Winter Patriot Community Blog*, 21/1/2009, accessed on 5/2/2024, at: <https://tinyurl.com/phdvs356>

⁴⁷ “Benjamin Netanyahu,” *X*, 1/7/2014, accessed on 5/2/2024, at: <https://bit.ly/3OBaAN3>

⁴⁸ Ben Norton, “Netanyahu appoints Ayelet Shaked—who called for genocide of Palestinians—as Justice Minister in new government,” *Mondoweiss*, 6/5/2015, accessed on 5/2/2024, at: <https://bit.ly/3OydySI>

⁴⁹ Moshe Feiglin, “My Outline for a Solution in Gaza, Arutz Sheve,” *Israel National News*, 15/8/2014, accessed on 5/2/2024, at: <https://bit.ly/3UzB711>

⁵⁰ “Settler extremists are sowing terror, Huwara riot was a ‘pogrom,’ top general says,” *The Times of Israel*, 28/2/2023, accessed on 5/2/2024, at: <https://bit.ly/3UrJpln>

State,⁵¹ including the President, the Prime Minister, the Minister of Defence, the Minister of National Security, and other decision-making figures. The file included Galant's reiteration of Netanyahu's description of the Palestinians as "human animals", serving as evidence of the normalization of genocidal rhetoric that had proliferated since the establishment of the Office of the Special Adviser on the Prevention of Genocide. It also underscores the Office's failure in its primary duty of monitoring, reporting, and alerting about such dehumanizing rhetoric.

Before "Operation Al-Aqsa Flood", this Office had issued only one statement regarding such discourse, specifically in the context of Israel's third war on the Palestinians in Gaza in 2014. However, this statement made by Special Adviser Adama Dieng, refrained from attributing genocidal rhetoric to Israeli leaders, instead casting doubt on the credibility of such rhetoric and downplaying its seriousness: "According to reliable reports, individuals have disseminated messages that could be dehumanizing to the Palestinians and have called for the killing of members of this group".⁵² He only entertained the "possibility" that Palestinians being dehumanized, without including them on the early warning list of people at risk of genocide. The statement contradicts Adama's own warnings regarding the seriousness of hate speech, which he often identified as a potential catalyst for genocide, war crimes, ethnic cleansing, and crimes against humanity. Guterres too has equated hate speech to "an alarm bell – the louder it rings, the greater the risk of genocide. It precedes and promotes violence".⁵³

Israel's genocidal rhetoric and other genocide indicators remained conspicuously absent from the early warning mechanism. They were also omitted from the UN Strategy and Action Plan on Hate Speech which the Special Adviser's Office has been implementing since its adoption in 2019. Palestine was absent from the Office of the Special Adviser's annual reports on its activities submitted to the UNGA. According to the Office's 2022 report, Special Adviser Alice Nderitu "undertook eight official visits, issued 15 public statements on situations of concern, and sent 20 internal notes to the Secretary-General. The Office organized 25 workshops and training sessions and seven technical assistance initiatives. The Office supported the development of context-specific action plans for United Nations country teams in four countries on countering and addressing hate speech and executed several policy initiatives highlighting the voices of new and underutilized actors in prevention".⁵⁴ Year after year, the Office failed to include the risk of Palestinians facing atrocity crimes under Israeli occupation in its monitoring and warning activities. Palestinian women too were excluded from the global women's network established by the Adviser's Office as part of an action plan to prevent atrocity crimes and global consultations with women leaders.⁵⁵

Reasons for the Failure of the Early Warning Mechanism to Prevent the Extermination of Palestinians

Shortly after Israel initiated its war on Gaza following the 7 October attack, numerous parties warned of the risk of Israel committing genocide against the Palestinians. However, the UN Secretariat failed to include Gaza in its early warning mechanism for the prevention of genocide and other atrocities. This failure can be attributed to five interconnected factors:

⁵¹ International Court of Justice, "Application instituting proceedings and request for the indication of provisional measures, South Africa," 28/12/2023, pp. 59-67, para. 101-107, accessed on 4/4/2024, at: <https://tinyurl.com/3j8tfrwm>

⁵² "Statement by the Special Advisers of the Secretary-General on the Prevention of Genocide, Mr Adama Dieng, and on the Responsibility to Protect, Ms Jennifer Welsh, on the situation in Israel and in the Palestinian Occupied Territory of Gaza Strip," *Reliefweb*, 24/7/2014, accessed on 14/2/2024, at: <http://tinyurl.com/h34p2ves>

⁵³ "Hate speech is rising around the world," *United Nations*, accessed on 3/31/2024, at: <https://tinyurl.com/3hwben6c>

⁵⁴ General Assembly, "Seventy-eighth Session, item 139 of the preliminary list, proposed program budget for 2024, Part II," p. 20.

⁵⁵ *Ibid.*, pp. 20-21.

1. The Mechanism's Non-Independence

Considering the wealth of information provided by reports submitted by the UN on Israel's policies and practices against the Palestinians, the failure of the early warning mechanism in the case of Palestine is less about the availability of information and more about the decision to collect, analyse, and report this information. This is a political decision that falls not to the Adviser's Office, but to the Secretary-General, who appoints the Special Adviser and supervises his/her work as he deems politically appropriate. The reports and statements that the Special Adviser submits to the Secretary-General require the approval of the Executive Office of the Secretary-General before their publication and dissemination.⁵⁶ An early study on the Office's work conveyed criticisms regarding the supervisory role exercised by the Secretary-General and his Executive Office over the tasks of the Special Adviser, noting a lack of independence.⁵⁷

According to Craig Mokhiber, former Director of the New York Office of the UN High Commissioner for Human Rights, who contributed to the discussion on the design of an early warning mechanism to prevent genocide at the UN in 2004, the initial proposal was to establish the position of an independent special rapporteur on the prevention of genocide. The rapporteur would be supported by the Human Rights Office and would report directly to the UNSC. This plan was announced by Secretary-General Kofi Annan in a speech he delivered at the Stockholm International Forum in early 2004.⁵⁸ Mokhiber explains that the Secretariat's political office rejected the idea of having an independent special rapporteur, preferring instead to appoint a special adviser who would report to the Secretary-General rather than directly to the UNSC. This approach was intended to avoid angering any of the UNSC's Member States. It also decided that the Special Adviser should be supported by the political office rather than by the Human Rights Office, as they believed that genocide is not a human rights issue, but a political one.⁵⁹ Reflecting on the Secretariat's politicization of the genocide, Mokhiber concludes that the Office of the Special Adviser "by design, it is weak, non-independent, politically controlled office", subordinate to the Secretary-General.⁶⁰

2. The Lack of an Independent Committee of Experts to Oversee the Work of the Special Adviser and Safeguard its Independence

The early warning mechanism lacks an autonomous body of experts in genocide studies to supervise the Special Adviser's work and participate in evaluating cases that require monitoring and reporting, thereby avoiding selective or politicized decisions. It should be noted that at the suggestion of the first Special Adviser, Juan Mendez (2004-2007), Kofi Annan established the Advisory Committee on Genocide in May 2006 to support the Special Adviser and advise the Secretary-General. This Committee consisted of prominent figures in various fields who volunteered their time and expertise, and contributed to the development of the Office of the Special Adviser, the expansion of its scope, and the improvement of its work. The Committee's work continued until 2011, providing confidential advice to the Special Adviser and the Secretary-General, including recommendations on addressing the risk of genocide in several

⁵⁶ General Assembly, "Thirtieth report of the Advisory Committee on Administrative and Budgetary Questions on the proposed program budget for the biennium 2008-2009," 12/14/2007, A/62/7/Add.29, para. 12-13, accessed on 4/1/2024, at: <https://tinyurl.com/yc3rp544>

⁵⁷ Payam Akhavan, "Report on the Work of the Office of the Special Adviser of the United Nations Secretary-General on the Prevention of Genocide," *Human Rights Quarterly*, vol. 28, no. 4 (November 2006), pp. 1056-1058.

⁵⁸ "Address by Secretary-General Kofi Annan to the Stockholm International Forum in Stockholm, Sweden," *United Nations Secretary-General*, 26/1/2004, accessed on 26/3/2024, at: <https://tinyurl.com/yr2azp6h>

⁵⁹ "UN officials abdicate responsibilities regarding the Gaza genocide, with Craig Mokhiber," *The Electronic Intifada - YouTube*, 26/12/2023, min: 8:50-13:50, accessed on 26/3/2024, at: <https://tinyurl.com/hwfut6z5>

⁶⁰ Ibid.

countries.⁶¹ Following the establishment of a joint office which brought together the Special Adviser on the Prevention of Genocide and the Special Adviser on the Responsibility to Protect in 2010, the membership and functions of the Advisory Committee were reviewed. Recommendations were made to Ban Ki-moon to reconfigure its composition and review its mandate to continue to provide new advisory tasks.⁶² Since 2012, this mechanism has disappeared from UN reports, raising questions about why it was abandoned.

3. Censorship of the Secretary-General by Israel and its Allies

The dysfunctionality of the early warning mechanism in the case of Palestine also stems from the censorship imposed by Israel and the United States on the UN Secretary-General. Since the establishment of the Office of the Special Adviser on the Prevention of Genocide in 2004, this censorship has aimed to protect Israel from criticisms of its policies and practices. This influence is evident in the annual reports prepared since 2008 by the Office of the Special Representative of the Secretary-General for Children and Armed Conflict on states, militias, and armies that commit the crimes of murder, injury, and disablement against children, as well as child recruitment, attacks on schools and hospitals, kidnapping, torture, physical abuse, and prevention of access to humanitarian aid. Due to pressure from Israel and the United States, both Ban Ki-moon and Guterres removed Israel from the “list of shame” after it was included in draft reports prepared by the Office of the Special Representative.⁶³ Under pressure from the US Permanent Representative to the United Nations, Nikki Haley, Guterres demanded the withdrawal of the 2017 report of the UN Economic and Social Commission for Western Asia (ESCWA), which documented the apartheid regime imposed by Israel on the Palestinian people.⁶⁴ The Secretary-General’s lack of independence in political decision-making, along with his subordination to the will of the world’s major powers in multiple instances, explains in part why Israel has been exempted from the early warning mechanism to prevent genocide and other atrocities.

4. Failure to Connect UN Responsibility for Preventing Genocide to Legal Accountability

According to the definition given in UNGA Resolution 64/259, “accountability is the obligation of the Secretariat and its staff members to be answerable for all decisions made and actions taken by them, and to be responsible for honouring their commitments, without qualification or exception”.⁶⁵ However, the failure to link this ethical responsibility to legal accountability is a major factor in the repeated failures of senior UN officials in Rwanda, Srebrenica, Sri Lanka, Myanmar, and Gaza to report serious international crimes despite clear indicators or confirmed reports of their occurrence. The report submitted by the Internal Review Panel to evaluate the UN’s actions during the war in Sri Lanka confirmed that the Organization’s failure was due to a “UN system that lacked an adequate and shared sense of responsibility for human rights violations”.⁶⁶ It also acknowledged the deeper issue of leadership and accountability within the system,

⁶¹ The committee consisted of David Hamburg (chairperson), Monica Anderson, Ibrahim Zakari, first team Romeo Dallaire, Gareth Evans, Roberto Garreton, Juan Mendes, Sadako Ogata, and Father Desmond Tutu. Its members included the Special Adviser on the Prevention of Genocide. General Assembly, “Annual Report of the United Nations High Commissioner for Human Rights and Reports of the High Commissioner and the Secretary-General,” 18/3/2008, A/HRC/7/37, paragraphs 12-15, accessed on 1/4/2024, at: <https://tinyurl.com/3buhumde>; General Assembly, “Annual Report of the United Nations High Commissioner for Human Rights and Reports of the High Commissioner and the Secretary-General,” 18/2/2009, A/HRC/10/30, paragraphs 26-27, accessed on 1/4/2024, at: <https://tinyurl.com/3zcdjd7k>

⁶² Francis Deng, “Making an Impossible Mandate Possible: The Challenge of Preventing Genocide and Mass Atrocities,” *End of Assignment Note*, Concordia University, February 2012, p. 4, accessed on 4/1/2024, at: <https://tinyurl.com/2zestpvc>

⁶³ “Ensure Consistency in Children and Armed Conflict Report: Letter to UN Secretary-General Ban Ki Moon,” *Human Rights Watch*, 27/4/2023, accessed on 26/3/2024, at: <https://tinyurl.com/2sf987rm>; “After Broad Lobbying Effort, UN Leaves Israel off Child-Killer ‘List of Shame’,” *Jewish News Syndicate*, 23/6/2023, accessed on 14/2/2024, at: <https://cutt.ly/Kw1n8oVL>

⁶⁴ ESCWA, “Israeli practices towards the Palestinian people and the issue of apartheid, issued on 15/3/2017,” translation from English (Geneva: Euro-Mediterranean Human Rights Monitor, 30/7/2018), accessed on 29/4/2024, at: <https://shorturl.at/dxAN3>

⁶⁵ General Assembly, “Towards a System of Accountability in the United Nations Secretariat,” 5/5/2024, A/RES/64/259, p. 3, accessed on 1/4/2024, at: <https://tinyurl.com/yja7bn9n>

⁶⁶ Petrie, p. 28, para. 80.

when confronting such situations.⁶⁷ Negligence on the part of UN staff has caused serious harm to millions of citizens around the world in many cases.⁶⁸ Yet, they have not often been held legally accountable, due to the persistent issue of immunity. The UN has developed a procedure whereby it waives its employees' immunity in order to allow national authorities to file cases against them; however, it maintains its right to assert immunity when they are tried in a court of law.⁶⁹

5. The Failure of the Palestinian Authority and the Arab Countries to Activate the Mechanism

Since obtaining Observer status at the UN in 2012, the PA has ratified numerous international treaties, including the Genocide Convention, to which it acceded in April 2014. Since then, the PA has focused on prosecuting Israel in the ICC, and has filed a complaint against it with the UN Committee on the Elimination of Racial Discrimination. However, it failed to call on the Secretary-General to include Palestine in the early warning mechanism to prevent further atrocity crimes committed by Israel against the Palestinians. This failure represents a departure from one of the demands put forward in the 1980s by the PLO, which was to “end the policy of genocide pursued by Israel against the Palestinian people” since the Nakba.⁷⁰

Despite accusing Israel of committing genocide in Gaza in the wake of Al-Aqsa Flood Operation,⁷¹ the PA did not support Palestinian human rights organizations, in urging the Secretary-General to investigate the failure of his Special Adviser to fulfill her mandate regarding the Israeli genocide in Gaza.⁷² This failure is also shared by several Arab countries that are parties to the Genocide Convention, such as Jordan, Kuwait, and Iraq. Although they have characterized Israel's ongoing crimes in Gaza as genocide, they have failed to raise the issue of Palestine's exclusion from the Secretary-General-supervised early warning mechanism for atrocity prevention. Many Arab governments, especially those that recognized the State of Israel, have gradually scaled back their advocacy for Palestinians in the UN. They have long relied on Washington's mediation to settle the “conflict” through negotiation, rather than using UN mechanisms to support the Palestinians' right to self-determination.

Impact of Palestine's Negligence and Israel's Activism on the UN's Early Warning Mechanism

To understand the failure of the UN's early warning mechanism in preventing genocide and other atrocities in Palestine, it is essential to examine the relationship between the PA's negligence and Israel's increasing activism within the UN.

From Palestine's Failure to Oppose Zionism to Zionist Activism in the United Nations

Palestinian and Israeli advocacy have moved in opposite directions. As the PA has retreated from anti-Zionist activism and resistance to occupation, Israel has amped up its advocacy in the UN. This divergence has

⁶⁷ Ibid., p. 117, para.4.

⁶⁸ To review the lawsuits filed by the families of those affected in Haiti, Kosovo, and Srebrenica in light of the issue of the UN immunity, see: Kristen E. Boon, “The United Nations as Good Samaritan: Immunity and Responsibility,” *Chicago Journal of International Law*, vol. 16, no. 2 (2016); Rosa Freedman, “UN Immunity or Impunity? A Human Rights Based Challenge,” *European Journal of International Law*, vol. 25, no. 1 (February 2014), pp. 239–254.

⁶⁹ Ibid., p. 342.

⁷⁰ Letter dated 17 May 1984.

⁷¹ Servet Günerigök, “Israel is offering Palestinians genocide, ethnic cleansing: Palestinian foreign minister,” *Anadolu*, 23/2/2024, accessed on 22/5/2024, at: <https://bit.ly/3V93KII>

⁷² “Palestinian Organizations Demand Inquiry into UN Genocide Prevention Office's Inexcusable Failure to Address Israel's Ongoing Genocide in Gaza,” *Mezan*, 7/2/2024, accessed on 14/2/2024, at: <https://cutt.ly/jw1mMhUH>

contributed to the exclusion of Palestine from the early warning mechanism for the prevention of genocide and other atrocities.

In November 1975, during a period of global opposition to colonialism and apartheid, and a time of Arab unity following the October 1973 War, the UNGA adopted resolution 3379, declaring that “Zionism is a form of racism and racial discrimination”.⁷³ The resolution built on previous UNGA resolutions, and on statements by other international organizations that condemned Zionism and called upon “all countries to oppose this racist and imperialist ideology”.⁷⁴

Resolution 3379, along with UNGA Resolution 123/37 of 1982, which recognized that Palestinians in the Sabra and Shatila refugee camps had been subjected to genocidal acts, and the 1984 PLO demand to the UNSC to end Israel’s genocidal policy against the Palestinian people represented the peak of Palestinian advocacy in the UN. As the struggle to end the apartheid regime in South Africa intensified, the PLO engaged in a political process as a means of settling the “conflict” rather than pursuing the path of resistance to free Palestine from the Israeli occupation. This shift was reflected in the Oslo Accords (1993), which were preceded by the PLO’s acceptance in 1991 of revoking resolution 3379.

Accordingly, spearheaded by Washington, the UNGA adopted on December 1991 the short Resolution 46/86, which stated that “the General Assembly decides to revoke the determination contained in its resolution 3379 (XXX) of 10 November 1975”.⁷⁵ The PLO further compromised its liberation stance by entering into political negotiations that led to the Oslo Accords.

The repeal of Resolution 3379 significantly bolstered the pro-Israeli narrative at the UN. Since then, UNGA resolutions backtracked on its earlier stance that equated Zionism with racism. Instead, the new narrative has focused on peace, dialogue, and the two-state solution, disregarding issues of decolonization and self-determination. However, the NGO Forum which was held on the sidelines of the Anti-Racism Conference in late August and early September 2001 in Durban, South Africa, caught Israel and its supporters by surprise. It adopted a declaration that condemned Israel’s racism, “settler colonialism” and “State terrorism”, calling for a restitution of Resolution 3379 and the establishment of a war crimes tribunal to investigate and bring to justice those who committed serious crimes against Palestinians that may amount to genocide.⁷⁶ The declaration posed a major challenge to Israel and its supporters, particularly with the emergence of the Boycott, Divestment, and Sanctions (BDS) movement in the wake of the Second Intifada.

According to Brian Klug, some commentators claim that the start of Second Intifada in September 2000, sparked a wave of a new type of antisemitic hostility toward the Jews, in the form of criticism of Israel and Zionism which they term “the new antisemitism”.⁷⁷ Anthony Lerman contends that while the Durban Anti-Racism Conference, the Second Intifada, and September 11 contributed to the rise of the “new antisemitism” narrative, its emergence was in reaction to the UNGA resolution 3379. Over time, the new concept came to refer to perceived attacks on the Jewish people’s right to live as an equal member of the global community, with Israel being targeted as the “collective Jew among nations”.⁷⁸ Shifting from the traditional source of antisemitism, historically linked to Christianity, the “new antisemitism” tends

⁷³ “3379 (XXX). Elimination of all Forms of Racial Discrimination,” *United Nations – The Question of Palestine*, accessed on 20/3/2024, at: <https://tinyurl.com/3tyran3x>

⁷⁴ General Assembly Resolution 3379, 10 November 1975, A/RES/3379(XXX).

⁷⁵ General Assembly Resolution 8646, 16 December 1991, A/RES/46/86.

⁷⁶ “WCAR, NGO Forum Declaration,” *Adalah*, 3/9/2001, accessed on 14/2/2024, at: <https://bit.ly/49zwacV>

⁷⁷ Brian Klug, “The Collective Jew: Israel and the New Antisemitism,” *Patterns of Prejudice*, vol. 37, no. 2 (2003), p. 117.

⁷⁸ Antony Lerman, “New Antisemitism,” *Discussion Paper Series*, Centre for Research on Migration, Refugees and Belonging, September 2015, accessed on 15/5/2024, at: <https://bit.ly/3WMth5e>

to perceive Arab and Muslim societies, the political left, and the international advocacy movement for Palestinian rights as primary sources of antisemitism.⁷⁹

According to a recent study by Israeli historian Dina Porat, the challenges posed by “new antisemitism” and the BDS movement were answered in two ways: first, by promoting the new working definition of antisemitism developed by the International Holocaust Remembrance Alliance (IHRA), and second, by the UNGA’s adoption on 1 November 2005 of Resolution 7/60, which designated 27 January as International Holocaust Remembrance Day (IHRD).⁸⁰ This strategy turned the UN into an international battleground where “the new antisemitism” charge and Holocaust remembrance could be weaponized to counter any narrative favourable to Palestinian rights. Israel also capitalized on the shift in US policy in the wake of the 11 September 2001 attack, whereby resistance to the Israeli occupation was increasingly labeled as terrorism.⁸¹

Redefining Antisemitism: Serving Israel and Undermining Palestine

The Palestinian position within the UN weakened following the signing of the Oslo Accords, the events of September 11, and the “War on Terror”, while Israel and its supporters embarked on a broad partnership with the UN and its various agencies. The IHRA inaugurated an advocacy battle waged by Israel and its supporters within the UN. As an international body, the IHRA aims to influence decision-makers by keeping issues related to the Holocaust at the forefront of the political action agendas of both its Member States and the UN. It consists of thirty-five Member States, including Israel and its Western allies, and is supported by a number of permanent international partners, including the United Nations Educational, Scientific, and Cultural Organization (UNESCO) and several UN offices.⁸²

The IHRA defines antisemitism as “a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities”.⁸³ There is nothing objectionable about this working definition in and of itself. The issue arises with seven of the eleven examples that illustrate the definition, as they seek to label criticism of Israel as antisemitic. The IHRA definition has been adopted by over forty countries supporting Israel, as well as a coalition of nearly 180 international civil organizations.⁸⁴

Led by Human Rights Watch, 104 international human rights organizations have warned the UN against adopting the IHRA definition, arguing that it seeks to silence criticism of the Israeli government’s policies, restricts freedom of expression, and hinders the defence of Palestinian rights.⁸⁵ A group of 128 researchers in Holocaust studies and antisemitism also cautioned the UN against the use of a vague definition of antisemitism that could all too easily be weaponized.⁸⁶ However, the IHRA successfully promoted the

⁷⁹ Shane Burley, “Interrogating the ‘New Antisemitism,’” *Jewish Currents*, 15/9/2022, accessed on 14/2/2024, at: <https://bit.ly/48gOztY>. See also: Klug, pp. 117-138.

⁸⁰ Dina Porat, “A Different Attack on Israel and the Jewish People and Its Consequences,” in: Ronnie Fraser & Lola Fraser (eds.), *Challenging the Boycott, Divestment and Sanctions (BDS) Movement* (Abingdon: Routledge, 2023).

⁸¹ See: Muhammad Sayyid Ahmad, “11 September and the Palestinian Cause,” *Journal of Palestinian Studies*, vol. 13, no. 52 (Fall 2002).

⁸² “Permanent International Partners,” *International Holocaust Remembrance Alliance*, accessed on 14/2/2024, at: <http://tinyurl.com/4waz3y58>

⁸³ “Working definition of antisemitism,” *International Holocaust Remembrance Alliance*, accessed on 14/2/2024, at: <http://tinyurl.com/yc6bpsny>

⁸⁴ See: Canadians for Justice and Peace in the Middle-East, “IHRA’s True Intentions: This is the Speech about Israel and Palestine that IHRA Wants to Silence” (December 2022), accessed on 29/2/2024, at: <http://tinyurl.com/yfy9mccu>

⁸⁵ “Human Rights and Other Civil Society Groups Urge United Nations to Respect Human Rights in the Fight Against Antisemitism: Joint Letter to UN Secretary-General António Guterres and Under Secretary-General Miguel Ángel Moratinos,” *Human Rights Watch*, 4/4/2023, accessed on 5/2/2024, at: <https://bit.ly/486uKpg>

⁸⁶ “Over 100 academics warn UN against adopting controversial IHRA anti-Semitism definition,” *The New Arab*, 4/11/2022, accessed on 14/2/2024, at: <http://tinyurl.com/y49s9vuc>

concept of the “new antisemitism” in the UN. In a speech delivered in September 2018, Secretary-General Guterres accused advocates of the Palestinian cause of antisemitism, according to IHRA definition :

Jews continue to be attacked for no other reason than their identity [...]. In more recent times, it [antisemitism] is expressing itself in attempts to delegitimize the right of Israel to exist, including calls for its destruction, using the pretext of the situation in the Middle East to target Jews and Jewish symbols.⁸⁷

In his 2019 report, Special Rapporteur on the Freedom of Religion or Belief, Ahmed Shaheed, echoed Guterres’ speech. He went as far as to charge anyone who associates Israel and Zionism with racism, including the BDS movement, of antisemitism.⁸⁸ On 23 July 2023, Shaheed launched an eight-point action plan to combat antisemitism, strongly recommending that Member States adopt the IHRA definition of antisemitism. He recommended that the UN should provide training for all personnel on recognizing and responding to antisemitism, adhering to international standards on freedom of expression and prohibition of incitement to discrimination. The Organization should also establish effective reporting mechanisms for antisemitic incidents and enforce disciplinary measures for personnel expressing antisemitic views.⁸⁹

As a result of the UN’s partnership with Israel and its allies, criticism of Israel’s policies has been equated with antisemitism. In addition to promoting the “new antisemitism” definition at the UN, the IHRA weaponized “Holocaust remembrance” in partnership with the UN. This strategy undermined the likelihood of the UN’s early warning mechanism to prevent genocide being applied to Palestinians as potential victims of Israel’s policies and practices.

Declaration of Holocaust Remembrance at the UN: From International Day to Early Warning Mechanism

Through IHRA, Israel and its allies have leveraged the UNGA to issue a series of resolutions that extend beyond Holocaust commemoration to also combat the “new antisemitism”. On 1 November 2005, the UNGA adopted Resolution 60/7,⁹⁰ which designated 27 January as an annual International Day of Commemoration (IHRD). In 2007, Resolution 61/255 condemned any denial of the Holocaust.⁹¹ Further, Resolution 76/250, adopted in 2022, placed Holocaust denial clearly within the framework of combating antisemitism, urging states and social media companies to take active measures to combat “antisemitism and Holocaust denial or distortion”.⁹²

Pursuant to Resolution 60/7, the UNGA also requested that the Secretary-General establish a UN program focused on outreach and mobilizing society for Holocaust remembrance and education. The UN Outreach Programme on the Holocaust, established in 2005 and funded by Member States through the budget of the Education Outreach Division of the UN’s Global Communications Department, has provided a platform that Israel has diligently utilized through its Permanent Representative to the UN and a network of supportive governmental and non-governmental organizations.⁹³ Through intensive outreach activities aimed at keeping the memory of the Holocaust alive year-round, the IHRA, in collaboration with the UN Secretariat and UNESCO, suppressed criticism of Israel and advocacy for Palestine at the UN.

⁸⁷ “Secretary-General’s remarks to High-Level Event on the Power of Education for Countering Racism and Discrimination: The Case of anti-Semitism,” *United Nations*, 26/9/2018, accessed on 14/2/2024, at: <http://tinyurl.com/bde2sr6r>

⁸⁸ United Nations, General Assembly, “Eliminate of all forms of religious intolerance,” A/74/358, 20/9/2019, para. 17.

⁸⁹ Ahmed Shaheed, “Taking Action to Combat Antisemitism: Follow-up Action Plan for Advancing the Implementation of the Recommendations of the UN Special Rapporteur on Freedom of Religion or Belief in his 2019 Report to the UN General Assembly,” A/74/358, pp. 7-16.

⁹⁰ General Assembly Resolution, A/RES/60/7, 1 November 2005.

⁹¹ General Assembly Resolution 61/225, 26 January 2007.

⁹² General Assembly Resolution 67/250, 25 January 2022.

⁹³ United Nations, General Assembly, “Proposed programme budget for 2024,” A/78/6, 4/4/2023, Part 7, Global communications, Section 28, Global Communications.

The program organizes numerous activities throughout the year in cooperation with the Office of the Special Adviser on the Prevention of Genocide, the Global Network of UN Information Centres, and other UN offices, in addition to the annual celebration of IHRD. These activities include panel discussions, art exhibitions, film series, and educational materials that ensure the memory of the Holocaust intensely present in the UN at all levels of communication. In 2014 alone, the program organized over 140 activities in 42 countries.⁹⁴ The Office of the Special Adviser on the Prevention of Genocide has been a major partner in these activities by issuing statements, delivering speeches, organizing events, and presenting papers on the Holocaust.⁹⁵ The Special Adviser's collaboration with the IHRA persisted despite criticism for bias in favour of Israel. Notably, Special Adviser Adama Dieng attended the 2016 annual conference of the International Association of Genocide Scholars in occupied East Jerusalem, despite calls for him to boycott the event.⁹⁶

The cooperation between IHRA and the Special Adviser's Office reached new heights after Alice Nderitu assumed this position at the end of 2020. In July 2022, her Office issued a policy paper titled "Combatting Holocaust and Genocide Denial: Protecting Survivors, Preserving Memory, and Promoting Prevention", based on the IHRA's working definition of antisemitism. This UN document, offering guidance to the governments of Member States, the UN system, and other bodies in partnership, was drafted by her Office in collaboration with the Jacob Blaustein Institute for the Advancement of Human Rights (JBI), which is affiliated with the pro-Israel American Jewish Committee.⁹⁷

Not only did Nderitu make combatting Holocaust denial one of the tasks of an Office responsible for preventing atrocity crimes, but it also made it one of its top priorities, based on the assumption that Jews today are at risk of being victims of atrocity crimes.⁹⁸ In doing so, she acted on the existential threat narrative promoted by the State of Israel since its establishment; a narrative promoted at the UN. In his speeches at the UN, Israel's Permanent Representative, Gilad Erdan, often compares the 1988 Hamas Charter – superseded by the 2017 charter – to Nazi Germany's genocidal objectives. In a UNSC session following the 7 October attack, he claimed that his country was waging war on Nazism.⁹⁹

The UN Outreach Programme on the Holocaust was conducting activities aimed at protecting Jews from the risk of antisemitism-related atrocities, while Israel was simultaneously waging successive bombing campaigns against Gaza's besieged population and committing well-documented atrocities that remained outside the scope of the UN's early warning mechanism. Furthermore, the outreach activities undertaken by Israel and its allies have successfully transformed the UN from an institution that once opposed Zionism into an ally of Zionist organizations. Due to Israeli lobbying, spearheaded by Israel's Permanent Mission to the UN in New York, the American Zionist Movement successfully obtained NGO consultative status at the UN in August 2022. The Movement comprises 45 American and international Jewish Zionist organizations affiliated with the World Zionist Organization, which is very active in networking in support of Israel and Zionism.¹⁰⁰ Israel's Permanent Mission to the UN described this achievement as "a great

⁹⁴ "The Holocaust and the United Nations Outreach Programme," *United Nations*, accessed on 14/2/2024, at: <https://tinyurl.com/4vuusbcx>

⁹⁵ United Nations, "Outreach Programme on the Holocaust," *Discussion Papers*, accessed on 14/2/2024, at: <https://cutt.ly/iw1nHMPo>

⁹⁶ "An Open Letter From Human Rights Defenders To Mr. Adama Dieng, Concerning Participation in the Inogs 2016 Annual Conference," *BADIL*, 24/5/2016, accessed on 27/3/2024, at: <https://tinyurl.com/2x42e6jk>

⁹⁷ "AJC's Jacob Blaustein Institute Partners with UN on New Policy for Combating Holocaust and Genocide Denial," *American Jewish Committee*, 16/6/2022, accessed on 5/2/2024, at: <https://bit.ly/3Oz4fBG>; "Anti-Zionism and Anti-Semitism," *The World Jewish Congress*, accessed on 14/2/2024, at: <https://tinyurl.com/5ce6v5ny>

⁹⁸ General Assembly, "Seventy-eighth Session, item 139 of the preliminary list, proposed program budget for 2024, Part II," p. 18, para. 44.

⁹⁹ *Ibid.*

¹⁰⁰ For a list of member organizations of the American Zionist Movement, see: "Constituent Members," *American Zionist Movement*, accessed on 5/2/2024, at: <https://bit.ly/3SY0Jm3>

day for Zionism”, which would enable the Movement to use the UN as a “platform from which to move the discussion of Zionism and support for Israel in the United Nations from a negative to a positive”.¹⁰¹

The Role of the UN Secretary-General and His Special Adviser in Disabling the Early Warning Mechanism Vis-à-Vis Gaza

What sets the ongoing genocidal campaign in Gaza from its predecessors in Rwanda, Srebrenica, and Cambodia is the unprecedented abundance of information available in today’s diverse and complex media landscape. For the first time in history, genocidal acts are being documented around the clock, in what has been described as the first “live-streamed genocide”.¹⁰²

Based on extensive reports, testimonies, and visual materials, Palestinian human rights organizations (Al-Haq, Al-Mizan, and the Palestinian Centre for Human Rights) issued the first call to protect Palestinians in Gaza from the threat of genocide on 13 October 2023.¹⁰³ Two days later, more than 800 scholars of genocide and international law from across the world, issued a warning, stating that “the ongoing and imminent Israeli attacks on the Gaza Strip are being conducted with potentially genocidal intent”.¹⁰⁴ Starting in mid-October, Independent Experts at the UN issued three statements warning of the risk of genocide and demanding its cessation.

Given his mandated responsibility, Secretary-General Guterres was expected to convey such warnings to the UNSC. Instead, he avoided any reference to the word “genocide”. When asked at a press conference on 8 November 2023, about the measures the UN could take to stop the genocide against Palestinians in Gaza, he deflected responsibility, stating, “[We have] no power, no money, but a voice and a platform where people can [bring] together governments, civil society, businesses, and at least try to find ways to address the dramatic problems of our time”.¹⁰⁵

This statement contradicts Article 99 of the UN Charter, which grants the Secretary-General a unique political authority unparalleled by any head of an international organization in history.¹⁰⁶ Guterres’ response is also inconsistent with the responsibility of supervising the early warning mechanism to prevent genocide and other atrocity crimes, as assigned to the Secretary-General by successive resolutions issued by the UNSC, and confirmed by the UNGA, and the Human Rights Council since 2001.¹⁰⁷ Thus, his insistent refusal to warn of the danger of genocide in Gaza and his failure to activate Article 99 of the UN Charter for this purpose underscore the responsibility borne by the Secretary-General and his Adviser for disabling this mechanism in the case of Palestine.

The Secretary-General Versus Independent UN Human Rights Experts

Guterres has faced more criticism than any previous Secretary-General for his silence on human rights violations and for eclipsing the “Human Rights Up Front” initiative launched by Ban Ki-moon in 2013,

¹⁰¹ “American Zionist Movement Officially Recognized By UN: Granted Advisory Status,” *American Zionist Movement*, 3/8/2022, accessed on 5/2/2024, at: <https://bit.ly/3uDFy08>

¹⁰² “World has failed Gaza in ‘livestreamed genocide’, South Africa’s delegation says at ICJ – video,” *The Guardian*, 11/1/2024, accessed on 5/2/2024, at: <https://bit.ly/49ci1SX>

¹⁰³ “Urgent Action: Palestinian Human Rights Organisations Call on Third States to Urgently Intervene to Protect the Palestinian People Against Genocide,” *Al Haq*, 13/10/2023, accessed on 5/2/2024, at: <https://bit.ly/3SneDgU>

¹⁰⁴ “Scholars Warn of Potential Genocide in Gaza,” *Third World Approaches to International Law Review*, 15/10/2023, accessed on 1/4/2024, at: <https://tinyurl.com/zbx9c9u8>

¹⁰⁵ “Guterres: We Cannot Prevent Genocide in Gaza,” *Palestine Chronicle*, 8/11/2023, accessed on 5/2/2024, at: <https://bit.ly/49i0JCQ>

¹⁰⁶ United Nations, “Report of the Preparatory Commission of the United Nations,” 23/12/1945, p. 87, accessed on 21/3/2024, at: <https://tinyurl.com/2eubbbhp>

¹⁰⁷ See: General Assembly, “Seventy-eighth Session, item 139 of the preliminary list, proposed program budget for 2024, Part II,” p. 17, paragraph 40.

which included a comprehensive strategy and implementation mechanisms.¹⁰⁸ This initiative obliges all UN employees to issue warnings when serious violations of human rights and international law are imminent, thereby integrating it in the early warning mechanism.¹⁰⁹ However, this initiative has vanished from Guterres' speeches and reports, replaced by a humanitarian and political approach to crises influenced by his political background and his ten-year tenure as the UN High Commissioner for Refugees.¹¹⁰

The Secretary-General's statements and speeches on Gaza have used the language of humanitarian diplomacy. He has repeatedly called for a humanitarian ceasefire rather than a permanent one,¹¹¹ describing the situation in Gaza in vague and emotional terms such as "horror", "disaster", "tragedy", "nightmare" or "humanitarian catastrophe", thereby avoiding the language of human rights. He also frequently avoids attributing responsibility for the "tragedy" to Israel by excessively using the passive voice: "Gaza is becoming a graveyard for children. Hundreds of girls and boys are reportedly being killed or injured every day".¹¹² In the same vein, commenting on the release of the Integrated Food Security Phase Classification (IPC) report on 28 March 2024, the Secretary-General said that "Palestinians in Gaza enduring horrifying levels of hunger and suffering".¹¹³ He dismissed the assessment of the UN Special Rapporteur on the right to food, Michael Fakhry, who characterized Israel's deliberate starvation of the Palestinians as collective punishment that may amount to genocide.¹¹⁴

The significant disparity between the Secretary-General's rhetoric and the statements made by UN Independent Experts further underscores his position. On 19 October 2023, seven Special Rapporteurs issued a statement warning that the Palestinians in Gaza were in danger of being subjected to genocide.¹¹⁵ They reiterated the same warning on 2 November 2023. On 16 November, approximately 30 Special Rapporteurs, Independent Experts, and Working Groups issued an "early warning" concerning Israel's stated intention to destroy the Palestinian people.¹¹⁶ In her report issued on 25 March 2024, Francesca Albanese, the UN Special Rapporteur on the situation of human rights in the Occupied Palestinian Territories, stated unequivocally that Israel had committed three out of five acts of genocide listed under the UN Genocide Convention.¹¹⁷

The reports and statements from Special Rapporteurs and other UN Independent Experts were met with complete silence from the Secretary-General. Asked about the UN experts' statement on genocide and Guterres' notable silence on the risk of genocide in Gaza, his spokesperson, Stéphane Dujarric, claimed

¹⁰⁸ "UN: Promoting Rights Key to UN Chief Guterres' 2nd Term," *Human Rights Watch*, 8/6/2021, accessed on 1/4/2024, at: <https://tinyurl.com/3ax626ab>; Colum Lynch, "U.N. Chief Faces Internal Criticism Over Human Rights," *Foreign Policy*, 4/2/2020, accessed on 1/4/2024, at: <https://tinyurl.com/mr3ar42w>; Jennifer Norris, "Given UN failings in Myanmar, where is Human Rights up Front?," *Universal Rights Group*, 30/10/2019, accessed on 1/4/2024, at: <https://tinyurl.com/mtb3js9f>; Jennifer Norris, "Why is Human Rights Absent from the Secretary-General's Prevention Agenda?," *The International Peace Institute, Global Observatory*, 9/10/2018, accessed on 1/4/2024, at: <https://tinyurl.com/mu43mvcf>

¹⁰⁹ "Human Rights up Front speaks to the essence of the United Nations," *Briefing Note*, UN HABITAT, Human Rights Up Front, 5/12/2014, accessed on 1/4/2024, at: <https://tinyurl.com/54vyrzww>

¹¹⁰ See: "Biography," *United Nations, Secretary-General*, accessed on 4/1/2024, at: <https://tinyurl.com/zpd86cj8>

¹¹¹ On the difference between a humanitarian ceasefire and a ceasefire, see: Emanuela Chiarrà-Gillard, "Humanitarian Pauses and Ceasefires – what are the Differences?" *Chattam House Blog*, 6/11/2023, accessed on 5/2/2024, at: <https://bit.ly/3usSRR5>

¹¹² Michelle Nichols, "UN Chief Says Gaza Becoming a 'Graveyard for Children'," *Reuters*, 6/11/2023, accessed on 5/2/2024, at: <https://bit.ly/3HQZ8X>

¹¹³ "Imminent famine in northern Gaza is 'entirely man-made disaster': Guterres," *United Nations Secretary-General*, 18/3/2024, accessed on 1/4/2024, at: <https://tinyurl.com/45f5v3t7>

¹¹⁴ Muhammad Iqbal Arslan, "United Nations rapporteur: Israel's starvation of the Palestinians of Gaza is a 'genocide'," *Anadolu Agency*, accessed on 4/1/2024, at: <https://tinyurl.com/3zf84svu>

¹¹⁵ "Gaza: UN Experts Decry Bombing of Hospitals and Schools as Crimes Against Humanity, Call for Prevention of Genocide," *UN: The Question of Palestine*, 19/10/2023, accessed on 5/2/2024, at: <https://bit.ly/42BYmcY>

¹¹⁶ "Gaza: UN experts call on the international community to prevent genocide that threatens the Palestinian people," *United Nations, Human Rights, Office of the High Commissioner*, 11/16/2023, accessed on 5/2/2024, at: <https://bit.ly/42L60lr>

¹¹⁷ The United Nations Human Rights Council, "Anatomy of A Genocide: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese," *Agenda item 7, A/HRC/55/73*, 25 March 2024, pp. 6-11, accessed on 31/3/2024, at: <https://tinyurl.com/3xnj4e9h>

that, for legal reasons, the Secretary-General was not qualified to address the issue of genocide: “These experts, all the Independent Experts are independent from the Secretary-General. On the issue of genocide, we are very clear on our position, which is that genocide can only be labelled by a competent court”.¹¹⁸ This claim is based on an undated guidance note issued by the Office of the Special Adviser, urging UN staff to avoid using the term “genocide” as the charge could only be established by a competent international court of law.¹¹⁹ However, this directive does not apply to the Secretary-General and his Special Adviser, who explained her mission by saying,

My job is to prevent genocide and related crimes. More specifically, I am charged with raising alarm through early warnings to the Secretary General and the Security Council when there is a risk of genocide and related crimes and mobilizing action to prevent or stop that risk... I should emphasize that my role as Under Secretary General and Special Adviser on the Prevention of Genocide is not to decide whether genocide has taken place. This is the responsibility of independent courts of justice that have the jurisdiction to make those judgments.¹²⁰

In keeping with this mandate, Ban Ki-moon and his Adviser, Adama Dieng, warned of the risk of genocide in both South Sudan,¹²¹ and the Central African Republic,¹²² and of the risk of atrocity crimes in Burundi and Myanmar.¹²³ For his part, Guterres warned of the risk of atrocity crimes in Mali,¹²⁴ and described the Myanmar government’s crimes against the Rohingya Muslims as “ethnic cleansing”.¹²⁵ However, he overstepped his mandate when he dismissed the validity of Russia’s accusation that Ukraine had committed genocide in the Donetsk and Luhansk regions.¹²⁶ As for his Special Adviser, Alice Nderitu, she has issued a series of warnings about the risk of genocide across the world. In 2023 alone, she warned of the increasing risk of genocide in Sudan,¹²⁷ and in relation to the escalating conflict between Armenia and Azerbaijan.¹²⁸ Three days after Operation Al-Aqsa Flood, Nderitu issued a statement warning of the increasing risk of genocide and atrocity crimes in Ethiopia,¹²⁹ followed by another statement warning of genocide in Darfur,¹³⁰ yet made no mention of the clear threat of genocide facing Palestinians in Gaza.

At the daily media briefing with the Spokesman for the Secretary-General at the UN headquarters in New York, Arab media correspondents questioned the Secretary-General and his Adviser’s silence on the risk

¹¹⁸ “Daily Press Briefing by the Office of the Spokesperson for the Secretary-General,” *United Nations*, 16/11/2023, accessed on 5/2/2024, at: <https://bit.ly/3UumbkG>

¹¹⁹ “When to Refer to a Situation As “Genocide”,” *Guidance Note I*, United Nations Office on Genocide Prevention and the Responsibility to Protect, accessed on 31/3/2024, at: <https://tinyurl.com/yzryhfrm>

¹²⁰ “Statement by Alice Wairimu Nderitu, Special Adviser on the Prevention of Genocide, Friday, 24th February 2023, Abuja, Nigeria,” *Press Release*, United Nations, accessed on 5/2/2024, at: <https://bit.ly/3UtT9BO>

¹²¹ “Possibility of genocide in South Sudan is ‘all too real,’ Ban warns in opinion piece,” *UN News*, 16/12/2026, accessed on 1/4/2024, at: <https://tinyurl.com/m5kj4fsn>

¹²² Josie Ensor, “Ban Ki-moon warns of Rwandan genocide repeat in Central African Republic,” *The Telegraph*, 6/4/2014, accessed on 1/4/2024, at: <https://tinyurl.com/yrhsmxbx>

¹²³ See press statements of the Office of the Special Adviser for Genocide Prevention, available at: “Our Work,” *United Nations, Office on Genocide Prevention and the Responsibility to Protect*, accessed on 30/4/2024, at: <https://bit.ly/3UA9gOf>

¹²⁴ “UN chief warns of ‘high risk’ of atrocities in Mali,” *Radio France Internationale*, 3/6/2019, accessed on 1/4/2024, at: <https://tinyurl.com/5e2unbkr>

¹²⁵ Michelle Nichols, “Half of U.N. Security Council ask Guterres to publicly brief on Myanmar,” *Reuters*, 23/9/2017, accessed on 30/4/2024, at: <https://tinyurl.com/yhubzcyj>

¹²⁶ Antonio Guterres said: “Genocide is a crime that is clearly defined and whose application must be done in line with international law. I do not think that it is the case,” “Ukraine: We need de-escalation now – United Nations chief (22 February 2022),” *United Nations – YouTube*, 23/2/2022, minute 5:39-5:53, accessed on 1/4/2024, at: <https://tinyurl.com/4bab9a6p>

¹²⁷ “Urgent action needed to address Sudan crisis amid increasing risk of genocide and related atrocity crimes, warns UN Special Adviser on the Prevention of Genocide,” *United Nations*, 5/9/2023, accessed on 31/3/2024, at: <https://tinyurl.com/c2fzz5sf>

¹²⁸ “Statement by Ms. Alice Wairimu Nderitu, UN Special Adviser on the Prevention of Genocide, on the situation in Armenia and Azerbaijan,” *United Nations*, 22/9/2023, accessed on 1/4/2024, at: <https://tinyurl.com/4f4krcn3>

¹²⁹ “Statement by Ms. Alice Wairimu Nderitu, United Nations Special Adviser on the Prevention of Genocide, Ethiopia: United Nations Special Adviser warns of heightened risk of genocide and related atrocity crimes amid increased violent clashes in Tigray, Amhara, Afar and Oromi,” *United Nations*, 10/10/2023, accessed on 31/3/2024, at: <https://tinyurl.com/25c5bf5a>

¹³⁰ “Statement by Ms. Alice Wairimu Nderitu, United Nations Special Adviser on the Prevention of Genocide, on the renewed escalation of violence in Darfur, Sudan,” *United Nations*, 14/11/2023, accessed on 31/3/2024, at: <https://tinyurl.com/4j6zapsw>

of Israel's committing genocide against the Palestinians in Gaza, particularly given the numerous warnings they had issued about other parts of the world.¹³¹ On the 14 December briefing, Arab News correspondent Ephrem Kossaiy reported that reliable sources at UN Headquarters had informed him that the Secretary-General demanded that press statements should not mention the word "genocide" about Gaza.¹³² Dujarric neither confirmed nor denied this statement. However, as discussed earlier, raising the issue of the risk of an Israeli genocide in Gaza is a political decision beyond the Special Adviser's authority. It lies with her superior, the Secretary-General.

The Secretary-General and his Special Adviser's failure to relay genocide warnings to the UNSC was exposed by the vocal stance of UN Independent Experts. These experts, including Special Rapporteurs, enjoy financial and intellectual independence since they are not UN employees. They receive no compensation for their pro bono work, under a system known as the Special Procedures of the Human Rights Council. This system includes approximately 60 Independent Special Rapporteurs, Independent Experts, and Working Groups who research topics within their areas of specialization, conduct field visits and report to the Human Rights Council on the issues they have been assigned. The UN experts' findings are considered advisory opinions and do not necessarily reflect the Organization's vision and position.¹³³ This partly explains why the Secretary-General and his Adviser have ignored their multiple warnings about the grave risk of genocide in Gaza.

Additionally, Guterres disregarded a panel discussion organized on 12 December 2023 at the UN headquarters in New York titled "The Gaza War: The Responsibility to Prevent Genocide". The UN Committee on the Palestinian People's Exercise of Their Inalienable Rights, established by the UNGA convened scholars and legal experts who called on Member States to urgently assume their responsibility to stop genocide and other atrocities being committed by Israel against the Palestinians.¹³⁴ For the first time in UN history, calls from within its own headquarters demanded an end to an ongoing genocide, yet these pleas were met with an intransigent silence from the Secretary-General and his Special Adviser.

The Secretary-General Squanders an Opportunity to Activate Article 99 to Warn of Genocide in Gaza

Resolution 1366, adopted by the UNSC in 2001, acknowledged "the essential role" played by the Secretary-General in preventing armed conflicts" in accordance with Article 99 of the UN Charter.¹³⁵ This Article authorizes the Secretary-General to alert the UNSC to any matter which he deems a threat to the maintenance of international peace and security. Since 2009, Article 99 has increasingly been understood as including the potential commission of atrocity crimes, including genocide.¹³⁶ In a report on the actions undertaken by the UN during the final phase of the war in Sri Lanka, a UN internal review criticized then-Secretary-General Ban Ki-moon for failing to invoke Article 99.¹³⁷ It recommended that the Secretary-General should more frequently and explicitly utilize his authority to convene the UNSC under Article 99.¹³⁸ When invoking Article 99, Walter Dorn notes that "In UN terminology, the phrase 'bring to the attention of the Security

¹³¹ "Secretary-General's remarks to the Security Council - on the Middle East [as delivered]," *United Nations – Secretary-General*, 29/11/2023, accessed on 30/4/2024, at: <https://tinyurl.com/2ufmd6cf>.

¹³² "Daily Press Briefing by the Office of the Spokesperson for the Secretary-General," *United Nations*, 14/12/2023, accessed on 1/4/2024, at: <https://tinyurl.com/ycp7rxzw>

¹³³ "Special Procedures of the Human Rights Council," *United Nations, Human Rights, Office of the High Commissioner*, accessed on 5/2/2024, at: <https://bit.ly/48VQ14z>

¹³⁴ "2023 War on Gaza: The Responsibility to Prevent Genocide," *Chair Summary of Panel discussion*, United Nations, 12 December 2023, accessed on 2/5/2024, at: <https://bit.ly/3w7TQXk>

¹³⁵ Security Council Resolution 1366, S/RES/1366, 30 August 2001.

¹³⁶ Edward C. Luck, "Why the United Nations Underperforms at Preventing Mass Atrocities," *Genocide Studies and Prevention: An International Journal*, vol. 11, no. 3 (2018), p. 34.

¹³⁷ *Ibid.*, p. 15.

¹³⁸ Petrie, p. 34.

Council’ means to have a new item inscribed on the agenda of the Security Council”.¹³⁹ Therefore, the activation of Article 99 only applies to matters that the Council has not previously discussed, a prerequisite that is referred to in this study as the “novelty condition”.

On 6 December 2023, Guterres addressed the UNSC under Article 99 to draw its attention to a matter he believed might aggravate threats to the maintenance of international peace and security: “a severe risk of collapse of the humanitarian system” in Gaza.¹⁴⁰ However, this warning did not meet the novelty condition, since it did not inscribe a new matter in the Council’s agenda. The Secretary-General did not alert the Council to a new threat to international peace, but merely reiterated his previous statements, including one on 27 October 2023, in which he warned that the humanitarian system in Gaza was facing “a total collapse with unimaginable consequences for more than 2 million civilians”.¹⁴¹ His recommendation for a humanitarian ceasefire, which he had been repeating since 18 October 2023, was also not new.¹⁴² As noted by Moncef Khane, a former senior UN political affairs officer, Guterres wasted the opportunity to urge the UNSC to prevent genocide, as he would have been expected to do through the activation of Article 99.¹⁴³

The Special Adviser and Her Refusal to Warn Against the Genocide in Gaza

During the 53rd session of the Human Rights Council in July 2023, Nderitu provided an overview of the populations at risk of atrocity crimes. This review encompassed ten regions stretching from Asia to Latin America, through Europe and Africa, including the Indigenous Peoples of Papua in Indonesia, as well as Brazil’s Indigenous Peoples of African descent.¹⁴⁴ However, like her predecessors, Nderitu’s selective list omitted the situation of the Palestinians, despite the early warning mechanism offering no justification for prioritizing one group over others.¹⁴⁵ In addition to likely complying to the Secretary-General’s directives, Nderitu’s prolonged silence on Palestine can be attributed to her pro-Israel bias, evident in several aspects. Firstly, she maintains an essentialist view of the Jews, which prevents her from treating Israel as any other state rather than primarily as a “Jewish” state. Secondly, she holds a conviction that Jews are inherently victims; a perspective that precludes the possibility of them being perpetrators at the same time. Lastly, she believes that Jews are more at risk of genocide than others.

The Advisor’s Double Standards and Bias in Favour of Israel

In the aftermath of Israel’s reprisal campaign in Gaza, Nderitu’s Office issued a controversial statement on 15 October 2023. The statement characterized the violence during Operation Al-Aqsa Flood as particularly “vicious”, asserting that it was “targeted on the basis of identity”.¹⁴⁶ This perspective aligns with the Israeli narrative, which detaches the attack from the broader context of a decades-long illegal occupation, siege, state aggression, and settler violence.

¹³⁹ Dorn & Matloff, p. 308.

¹⁴⁰ “The Secretary-General letter to the Security Council invoking Article 99 of the United Nations Charter,” *OCHA*, 6/12/2023, accessed on 5/2/2024, at: <https://tinyurl.com/2u7zt365>; “Gaza: Guterres invokes ‘most powerful tool’ Article 99, in bid for humanitarian ceasefire,” *United Nations*, 6/12/2023, accessed on 8/3/2024, at: <https://tinyurl.com/47zs7c5k>

¹⁴¹ “Humanitarian System for More than 2 Million Civilians in Gaza Facing Total Collapse, Secretary-General Warns, Once Again Urging Ceasefire, Aid Delivery at Scale Needed,” *United Nations*, 27/11/2023, accessed on 5/2/2024, at: <https://tinyurl.com/4dxhrt8h>

¹⁴² “Highlights of the Noon Briefing by Farhan Haq,” *United Nations*, 18/10/2023, accessed on 5/2/2024, at: <https://tinyurl.com/484dwjz4>

¹⁴³ Moncef Khane, “Invoking Article 99 of the UN Charter: Does It Make a Difference?” *Passblue*, 18/12/2023, accessed on 14/2/2024, at: <https://cutt.ly/gw1minKZ>

¹⁴⁴ “53rd Session of the Human Rights Council, Interactive dialogue with the Special Adviser on the Prevention of Genocide,” *Press Release*, United Nations, 4 July 2023, accessed on 1/4/2023, at: <https://tinyurl.com/2xetbvpb>

¹⁴⁵ *Ibid.*

¹⁴⁶ “Statement of the Special Adviser on the Prevention of Genocide, Alice Wairimu Nderitu, on the situation in the Middle East,” *Press Release*, United Nations, 15 October 2023, accessed on 30/4/2024, at: <https://tinyurl.com/bdekcm42>

In a rare move, 50 UN staff members sent Adviser Nderitu a strongly worded letter of protest, copying the Secretary-General and senior officials in the Secretariat.¹⁴⁷ The letter points out that the statement fails to mention the 16-year blockade on Gaza and the collective punishment imposed on its population, including the withholding of water, medicine, electricity, fuel, and other vital supplies. The staff expressed their objection to Nderitu's bias in favour of Israelis, criticizing her for implicitly inciting against Palestinians rather than warning of the threat of genocide they face. The letter states,

Sadly, the public statement, instead of condemning the dehumanization of Palestinians, may have further dehumanized them. We trust you are aware of the dangers of dehumanizing language – a warning sign and precursor to genocide – and that is [sic] has been and continues to be used by Israeli leaders.¹⁴⁸

The UN staff letter listed numerous statements by Israeli and US leaders expressing intent to destroy the Palestinians in Gaza, along with experts' warnings of a looming genocide. They warned the Adviser of the potential existence of an Israeli intent to commit genocide against the Palestinians in Gaza. The letter urged her, in fulfilling her mandate, "to uphold the equal rights and equal humanity of Palestinian civilians with the same passion and compassion as you have for Israeli civilians".¹⁴⁹

In response to press inquiries regarding the Secretary-General's stance on the contents of this letter, Dujarric affirmed, "the Secretary-General continues to have full confidence in the work of Ms. Nderitu".¹⁵⁰ Guterres demonstrated his support for his Adviser by refusing to address calls from numerous UN employees and online petitions demanding her dismissal. He also ignored requests by Palestinian human rights organizations for an inquiry into Nderitu's failure to fulfill her mandate. They demanded that the inquiry examine her neglect to raise awareness about Israel's ongoing genocide against Palestinians in Gaza or the alarming risk of such a genocide, her failure to acknowledge the ICJ ruling that Israel is plausibly committing genocide along with the provisional measures ordered for Israel, and her refusal to engage with, meet, or respond to requests from Palestinian human rights organizations.¹⁵¹

These requests assumed, however, that the Adviser is free to make independent decisions, whereas the Secretary-General has the authority to appoint the Special Advisers, supervise their work, and advise them based on the tasks formulated by Kofi Annan in 2004 in his letter to the President of the UNSC (S/2004/567). Nderitu operates under the directives of the Secretary-General, to whom she submits reports. Public reports must be approved by the Executive Office of the Secretary-General before they can be published and circulated.¹⁵² Likewise, press releases issued by the Adviser's Office are only circulated after receiving approval from the Executive Office of the Secretary-General, which reviews them for content to ensure alignment with the Secretary-General's position and directives.¹⁵³

Nderitu: Early Warning Mechanism Prioritizes Jews and Antisemitism

Nderitu firmly believes that Jews worldwide face a greater risk of genocide today than any other group. This belief may be attributed to the Adviser's interactions with Jewish circles. In 2014, Nderitu studied

¹⁴⁷ The full text of the letter is available on: "Rami Ayari," *X*, 9/11/2023, accessed on 22/5/2024, at: <https://bit.ly/4auufqe>

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*

¹⁵⁰ "Daily Press Briefing by the Office of the Spokesperson for the Secretary-General," *United Nations*, 14/12/2023.

¹⁵¹ Letter addressed by Palestinian Human Rights Organizations to the UN Secretary-General: "Palestinian Organizations Express Disappointment and Call for an Inquiry Regarding the Special Adviser on the Prevention of Genocide's Failure to Fulfil Her Mandate in Addressing Israel's Ongoing Genocide in Gaza," *Al Haq*, 7/2/2024, accessed on 22/5/2024, at: <https://bit.ly/44RnzRz>

¹⁵² General Assembly, "Thirtieth report of the Advisory Committee on Administrative and Budgetary Questions on the proposed program budget for the biennium 2008-2009," para. 12-13.

¹⁵³ On how the office operates, see: Akhavan, pp. 1056-1058.

at the Raphaël Lemkin Seminar, affiliated with the Auschwitz Institute for the Prevention of Genocide, where she also worked as an instructor before assuming her current UN position.¹⁵⁴ She acknowledges that her family environment and her visit to the Auschwitz camp had a particular influence on her.¹⁵⁵ In her speeches and media interviews, she refers to Jews across the world, including those in Israel, as the “Jewish community”, regardless of their geographic, social, and doctrinal differences and affiliations. Moreover, the Adviser considers Jews and other communities that previously endured genocide more vulnerable than others to the risk of this crime being perpetrated again,¹⁵⁶ without citing any evidence in support of her personal assessment:

I think the sense of victimhood it’s [sic] unfortunately not that anything these communities that have been targeted for extinction can get out [sic]. Because they continue to be targeted even today. Today the Jewish community, Bosnian Muslims, and Tutsis are still at risk, and sometimes because of social media, given that there are so many weapons in the world, there are so many ways of killing people, maybe the risk is even higher than it was before.¹⁵⁷

The Adviser holds an essentialist view of Jews, both in Israel and elsewhere. She perceives them all as immutable victims who could never become the perpetrators. Consequently, she struggles to recognize Palestinians as victims in their relationship with Jewish “victims”, whom she perceives as more vulnerable to genocide than others.

As a result of this rationale, Nderitu could only concur with Guterres’ undeclared exclusion of Palestinians from the list of Indigenous Peoples at risk of genocide, while including Jews in the UN’s early warning mechanism. The Palestinians’ exclusion starkly contrasts with the Special Advisor’s notable involvement in warning against a perceived threat of genocide facing Jews, as exemplified by her focus on Holocaust denial and antisemitism.

In her introduction to the policy paper published in July 2022 to combat Holocaust and genocide denial, in partnership with the pro-Israeli American Jewish Committee, the Adviser states that Holocaust denial is rooted in antisemitism. She emphasizes that it serves as a warning that the conditions that led to the extermination of the Jews persist today, without any study, research, or even opinion polls to support this assumption.¹⁵⁸ Dani Dayan, Chairman of Yad Vashem, the World Holocaust Remembrance Centre, contradicts Nderitu’s assertion. He contends that the Jewish people are no longer persecuted and do not live at the mercy of others, but, on the contrary, they have “an independent nation and a formidable army”, and they decide their own fate.¹⁵⁹

Nderitu’s belief that Jews are at risk of genocide is shaped by the IHRA’s working definition of antisemitism. While she acknowledges that the world’s leading human rights organizations reject this definition due to its censorship of criticism of Israel, she maintains that it lies at the heart of her mandate of preventing genocide.¹⁶⁰ She further states that she is not concerned about the distinction between antisemitism and anti-Zionism:

¹⁵⁴ “AIPG Congratulates Alice Wairimu Nderitu On Her Appointment as Un Special Adviser on The Prevention of Genocide,” *The Auschwitz Institute for the Prevention of Genocide and Mass Atrocities*, accessed on 1/4/2024, at: <https://tinyurl.com/2v8jeh42>

¹⁵⁵ “First Person: The Holocaust, Genocide, and War,” *UN News*, 20/1/2022, accessed on 14/2/2024, at: <http://tinyurl.com/4yk7w2w6>

¹⁵⁶ “What is the U.N. doing to Fight Antisemitism? with U.N. Special Advisor Alice Wairimu Nderitu,” *MomentMag – YouTube*, 19/9/2023, min. 35:00-35:31, accessed on 5/2/2024, at: <https://bit.ly/4bGYKLt>

¹⁵⁷ *Ibid.*, min. 37:30-38:05.

¹⁵⁸ “AJC’s Jacob Blaustein Institute Partners with UN on New Policy for Combating Holocaust and Genocide Denial,” *American Jewish Committee*, 16/6/2022, accessed on 1/4/2024, at: <https://cutt.ly/Zw5ZUoLg>

¹⁵⁹ Gadi Zaig, Zvika Klein & Tovah Lazaroff, “Erdan blasts Hamas final solution wearing yellow star at UNSC,” *The Jerusalem Post*, 31/10/2023, accessed on 27/5/2024, at: <https://tinyurl.com/ydr3dwx7>

¹⁶⁰ “What is the U.N. Doing to Fight Antisemitism? A Wide-Open Conversation with U.N. Special Advisor Alice Wairimu Nderitu and Noah Phillips,” *Moment Magazine*, min. 42:50-43:25 and 45:15-45:30, accessed on 21/3/2024, at: <https://tinyurl.com/2su2ze74>

I think for me (sic) so long as anybody is targeted on the basis of their identity, it's very clear (sic) it's the genocide convention. I think the world knows enough about the difference between antisemitism and antizionism (sic), but basically, it doesn't even matter ... so long as there is a Jewish person, it doesn't matter what they are identified as... if they are targeted, then that is a big big (sic) problem, it is a big concern and it's an issue to be enquired (sic) about.¹⁶¹

Accordingly, if we link Nderitu's allegation that Hamas targeted Israeli civilians based on their identity and her view that targeting any Jew on this basis necessitates the application of the Genocide Convention, then Palestinians could become the source of a genocide threat to Jews, resulting in a complete reversal of roles according to her baseless assessment.¹⁶²

The Special Advisor's silence regarding Palestinians and the international warnings against the risk of genocide in Gaza is clearly linked to her bias in favour of Israel and its allies. For nearly four months following her controversial statement on 15 October, she maintained complete silence regarding the risk of genocide facing Palestinians in Gaza. She also failed to issue a statement stressing the need to implement the ICJ's provisional measures in Gaza in line with the statements she had issued following the ICJ's issuance of similar rulings in the cases of Ukraine-Russia¹⁶³ and Armenia-Azerbaijan.¹⁶⁴ The Adviser's inaction prompted 16 Palestinian human rights organizations to address the Secretary-General on 7 February 2024. They called upon him to investigate his Adviser's failure to fulfill her mandate concerning Palestinians in Gaza; a call he has thus far ignored.¹⁶⁵

In response to the Palestinians' appeal, Nderitu broke her silence in early February, issuing three press releases in less than two months. However, these statements make no distinction between the Palestinian victims and the Israeli perpetrators, referring to the situation in Gaza as a "war" and a conflict between two equal parties requiring a political solution.¹⁶⁶ Her 28 March statement on the "situation in the Middle East" marked the first reference to the threat of genocide. Rather than linking this threat to Israel's atrocities in Gaza, she framed it within the broader context of violence in the Middle East, claiming that "many have suffered insurmountable violence in the troubled history of the Middle East, a region in which the risk factors for genocide, war crimes and crimes against humanity are extremely high and continue to rise".¹⁶⁷

Nderitu's consistent exclusion of Palestinians from the early warning mechanism for the prevention of atrocity crimes aligns with the approach of Secretary-General Guterres. This stance is consistent with the decisions made by previous UN Secretaries-General and their Special Advisers on the Prevention of Genocide over the past twenty years. Consequently, any calls for investigation and accountability should not be limited to Special Adviser Nderitu but must also include Guterres, given his established responsibility. Their resolute decision not to warn of the risk of genocide facing Palestinians in Gaza sets a significant precedent in UN history, necessitating a review of the grave responsibilities entrusted to senior UN Secretariat officials, without clear legal accountability.

¹⁶¹ Ibid., min. 46:00-46:14.

¹⁶² Ibid., min. 45:15-45:30.

¹⁶³ "Statement by the UN Special Adviser on the Prevention of Genocide on the Order of the International Court of Justice of 16 March 2022 (Ukraine vs. Russian Federation)," *Global Centre for The Responsibility to Protect*, 8/3/2022, accessed on 5/2/2024, at: <https://bit.ly/3HT7EaV>

¹⁶⁴ "Statement by the UN Special Adviser on the Prevention of Genocide on the situation in Armenia and Azerbaijan," *Press Release*, United Nations, 27 September 2023, accessed on 2/5/2024, at: <https://bit.ly/3SQ2hQp>

¹⁶⁵ "Palestinian Organizations Demand Inquiry into UN Genocide Prevention Office's Inexcusable Failure to Address Israel's Ongoing Genocide in Gaza," *Mezan*, 7/2/2024, accessed on 14/2/2024, at: <http://tinyurl.com/3pdm92xv>

¹⁶⁶ For the three statements issued on 9, 14 February and 28 March, 2024, see: "Public Statements," *The Office of the Special Adviser on the Prevention of Genocide and the Responsibility to Protect*, accessed on 1/4/2024, at: <https://tinyurl.com/3b54tyzb>.

¹⁶⁷ "Statement by Ms. Alice Wairimu Nderitu, Special Adviser on the Prevention of Genocide, on the situation in the Middle East," *Press Release*, United Nations, 28 March 2024, accessed on 1/4/2024, at: <https://tinyurl.com/5n863kwr>

Conclusion

This study underscores the intrinsic link between genocide and the Zionist settler-colonial project in Palestine. This process, which dates back to at least the Nakba in 1948, has intensified in Gaza since the Israeli siege began in 2007, reaching its peak in the aftermath of Operation Al-Aqsa Flood on 7 October 2023. The study argues that the Secretary-General and his Special Advisor's refusal to convey Palestinian and international warnings about the risk of genocide in Gaza to the UNSC points to the fact that the exclusion of Palestine from the early warning mechanism to prevent the crime of genocide and other atrocity crimes since 2004 was a deliberate political decision, rather than simple neglect. This is supported by the abundance of UN reports documenting that Israel's policies and practices in the occupied territories align with the risk factors and indicators of genocide outlined in the Framework Analysis, including genocidal rhetoric.

The study identifies five major factors that underlie the inherent institutional flaws in the early warning mechanism to prevent genocide, explaining why it continues to fail in the case of Palestine in general, and Gaza in particular: (1) The lack of independence of the early warning mechanism and its subordination to the authority of the UN Secretary-General; (2) the lack of an independent group of experts to monitor the work of the Special Adviser and ensure its independence; (3) the vulnerability of UN Secretaries-General to pressure from Israel and its allies; (4) the lack of UN legal accountability for atrocity crimes; (5) the failure of the Palestinian Authority and the Arab countries to include Palestine the early warning mechanism, in contrast to Israel and its allies' successful use of the mechanism to suppress critiques of Israeli policies under the guise of combating "the new anti-Semitism".

The study concludes that the failure of the UN early warning mechanism for the prevention of atrocity crimes regarding Palestine is more institutional than functional. To overcome these flaws and failures, it makes three recommendations:

1. Linking UN responsibility to accountability for warning of potential atrocity crimes by requesting an independent international investigation into the failure of the Secretary-General and his Adviser in including Palestine in the early warning mechanism to prevent genocide, and their refusal to warn of genocide in Gaza. The investigation findings would be instrumental in reforming this mechanism.
2. Tasking the UN Human Rights Council with establishing an independent committee of experts on genocide and other atrocity crimes that includes a fairly balanced geographical distribution. The committee would be in charge of monitoring the work of a reformed Office of the Special Adviser on the Prevention of Genocide; help identify cases that require monitoring and reporting; issue warnings, submit reports, and provide periodic and urgent briefings directly to the UNSC and the UNGA.
3. Calling upon the Palestinian Authority and the Arab states to demand that the Secretary-General activate the early warning mechanism, by placing Palestinians in the occupied territories (the West Bank, East Jerusalem, and Gaza Strip) on the list of Indigenous Peoples at risk of genocide by the Israeli settler colonial state.

References

- “2023 War on Gaza: The Responsibility to Prevent Genocide.” *Chair Summary of Panel discussion*. United Nations. 12 December 2023. Accessed on 2/5/2024, at: <https://bit.ly/3w7TQXk>
- “53rd Session of the Human Rights Council, Interactive dialogue with the Special Adviser on the Prevention of Genocide.” *Press Release*. United Nations. 4 July 2023. Accessed on 1/4/2023, at: <https://tinyurl.com/2xetbvbp>
- “Convention on the Prevention and Punishment of the Crime of Genocide.” UN General Assembly Resolution 260 A (III). 9/12/1948.
- “Human Rights up Front speaks to the essence of the United Nations.” *Briefing Note*. UN HABITAT, Human Rights Up Front. 5/12/2014. Accessed on 1/4/2024, at: <https://tinyurl.com/54vyrzww>
- “Israel in Lebanon: Report of the International Commission to Enquire into Reported Violations of International Law by Israel during Its Invasion of Lebanon.” *Journal of Palestine Studies*. vol. 12, no. 3 (Spring 1983).
- “No Safe Place.” Report of the Independent Fact-Finding Committee on Gaza Presented to the League of Arab States. 30 April 2009.
- “Official visit of the Office of the SRSO-SVC to Israel and the occupied West Bank, 29 January – 14 February 2024.” *Mission Report*. United Nations. 4 March 2024. Accessed on 1/4/2024, at: <https://tinyurl.com/mr2y2774>
- “Statement by Alice Wairimu Nderitu, Special Adviser on the Prevention of Genocide, Friday, 24th February 2023, Abuja, Nigeria.” *Press Release*. United Nations. Accessed on 5/2/2024, at: <https://bit.ly/3UtT9BO>
- “Statement by Ms. Alice Wairimu Nderitu, Special Adviser on the Prevention of Genocide, on the situation in the Middle East.” *Press Release*. United Nations. 28 March 2024. Accessed on 1/4/2024, at: <https://tinyurl.com/5n863kwr>
- “Statement by the Special Advisers of the Secretary-General on the Prevention of Genocide, Mr Adama Dieng, and on the Responsibility to Protect, Ms Jennifer Welsh, on the situation in Israel and in the Palestinian Occupied Territory of Gaza Strip.” *Reliefweb*. 24/7/2014. Accessed on 14/2/2024, at: <http://tinyurl.com/h34p2ves>
- “Statement by the UN Special Adviser on the Prevention of Genocide on the situation in Armenia and Azerbaijan.” *Press Release*. United Nations. 27 September 2023. Accessed on 2/5/2024, at: <https://bit.ly/3SO2hQp>
- “Statement of the Special Adviser on the Prevention of Genocide, Alice Wairimu Nderitu, on the situation in the Middle East.” *Press Release*. United Nations. 15 October 2023. Accessed on 30/4/2024, at: <https://tinyurl.com/bdekcm42>
- “When to Refer to a Situation As ‘Genocide’.” *Guidance Note 1*. United Nations Office on Genocide Prevention and the Responsibility to Protect. Accessed on 31/3/2024, at: <https://tinyurl.com/yzryhfrm>
- Ahmad, Muhammad Sayyid. “11 September and the Palestinian Cause.” *Journal of Palestinian Studies*. vol. 13, no. 52 (Fall 2002).
- Akhavan, Payam. “Report on the Work of the Office of the Special Adviser of the United Nations Secretary-General on the Prevention of Genocide.” *Human Rights Quarterly*. vol. 28, no. 4 (November 2006).
- Boon, Kristen E. “The United Nations as Good Samaritan: Immunity and Responsibility.” *Chicago Journal of International Law*. vol. 16, no. 2 (2016).

- Boyle, Francis A. "Palestine: Sue Israel for genocide before the International Court of Justice!." *Journal of Muslim Minority Affairs*. vol. 20, no. 1 (April 2000), pp. 161-166.
- Byrnes, Andrew C. & Gabrielle Simm. "Peoples' Tribunals, International Law and the Use of Force." *University of New South Wales Law Journal*. vol. 36, no. 2 (2013).
- Canadians for Justice and Peace in the Middle-East. "IHRA's True Intentions: This is the Speech about Israel and Palestine that IHRA Wants to Silence" (December 2022). Accessed on 29/2/2024, at: <http://tinyurl.com/yfy9mccu>
- Deng, Francis. "Making an Impossible Mandate Possible: The Challenge of Preventing Genocide and Mass Atrocities." *End of Assignment Note*. Concordia University. February 2012. Accessed on 4/1/2024, at: <https://tinyurl.com/2zestpvc>
- Dieng, Adama & Jennifer Welsh. "Assessing the Risk of Atrocity Crimes." *Genocide Studies and Prevention: An International Journal*. vol. 9, no. 3 (2016).
- Dorn, A. Walter & Jonathan Matloff. "Preventing the Bloodbath: Could the UN have Predicted and Prevented the Rwandan Genocide?." *Journal of Conflict Studies*. vol. 20, no.1 (Spring 2000).
- ESCWA. "Israeli practices towards the Palestinian people and the issue of apartheid, issued on 15/3/2017." Translation from English. Geneva: Euro-Mediterranean Human Rights Monitor, 30/7/2018. Accessed on 29/4/2024, at: <https://shorturl.at/dxAN3>
- Fraser, Ronnie & Lola Fraser (eds.). *Challenging the Boycott, Divestment and Sanctions (BDS) Movement*. Abingdon: Routledge, 2023.
- Freedman, Rosa. "UN Immunity or Impunity? A Human Rights Based Challenge." *European Journal of International Law*. vol. 25, no. 1 (February 2014).
- General Assembly Resolution 3379. 10 November 1975. A/RES/3379(XXX).
- General Assembly Resolution 37/123. 16 December 1982. A/RES/37/12.
- General Assembly Resolution 61/225. 26 January 2007.
- General Assembly Resolution 67/250. 25 January 2022.
- General Assembly Resolution 8646. 16 December 1991. A/RES/46/86.
- General Assembly Resolution. A/RES/60/7. 1 November 2005.
- General Assembly. "Annual Report of the United Nations High Commissioner for Human Rights and Reports of the High Commissioner and the Secretary-General." 18/3/2008. A/HRC/7/37. Accessed on 1/4/2024, at: <https://tinyurl.com/3buhumde>
- General Assembly. "Annual Report of the United Nations High Commissioner for Human Rights and Reports of the High Commissioner and the Secretary-General." 18/2/2009. A/HRC/10/30. Accessed on 1/4/2024, at: <https://tinyurl.com/3zcdjd7k>
- General Assembly. "Report of the Secretary-General submitted pursuant to Resolution 53/35, The Fall of Srebrenica." 15/11/1999. Accessed on 5/2/2024, at: <https://bit.ly/493R18o>
- General Assembly. "Seventy-eighth Session, item 139 of the preliminary list, proposed program budget for 2024, Part II." 12/5/2023. A/78/6. Accessed on 27/3/2024, at: <https://tinyurl.com/5xsds8sz>
- General Assembly. "Thirtieth report of the Advisory Committee on Administrative and Budgetary Questions on the proposed program budget for the biennium 2008-2009." 12/14/2007. A/62/7/Add.29. Accessed on 4/1/2024, at: <https://tinyurl.com/yc3rp544>

- General Assembly. "Towards a System of Accountability in the United Nations Secretariat." 5/5/2024. A/RES/64/259. Accessed on 1/4/2024, at: <https://tinyurl.com/yja7bn9n>
- Goldsmith, Katherine. "The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge-Based Approach." *Genocide Studies and Prevention: An International Journal*. vol. 5, no. 3 (2010).
- International Court of Justice. "Application instituting proceedings and request for the indication of provisional measures, South Africa." 28/12/2023. Accessed on 4/4/2024, at: <https://tinyurl.com/3j8tfrwm>
- Jabour, George. "*al-Qarār/3379/ft al- 'Ām al-Khāmis wa-l-Thalāthīn li-Šudūrih: Mulghā, wa-l- 'Unšuriyya al-Šahyūniyya Haqīqiyya 'Ayāniyya Yawmiyya, fa-Kayf Yumkin An Yu 'ād Ilayh al-I'tibār?*." Baheth Centre for Palestinian and Strategic Studies. 25/11/2009. Accessed on 5/2/2024, at: <https://bit.ly/48jxteZ>
- Klug, Brian. "The Collective Jew: Israel and the New Antisemitism." *Patterns of Prejudice*. vol. 37, no. 2 (2003).
- Lemkin, Raphaël. *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. New York: Carnegie Endowment for International Peace, 1944.
- Lerman, Antony. "New Antisemitism." *Discussion Paper Series*. Centre for Research on Migration, Refugees and Belonging. September 2015. Accessed on 15/5/2024, at: <https://bit.ly/3WMth5e>
- Letter dated 17 May 1984 from the Permanent Observer of the Palestine Liberation Organization to the United Nations addressed to the President of the Security Council. S/16570. Accessed on 5/2/2024, at: <https://bit.ly/42tWIdf>
- Letter dated 22 January 2016 from the Secretary-General of the United Nations and addressed to the President of the General Assembly and the President of the Security Council. A/70/741-S/2016/71. Accessed on 21/3/2024, at: <https://tinyurl.com/bdd4hexv>
- Letter dated 31 August 2007 from the Secretary-General addressed to the President of the Security Council. S/2007/721. Accessed on 21/3/2024, at: <https://tinyurl.com/6s3fvbm3>
- Luck, Edward C. "Why the United Nations Underperforms at Preventing Mass Atrocities." *Genocide Studies and Prevention: An International Journal*. vol. 11, no. 3 (2018).
- McLoughlin, Stephen, Jess Gifkins & Alex J. Bellamy. "The Evolution of Mass Atrocity Early Warning in the UN Secretariat: Fit for Purpose?." *International Peacekeeping*. vol. 30, no. 4, (2023).
- Petrie, Charles. "Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka" (November 2012). Accessed on 5/2/2024, at: <https://bit.ly/3Sxr5L4>
- Rashed, Haifa & Damien Short. "Genocide and Settler Colonialism: Can a Lemkin-Inspired Genocide Perspective Aid Our Understanding of the Palestinian Situation?." *The International Journal of Human Rights*. vol. 16, no. 8 (2012).
- Schabas, Willam. "Convention for the Prevention and Punishment of the Crime of Genocide." *Audiovisual Library of International Law, United Nations*. Accessed on 5/2/2024, at: <https://tinyurl.com/mvew3d92>
- Security Council Resolution 1366, S/RES/1366. 30 August 2001.
- Shaeed, Ahmed. "Taking Action to Combat Antisemitism: Follow-up Action Plan for Advancing the Implementation of the Recommendations of the UN Special Rapporteur on Freedom of Religion or Belief in his 2019 Report to the UN General Assembly." A/74/358.
- St. Charles, Bonnie. "You're on Native Land: The Genocide Convention, Cultural Genocide, and Prevention of Indigenous Land Takings." *Chicago Journal of International Law*. vol. 21, no. 1 (2010).

- The United Nations Human Rights Council. "Anatomy of A Genocide: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese." *Agenda item 7. A/HRC/55/73*. 25 March 2024. Accessed on 31/3/2024, at: <https://tinyurl.com/3xnj4e9h>
- United Nations, General Assembly. "Eliminate of all forms of religious intolerance." A/74/358. 20/9/2019.
- United Nations, General Assembly. "Proposed programme budget for 2024." A/78/6. 4/4/2023.
- United Nations, General Assembly. Report of the Independent Inquiry into the actions of the United Nations during the 1994 Genocide in Rwanda. S/1999/1257. 16/12/1999. Accessed on 16/5/2024, at: <https://bit.ly/4aDIYjT>
- United Nations. "Framework of Analysis for Atrocity Crimes: A Tool for Prevention" (2014).
- United Nations. "Outreach Programme on the Holocaust." *Discussion Papers*. Accessed on 14/2/2024, at: <https://cutt.ly/iw1nHMpO>
- United Nations. "Report of the Preparatory Commission of the United Nations." 23/12/1945. Accessed on 21/3/2024, at: <https://tinyurl.com/2eubbhbp>
- United Nations. "United Nations Declaration on Indigenous Peoples" (2008). Accessed on 5/2/2024, at: <https://tinyurl.com/4d6fuem3>
- Wakeham, Pauline. "The Slow Violence of Settler Colonialism: Genocide, Attrition, and the Long Emergency of Invasion." *Journal of Genocide Research*. vol. 24, no. 3 (2022).