

The Dangers of Complicity: The US Courts, Gaza and Genocide

By [Dr. Binoy Kampmark](#)

Global Research, February 06, 2024

Region: [Middle East & North Africa, USA](#)

Theme: [Law and Justice](#), [United Nations](#)

In-depth Report: [PALESTINE](#)

All Global Research articles can be read in 51 languages by activating the Translate Website button below the author's name (only available in desktop version).

To receive Global Research's Daily Newsletter (selected articles), [click here](#).

Click the share button above to email/forward this article to your friends and colleagues. Follow us on [Instagram](#) and [Twitter](#) and subscribe to our [Telegram Channel](#). Feel free to repost and share widely Global Research articles.

[Donation Drive: Global Research Is Committed to the "Unspoken Truth"](#)

Holding the foreign policy of a country accountable in court, notably when it comes to matters criminal, can be insuperably challenging. Judges traditionally shun making decisions on policy, even though they unofficially do so all the time. The Center for Constitutional Rights, a New York-based civil liberties group, was not to be discouraged, most notably regarding the Biden administration's unflagging support for Israel and its war in Gaza.

In a [filing](#) in the US District Court for the Northern District of California last November, the CCR, representing a number of Palestinian human rights organisations including Palestinians in Gaza and the United States, sought an order "requiring that the President of the United States, the Secretary of State, and the Secretary of Defense adhere to their duty to prevent, and not further, the unfolding genocide of Palestinian people in Gaza." Such a duty, arising in the UN Genocide Convention of 1948, "is judicially enforceable as a peremptory norm of customary international law."

The complaint alleged that the genocidal conditions in Gaza had "so far been made possible because of unconditional support given [to Israel] by the named official-capacity defendants in this case," namely, President Joseph Biden, Secretary of State Antony Blinken and Secretary of Defense Lloyd Austin.

At the time proceedings were initiated, the Israeli campaign in Gaza, launched in response to the October 7, 2023 attacks by Hamas, had already claimed the lives of 11,000 Palestinian civilians, "more than 4,500 of them children, as well as entire families, numerous journalists and UN workers." The bombardment had crippled critical infrastructure, led to the displacement of 1.6 million persons, and had been "accompanied by a total siege of Gaza, depriving Palestinians in Gaza the conditions of life necessary for human survival: food, water, medicine, fuel, and electricity." (Currently, the displaced number exceeds 2

million; the number of dead towers at 26,000.)

In reaching [his decision](#) to dismiss the case on jurisdictional grounds, Jeffrey S. White admitted it was the “most difficult” of his career. He acknowledged South Africa’s [action](#) in the International Court of Justice against Israel, which argues that Israel’s conduct against Palestinians in the Gaza Strip satisfies the elements of genocide.

The January 26 interim order of [provisional measures granted](#) by the ICJ explicitly put Israel on notice to comply with the Genocide Convention, punish those responsible for directly and publicly inciting genocide, permit basic humanitarian assistance and essential services to the Gaza Strip, preserve relevant evidence pertaining to potential genocidal acts and submit a report to the ICJ on its compliance within a month. In international law, these interim measures [are accepted as binding](#).

The ICJ also showed some scepticism to arguments that Israel had taken adequate measures to minimise harm to Palestinian civilians and respond to instances where an incitement to genocide could be imputed. None of the measures taken till that point had removed the risk of irreparable harm; to merely assert compliance was not sufficient evidence of it.

In White’s words, “the undisputed evidence before this Court comports with the finding of the ICJ and indicates that the current treatment of the Palestinians in the Gaza Strip by the Israeli military may plausibly constitute a genocide in violation of international law.” Lawyers representing the government also [chose not to cross-examine](#) witnesses, bar one Holocaust scholar who testified that Israel’s actions in the Gaza Strip could be classed as genocidal. Unfortunately for the plaintiffs, the claims advanced in this case, involving disputes over foreign policy, raised “fundamentally non-justiciable political questions.” To compel the US government to cease military and financial assistance to Israel were matters “intimately related to foreign policy and national security”.

The plaintiffs had encountered that great limitation articulated by Chief Justice Marshall in 1803: that “[q]uestions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court”. To do so would violate the separation of powers. The judiciary was, according to White, “not equipped with the intelligence or the acumen necessary to make foreign policy decisions on behalf of the government.”

Despite being bound by weighty precedent and rulings in previous cases, White concludes with a plea. The ICJ had found it “plausible that Israel’s conduct amounts to genocide.” The judge implored the “Defendants to examine the results of their unflagging support of the military siege against the Palestinians in Gaza.” Not bad for one lacking intelligence or the acumen necessary to make foreign policy decisions.

While disappointed in White’s ruling, Brad Parker, a senior advisor to one of the organisational plaintiffs, Defense for Children International Palestine, [saw](#) the thickest of silver linings. Along with the ICJ decision, “and the increasing recognition that what Israel is carrying out is a genocide and the US is complicit in those genocidal acts, I think the strong language from a US federal court judge increasingly works to isolate Israel’s actions and also bring pressure on the Biden administration to change course.”

To date, the slaughter in Gaza continues. Israeli politicians and military officials persist in

claiming that murderously innovative approaches to killing Palestinian civilians are not, by definition, genocidal. But the walls of justifiable impunity, so proudly claimed by Israel in its righteous mission of self-defence, are proving increasingly porous.

*

Note to readers: Please click the share button above. Follow us on Instagram and Twitter and subscribe to our Telegram Channel. Feel free to repost and share widely Global Research articles.

Dr. Binoy Kampmark was a Commonwealth Scholar at Selwyn College, Cambridge. He currently lectures at RMIT University. He is a Research Associate of the Centre for Research on Globalization (CRG). Email: bkampmark@gmail.com

Featured image [source](#)

The original source of this article is Global Research
Copyright © [Dr. Binoy Kampmark](#), Global Research, 2024

[Comment on Global Research Articles on our Facebook page](#)

[Become a Member of Global Research](#)

Articles by: [Dr. Binoy
Kampmark](#)

Disclaimer: The contents of this article are of sole responsibility of the author(s). The Centre for Research on Globalization will not be responsible for any inaccurate or incorrect statement in this article. The Centre of Research on Globalization grants permission to cross-post Global Research articles on community internet sites as long the source and copyright are acknowledged together with a hyperlink to the original Global Research article. For publication of Global Research articles in print or other forms including commercial internet sites, contact: publications@globalresearch.ca
www.globalresearch.ca contains copyrighted material the use of which has not always been specifically authorized by the copyright owner. We are making such material available to our readers under the provisions of "fair use" in an effort to advance a better understanding of political, economic and social issues. The material on this site is distributed without profit to those who have expressed a prior interest in receiving it for research and educational purposes. If you wish to use copyrighted material for purposes other than "fair use" you must request permission from the copyright owner.

For media inquiries: publications@globalresearch.ca