

DOI: 10.5281/zenodo.20818770

THE ROLE OF MOTIVE IN PROVING SPECIAL INTENT OF GENOCIDE IN INTERNATIONAL CRIMINAL LAW: AN ANALYSIS OF THE ICTR JURISPRUDENCE AND ITS IMPLICATIONS FOR THE SITUATION IN GAZA

Khawaja Mirajuddin Nail¹ and Seyed Zuhair Al-Mesilini²

¹Ph.D. Candidate in Criminal Law and Criminology, Al-Mustafa International University, Assistant Professor, Faculty of Law, Ghalib University, Kabul, Afghanistan. Email: mirajuddin.nail@ghalib.edu.af, khajanail@gmail.com Orcid ID: <https://orcid.org/0000-0003-0423-7390>

²Scientific Department of Islamic Theology, Golestan Representative Office, Al-Mustafa International University, Tunisia, Email: zohir_mesilini@miu.ac.ir Orcid ID: <https://orcid.org/0009-0008-1335-7267>

Received: 12/04/2026

Accepted: 26/05/2026

ABSTRACT

The crime of genocide, due to the necessity of proving a “specific intent” to destroy, in whole or in part, a national, ethnic, racial, or religious group, is among the most difficult crimes to establish in international criminal law. This article, employing a descriptive-analytical method and drawing upon library resources and international legal instruments, examines this evidentiary challenge. The primary objective is to elucidate the role of motive as a crucial evidentiary tool for inferring specific intent. While legal doctrine generally distinguishes motive from the mental element (mens rea) of the crime, this study argues that, in practice, international judicial precedents – particularly those of the International Criminal Tribunal for Rwanda (ICTR) – have relied on ethnic and political motives as powerful indicators for uncovering the perpetrators’ mindset. Through analysis of case law such as Akayesu and Kayishema, the paper demonstrates how broader contexts, discriminatory policies, and hate-inciting statements have been instrumental in inferring genocidal intent. This analytical framework is then applied to the situation in Gaza following October 7, 2023. The study’s main finding is that, although motive is not an independent element of the crime, it remains the most effective interpretive tool for linking material acts to specific intent in the absence of direct evidence, and may play a decisive role in future investigations of the International Criminal Court (ICC) regarding the situation in Palestine.

KEYWORDS: Genocide, Specific Intent, Motive, International Criminal Law, Gaza, Rwanda, International Jurisprudence.

1. INTRODUCTION

The crime of genocide, rightly termed the “crime of crimes,” constitutes the most severe international offense, requiring the proof of a unique mental element: the specific intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. This requirement renders the prosecution of genocide one of the greatest challenges for the international criminal justice system, as perpetrators of mass atrocities rarely disclose their true intentions explicitly, often justifying their actions under the guise of military or security objectives. In the absence of direct evidence, international courts are compelled to infer intent from a constellation of circumstantial and indirect evidence.

Within this context, a fundamental tension has emerged between legal doctrine and judicial practice. Theoretically, jurists have consistently emphasized the strict distinction between intent (the will directed toward a result) and motive (the reason underlying the act), asserting that motive bears no impact on the fulfillment of the mental element of the crime. However, this study argues that, in practice, international judicial practice has blurred this boundary, utilizing motive as a key evidentiary tool to uncover and establish specific intent. Indeed, motives such as ethnic hatred or discriminatory ideologies serve as a bridge linking the material acts of perpetrators to their criminal mindset.

The significance of this discussion has been amplified by recent developments in Gaza following October 7, 2023, and the case brought by South Africa against Israel at the International Court of Justice (ICJ). In this case, statements by Israeli officials reflecting ideological and dehumanizing motives were cited as primary circumstantial evidence in establishing genocidal intent. This underscores the necessity of a systematic and in-depth analysis. Despite the importance of the subject, the Persian legal literature has predominantly focused on the generalities of genocide, paying relatively little attention to the analytical role of motive in the judicial proof process.

This article seeks to fill this theoretical gap by conducting a comparative examination of the Rwanda Tribunal (as a classical case) and the situation in Gaza (as a contemporary crisis), offering a practical framework for a deeper understanding of this legal challenge. Accordingly, the primary aim of this study is to elucidate the role of motive as a key circumstantial indicator in inferring and proving the specific intent required for genocide. The central research question addressed is: How has motive been transformed into a tool for proving specific genocidal

intent in international judicial practice, and what implications does this analytical framework hold for the legal assessment of the situation in Gaza?

To achieve this aim, the article first examines the theoretical foundations and the distinction between intent and motive. It then analyzes the jurisprudence of the International Criminal Tribunal for Rwanda, before finally applying these insights to assess the situation in Gaza.

1.1. Literature Review and Research Background

The literature on international criminal law concerning genocide is replete with detailed discussions regarding the mental element of the crime. The starting point for nearly all analyses is the consensus on the conceptual distinction between specific intent as the constitutive element of the crime and motive as the psychological drive underlying its commission. However, the way in which these two concepts interact in the judicial proof process has been the primary focus of debate. While prominent scholars such as William Schabas have emphasized the difficulty of proving specific intent, most analyses have not systematically examined the role of motive as an evidentiary tool, treating it merely as one among many circumstantial indicators. This article seeks to address precisely this theoretical-practical gap.

- English-language and international sources: In English-language theoretical works, leading jurists like William Schabas, in his classic work *Genocide in International Law* (2009), insist on the distinction between motive and specific intent. From Schabas’s perspective, motive should not replace specific intent; however, he acknowledges that motive can indirectly aid in understanding and inferring intent, particularly when courts are confronted with circumstantial evidence. Similarly, Paula Gaeta, in her commentary on the Genocide Convention (2009), emphasizes the necessity of conceptual precision and considers motive primarily relevant at the criminological level. Nonetheless, in practice, courts are often compelled to examine motive to discern the perpetrators’ actual intent.

This theoretical perspective has gradually been tempered by the practical challenges of proof in judicial proceedings. Antonio Cassese, in *International Criminal Law* (2013), through an analysis of jurisprudence, demonstrates that judges at the International Criminal Tribunal for Rwanda (ICTR) in key cases such as *Akayesu* effectively relied on

ethnic and racial motives as strong circumstantial evidence to establish specific intent. This shift from a purely theoretical separation to the acknowledgment of practical significance has been reflected in the work of other scholars. For instance, Catherine Goldsmith (2010) argues that, although motive is not in itself necessary for conviction, it constitutes “an essential part of the circumstantial evidence” in the process of inferring intent. This pragmatic approach has transformed motive from a marginal concept into an analytical and evidentiary tool within the toolkit of international judges.

- Review of Persian-Language Sources: The Persian literature on the role of motive in proving the specific intent required for genocide is considerably more limited than its English-language counterpart and primarily focuses on general legal principles. Seyed Ghasem Zamani’s *International Criminal Law* (2nd edition, 2014 [1393 SH]) is considered one of the first comprehensive Persian works in this field, providing definitions and discussing the elements of genocide. He emphasizes that specific intent is the core element of genocide; however, his analyses pay little attention to the evidentiary role of motive in establishing this intent.

In addition to this foundational source, numerous scholarly articles have been published in domestic journals, mainly concentrating on the concepts of genocide, its applicability to regional massacres (such as in Bosnia and Palestine), and procedures in international tribunals. Some studies adopt a more practical approach. For instance, the article “*Cultural Destruction from the Perspective of International Law: Emphasizing Israeli Actions in the Occupied Territories*” by Meysam Hagh-Sarasht and Alireza Arashpour (2018) identifies cultural destruction as a dimension of genocide. The authors argue that genocide is not limited to physical acts and that criminalizing cultural genocide is necessary to protect human rights.

Similarly, the article “*Filing a Case Against Israel for Committing Genocide at the International Court of Justice: Possible Scenarios*” by Abdullah Abedini and Bahman Bahri-Khiavi (2022) examines the legal basis for ICJ intervention and pronouncements under the Genocide Convention, analyzing potential legal scenarios arising from Israel’s membership in the Convention.

A review of Persian-language sources indicates that the distinction between intent and motive, and its role in the judicial process of establishing specific intent, has rarely been addressed as an independent

subject of comprehensive research. This represents a significant scholarly gap in the field.

At the international level, however, legal scholarship has gradually shifted from a strict theoretical separation between intent and motive toward acknowledging the pragmatic role of motive as an important evidentiary tool in the judicial process of inferring intent. Nevertheless, a clear framework regarding how and to what extent this evidentiary tool should be applied – particularly in the analysis of contemporary crises – remains under development.

The review of the literature thus reveals a distinct research gap in Persian-language scholarship: to date, no study has systematically and comparatively analyzed the established judicial practice of the Rwanda Tribunal alongside the unfolding crisis in Gaza, specifically from the perspective of the pivotal role of motive in proving the specific intent required for genocide.

This article seeks to fill this gap by systematizing the evidentiary function of motive and applying it in a comparative analysis, demonstrating how this concept can aid in understanding and proving the “crime of crimes” in the most complex international cases. Consequently, by bridging a conceptual gap between legal doctrine (which emphasizes the strict separation of intent and motive) and judicial practice (which in practice utilizes motive to uncover intent), this study provides a robust analytical framework for evaluating contemporary mass atrocities.

2. THEORETICAL FOUNDATIONS AND CONCEPTUAL FRAMEWORK

In international criminal law, genocide is considered an exceptional crime with a dual material and mental structure, the understanding of which is impossible without grasping the relationship between specific intent and motive (Schabas, 2009: 150). Accordingly, in this section, the theoretical foundations related to intent and motive are outlined, followed by an examination of the material and mental elements of genocide and its conceptual boundaries under the 1948 Genocide Convention and the jurisprudence of international criminal tribunals.

2.1. Conceptualization Of the Elements of Genocide

This subsection examines the constitutive elements of genocide from the perspective of international criminal law instruments and case law, with a focus on the relationship between motive and specific intent.

2.1.1. Material Element: The Five Acts of Genocide

The material element of genocide encompasses objective and observable acts, as defined under Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Schabas, 2009: 152; Cassese, 2008: 125).

According to this provision, any of the following acts, when committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, constitute genocide:

1. Killing members of the group: Any direct action intended to kill members of the group, whether individually or collectively.
2. Causing serious bodily or mental harm to members of the group: Any intentional physical or psychological injury aimed at weakening or destroying the group.
3. Deliberately inflicting living conditions intended to bring about the group's physical destruction in whole or in part: The intentional creation of living conditions directly designed to bring about the partial or total destruction of the group, such as deprivation of food, shelter, or medical care.
4. Measures intended to prevent births within the group: Deliberate actions to prevent procreation among the group, including forced sterilization or severe population restrictions.
5. Forcible transfer of children from the group to another group: The abduction or forced relocation of children with the purpose of separating them from their original group identity.

These five acts, together with the mental element, which consists of the specific intent to destroy the group, constitute the crime of genocide. In the jurisprudence of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court (ICC), these acts have served as the primary criteria for the identification and proof of genocide.

Under Article 3 of the Genocide Convention, in addition to the direct commission of the five enumerated acts, the following related actions are also criminalized and punishable:

- Conspiracy to commit genocide
- Direct and public incitement to commit genocide
- Attempt to commit genocide
- Complicity in genocide

This provision indicates that the crime of genocide is not limited to completed physical acts but also encompasses preparatory, preliminary, and psychological behaviors, through which the

perpetrators' motive and specific intent can be analyzed and established.

For these acts to constitute genocide, they must be committed against one of the four protected groups under the Convention.

International jurisprudence has applied two main approaches to identify these groups:

- Objective approach: This approach relies on tangible characteristics such as language, culture, history, and religion to identify the group.
- Subjective approach: Under this approach, the perpetrator, driven by a specific motive and targeting a set of individuals, defines them as a distinct group subject to destruction (ICTY, 1999: para. 71).

International tribunals, including the International Criminal Tribunal for Rwanda (ICTR) in the Kambanda (1998) and Musama (2000) cases, emphasized that these groups must be stable and permanent, and membership is generally involuntary, based on birth. Consequently, political or economic groups, which are inherently fluid, are excluded from the Convention's protection.

Applying these criteria, the people of Gaza can be considered a group protected under the Convention. With Palestinian nationality, they constitute a national group (Reza-zadeh & Ranjbarian, 2019: 12). Additionally, as a population that is predominantly Muslim and Arabic-speaking, with shared culture and history, they can also be classified under ethnic, racial, and religious groups (Abedini & Khiavi, 2022). Their shared identity, history, and common origin define Palestinians as both an ethnic and national group based on self-identification and voluntary recognition (MacAllister, 2008: 14).

2.1.2. The Mental Element: Focus On the Concept of Specific Intent

The mental element is a necessary condition for establishing criminal responsibility under international law, as without it, the act committed cannot be considered criminal (Momeni, 2012: 136). The fundamental distinction of genocide from other international crimes, such as crimes against humanity, lies in its unique mental element, namely specific intent. This intent is defined as the "will directed toward the complete or partial destruction of a national, ethnic, racial, or religious group."

Due to the heinous nature of this crime, international jurisprudence emphasizes the necessity of conclusively establishing this intent. The Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) stipulates that a

conviction for genocide is only possible when this specific intent is proven beyond any reasonable doubt (ICTY, 2004: para. 134).

The key concept of “complete or partial destruction” has also been clarified in case law. This phrase does not merely refer to the killing of large numbers of individuals, but rather to the destruction of a significant part of the group, which can be understood in either quantitative terms (number of victims) or qualitative terms (importance of the victims for the survival of the group) (Yousefian & Esmaeili, 2012: 146). In this context, the ICTY in the Jelisić case emphasized that the intent to destroy can be established even by targeting a limited number of key group members, such as political or intellectual leaders, since their elimination may endanger the existence of the group (ICTY, Jelisić, 1999: para. 82).

The main challenge in this regard is proving this complex mindset. Since direct evidence is rarely available, tribunals ascertain specific intent by inference from a combination of circumstantial and indirect evidence. These inferences include patterns of criminal conduct, the context in which the crimes occurred, and surrounding circumstances (ICTR, Ntakirutimana et al., 2001: para. 572). The Jelisić case itself illustrates this high evidentiary standard: despite multiple killings committed by the accused, the court concluded that while the acts were brutal, they were insufficient to conclusively infer an intent to destroy the group, and thus the genocide charge was not established (ICTY, Jelisić, 1999: paras. 107–108).

3. THE COMPLEX RELATIONSHIP BETWEEN INTENT AND MOTIVE IN CRIMINAL LAW

In criminal law, the analysis of criminal behavior extends beyond merely examining the act and its consequences; it also involves investigating the actor’s innermost mental state. In this context, concepts such as “intent” and “motive” are particularly significant, as the distinction between them directly affects the degree of criminal responsibility and the determination of punishment. Legal doctrine and the philosophy of law have sought to theoretically and practically differentiate these two concepts, as outlined below.

3.1. Conceptual Distinction in Doctrine and Legal Philosophy

In criminal law doctrine, intent refers to the conscious will of the actor to bring about a criminal result; for example, the will to destroy a group (Ghyasi & Mohtaram Qalati, 2017: 160). In contrast,

motive represents the psychological reason or driving force behind that will, such as racial hatred, ethnic supremacy, or revenge (Ali Abadi, 2006: 60). Substantively, motive is an internal force that forms in the mind prior to the criminal will and intent, and is in fact the ultimate or final cause of committing the crime.

Legal doctrine insists on this distinction for two main reasons:

- Preventing the acquittal of perpetrators due to “good motives”: Criminal responsibility is based on criminal intent and free will. If motive were part of the crime, a person who kills out of “benevolent” motives, such as mercy killing of the sick, could avoid liability. However, under criminal law, such an act is still considered intentional homicide, because the intent to deprive life exists.
- Avoiding punishment solely for “evil thoughts”: The opposite is also true. Merely possessing a reprehensible motive, such as hatred, does not incur criminal liability unless it is accompanied by the intent and will to commit a criminal act (Shambiyati, 2008: 377). This principle ensures that individuals are not punished for their thoughts alone, but rather for their voluntary actions.

This principle is reflected in international instruments. For instance, Article 30 of the Rome Statute specifies that motive, except when included in the definition of the crime, does not affect criminal responsibility (Ghyasi & Mohtaram Qalati, 2017: 165). International jurisprudence confirms this rule, generally not considering motive as part of the mental element of a crime (Kriang Sak, 2008: 88–93).

3.2. The Primacy of Circumstantial Evidence in International Criminal Law

International crimes, such as genocide, rarely involve explicit written orders. The nature of these crimes—often committed collectively by states or complex organizations—makes direct proof of the mental element (specific intent) nearly impossible. Consequently, the practice of international tribunals, from Nuremberg to Rwanda and the International Criminal Court (ICC), has heavily relied on inferring intent through circumstantial and indirect evidence.

To establish specific intent for genocide, courts examine a combination of factors and objective evidence to infer the perpetrators’ inner state.

These evidentiary elements include, but are not limited to:

- Systematic pattern of attacks: Repeated acts of violence directed against a specific group.

- Scale and scope of the crimes: Large-scale killings, destruction of critical infrastructure, and creation of unbearable living conditions for a group may indicate an intent to destroy (Sadeghi, 2024: 262).
- Vulnerability of the targeted group: The deliberate targeting of civilians, including women and children of a specific group.
- Hate speech and propaganda: The use of dehumanizing and inflammatory language against the target group, which will be discussed in the following section.
- Overall context of the incidents: Crimes occurring in a discriminatory and hostile environment against the victimized group. For instance, the International Criminal Tribunal for Rwanda (ICTR) in several cases, including the notable Akayesu case, established specific intent for genocide not through a single document or direct order, but by inferring from the accused's behavioral patterns and the context of the massacres (Pourmohammadi, Sobhani & Janipour, 2023: 216).

3.3. *Motive As the Most Crucial Evidentiary Indicator*

Within the inferential framework based on circumstantial evidence, motive transforms from a purely psychological concept into a powerful evidentiary tool. Although motive is not a constitutive element of the crime, the existence of a strong discriminatory motive—such as ethnic hatred or racist ideology—can provide the most compelling explanation for why a series of material acts were committed with the specific intent to destroy a group.

Here, the gap between legal doctrine (which emphasizes the separation of intent and motive) and judicial practice is bridged. In practice, courts use motive to uncover and establish intent. In other words, proving the existence of a discriminatory motive renders the inference that violent acts were carried out with genocidal intent logical and acceptable.

For example:

- Hate-inciting speeches: In Rwandan cases, the court considered inflammatory speeches and media propaganda that referred to the Tutsi as “cockroaches” not only as the independent crime of “incitement to genocide,” but also as a strong circumstantial indicator for proving the specific intent of the principal perpetrators of the massacres (Pourmohammadi, Sobhani & Janipour, 2023: 229). Such propaganda revealed the motive based on hatred and

assisted the court in establishing genocidal intent in the defendants' other acts.

- Statements by official authorities: United Nations experts analyzing the events in Gaza have assessed statements made by Israeli officials—containing indications of a “manifest intent to destroy the occupied population” and “incitement to genocide”—as evidence of the formation of this crime (Sadeghi, 2024: 262). These statements, reflecting motive, can be cited as circumstantial evidence to prove specific intent in military operations.

Ultimately, in the context of genocide, the boundary between motive and specific intent becomes extremely narrow. The “intent to destroy, in whole or in part, a national, ethnic, racial, or religious group”—the core element of the crime—is itself a combination of a discriminatory driver (motive) and a result-directed will (intent). For this reason, courts treat motive not as a separate element, but as the most significant form of evidence capable of establishing the existence of this complex specific intent.

4. JUDICIAL ANALYSIS AND CASE STUDIES

This section tests the theoretical framework of the article by analyzing judicial practice and applying it to the situation in Gaza.

4.1. *The Role and Significance of Motive in International Judicial Practice*

International case law, particularly in specialized criminal tribunals, has played a pivotal role in elucidating the complex relationship between motive and specific intent in the context of genocide. This jurisprudence demonstrates that, although motive is not an element constitutive of the crime, it functions as one of the most important circumstantial indicators for inferring and proving specific intent (Schabas, 2009: 260).

4.2. *The Role of Motive in the International Criminal Tribunal for Rwanda (ICTR)*

The jurisprudence of the ICTR represents a landmark in international criminal law, as it was the first tribunal after Nuremberg to address genocide and interpret its elements, particularly the mental element (specific intent). Since direct proof of this intent is nearly impossible, the tribunal relied extensively on indirect evidence and circumstantial indicators, among which discriminatory motive played a central role. As William Schabas notes, international courts rarely encounter a “document in

which a genocide order is explicitly issued"; therefore, intent must be inferred logically from behavioral and verbal patterns (Schabas, 2009: 253).

4.2.1. *The Akayesu Case*

The case of Jean-Paul Akayesu, mayor of the commune of Taba, is one of the most significant ICTR cases, in which the court convicted an individual of genocide for the first time. The main challenge for the tribunal was to prove that Akayesu possessed the specific intent to destroy, in whole or in part, the Tutsi ethnic group. To overcome this challenge, the court directly analyzed his speeches and actions, which revealed his ethnic motive.

In its judgment, the Trial Chamber emphasized that "intent is a mental element" and that its proof is often difficult, except through inferences drawn from the acts and words of the accused (Prosecutor v. Akayesu, 1998, para. 523). The court found that Akayesu, in a public speech before a large audience, called on the people to unite to eliminate his "enemies" and "associates." Considering the "cultural and linguistic context of the target community" (Pourmohammadi, Sobhani & Janipour, 2023: 221), the tribunal concluded that these seemingly ambiguous terms were clearly understood in Rwanda at the time as a call for the extermination of Tutsis (Prosecutor v. Akayesu, 1998, para. 673).

Thus, the court used Akayesu's ethnic speeches – which reflected his hatred-based motive – as a powerful circumstantial indicator to infer his specific intent to destroy the Tutsi group. As Cassese notes, although motive (such as racial hatred) differs from intent (the will to destroy), the existence of the former can serve as the strongest evidence for proving the latter (Cassese, 2013: 105). In fact, Akayesu's discriminatory motive provided the most compelling explanation for why he delivered such speeches and why these speeches led to mass killings.

4.2.2. *The Kayishema and Ruzindana Case*

The case of Clément Kayishema and Fulgence Ruzindana established another key principle in international jurisprudence: specific intent for genocide can be inferred from the broader context in which crimes occur. The Trial Chamber argued that specific intent could be deduced from "facts and circumstances that are fully convincing" (Prosecutor v. Kayishema and Ruzindana, 1999, para. 93).

These circumstances include:

1. Overall context: The existence of a state or policy plan aimed at the destruction of a group.
2. Propaganda and dehumanization: Speeches and campaigns that humiliate the target group

and remove them from the circle of humanity.

3. Scale and pattern of attacks: Systematic targeting of a particular group on a wide scale.
4. Nature of the acts committed: Actions that not only target individuals but also threaten the very existence of the group.

Within this framework, discriminatory policies and hate propaganda – which clearly indicate ethnic or racial motives – are regarded as primary circumstantial indicators for proving specific intent for genocide (Azari, 2006). Leading legal scholars also affirm that "the existence of a state or organizational policy against a group is the strongest evidence for proving genocidal intent" (Cryer et al., 2019: 335).

By examining this overall context, the tribunal concluded that the violent acts were not random, but part of a coordinated campaign aimed at the physical destruction of the Tutsi group. This approach allowed the court to use evidence of collective motive (discriminatory policies) to infer the specific intent of the individuals involved, demonstrating how motive, while independent from the crime, practically becomes the most crucial tool for proving the mental element of genocide.

This judicial logic was later referenced in the case brought by South Africa against Israel at the International Court of Justice, where South Africa argued that statements by Israeli officials – as evidence of motive – indicated the existence of genocidal intent in Gaza (ICJ, 2023: 58–69).

4.3. *Challenges of Proof and The Importance of Motive*

However, case law indicates that such inferences are not automatic; cases from the ICTY illustrate this clearly:

- Jelisić Case: Despite committing widespread atrocities, Jelisić was acquitted of genocide because there was insufficient evidence of "a specific plan to destroy the Muslim group." The court found his acts to result primarily from individual sadism and irregular patterns of killings, lacking systematic group intent (ICTY, 1999, para. 108).
- Stakić Case: Similarly, Stakić was acquitted; the court noted that "genocidal intent was not proven beyond a reasonable doubt." The court reasoned that Stakić "did not use genocidal language" and his primary objective was "to establish a Serb-dominated municipality," not the physical destruction of the Muslim group (ICTY, 2003, para. 526).

The significance of these cases lies in showing that

motive can serve as evidentiary support only when it clearly indicates the specific intent to destroy a group. The absence of explicit genocidal rhetoric or the presence of an alternative primary motive (e.g., personal sadism or political control) can prevent the proof of genocide.

4.4. Structural Basis in the Rome Statute: Integration of Purpose and Motive in the Elements of Crimes

The argument regarding the central role of motive in proving genocidal intent is reinforced by the structure of the Rome Statute itself. Within the “Elements of Crimes,” certain offenses are defined in a way that a specific purpose or objective – which is essentially akin to motive – is explicitly included as part of the mental element.

Examples include:

- **Crime of Apartheid:** The act must be committed “with the intent to maintain an institutionalized regime of systematic oppression and domination by one racial group over any other racial group(s)” (United Nations, 1998, Art. 7(1)(j)).
- **Crime of Persecution:** This crime requires the existence of a discriminatory motive based on political, racial, national, ethnic, cultural, religious, or gender grounds (United Nations, 1998, Art. 7(1)(h)), a point emphasized in judicial practice as well (Sadeghi, 2014, 125).

These examples demonstrate that international criminal law explicitly integrates a “final objective” within the definition of the mental element of certain crimes. This supports the argument that genocidal intent – understood as the ultimate goal of destroying a group – can and should be interpreted in a similar manner.

Summary: In sum, international jurisprudence presents a complex yet coherent picture:

- The ICTR (Rwanda) demonstrated the probative power of motive in uncovering specific intent.
- Conversely, the ICTY (Yugoslavia) highlighted the limitations of such inferences, showing that the mere commission of widespread crimes is insufficient to establish genocidal intent.
- Finally, the Rome Statute’s structure provides a doctrinal basis for accepting the central role of motive.

The overarching principle is that motive – especially when revealed through systematic hate speech – becomes the most effective interpretive tool for linking material acts to the specific intent required for genocide.

5. ANALYSIS OF THE GAZA SITUATION IN LIGHT OF THE ESTABLISHED LEGAL FRAMEWORK

This section tests the theoretical framework for inferring specific intent from motive by analyzing international jurisprudence and applying it to the situation in Gaza following 7 October 2023.

5.1. Background And Context of Events After 7 October 2023

Following the “Al-Aqsa Storm” operation on 7 October 2023 and Israel’s extensive and destructive military response, the international community faced one of its most serious humanitarian and legal crises. On 29 December 2023, South Africa filed a case against Israel before the International Court of Justice (ICJ), formally accusing the country of violating its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide (1948). This action provided a valid legal basis for analysis.

The Court, in its provisional measures order of 26 January 2024, while recalling Israel’s obligations under the Convention, found South Africa’s claim regarding the possibility of genocide to be plausible. This plausibility was largely based on UN reports and statements by Israeli officials. In a more assertive order on 24 May 2024, the Court obliged Israel to immediately halt its military operations and any other measures in the Rafah area that could lead to the complete or partial physical destruction of the Palestinian group in Gaza (OHCHR, 2023).

In parallel, the Prosecutor of the International Criminal Court (ICC), on 20 May 2024, issued a request for arrest warrants for the Prime Minister and Minister of Defense of Israel on charges of war crimes and crimes against humanity (Khan, 2024). Although genocide was not alleged at this stage, this action highlighted the centrality of individual criminal responsibility of officials.

5.2. Evidence Of Intent Based on Motive

Proving specific intent in the absence of direct evidence requires reliance on circumstantial and indirect evidence. In the Gaza situation, two categories of evidence clearly demonstrate genocidal motive.

5.2.1. Statements of Israeli Officials

The tone and content of statements by senior Israeli officials after 7 October 2023 systematically indicate an intent that goes beyond the destruction of Hamas and targets the entire population of Gaza as a group.

- Benjamin Netanyahu, Prime Minister of Israel,

in a speech addressed to soldiers, referred to Palestinians as “Amalekites” (sarajevotimes, 2023), a term in religious texts interpreted as calling for the complete destruction of a people, including men, women, and children (Friedman, 2009, trans. Hossein). This clearly signals genocidal intent.

- Isaac Herzog, President of Israel, explicitly denied distinctions between combatants and civilians, stating: “It is the entire nation that is responsible... this discourse regarding unaware civilians is absolutely incorrect” and emphasized that Israel will fight until it “breaks their backbone” (itv, 2023). Such statements extend collective responsibility to the entire population of Gaza, a key indicator in proving specific intent to commit genocide.

Furthermore, inhuman and hate-inciting language was widely used. The Minister of Defense stated: “We are at war with humanoid animals.” Alongside this, the Minister of National Security called for the destruction not only of Hamas but also of “celebrants, supporters, and those distributing sweets” (as cited in Ben-Gvir, 2023, ICJ South Africa v. Israel, 2023, para. 101), and Moshe Feiglin called for the “complete destruction of Gaza” (aa, 2023). These statements indicate that the target was a group far broader than armed fighters. The repetition of such statements by multiple officials and parliamentary representatives demonstrates the formation of an official and systematic policy, reflecting a motive to destroy the people of Gaza based on their national and ethnic group membership.

These statements, made by the highest-ranking decision-makers and forming a systematic pattern, have been identified by UN experts and the ICJ as key evidence of “incitement to genocide” and clear intent to destroy the Palestinian people.

5.2.2. Declared Policies (Blockade and Displacement)

Statements indicating intent quickly translated into practical policies. The Israeli Minister of Defense ordered a “complete blockade” of the Gaza Strip, declaring: “No electricity, no food, no water, no fuel; everything is blocked” (jordanneews, 2023). This policy was reinforced as a punitive measure by the Minister of Energy, who stated: “Until our captives return, no electricity, fuel, or water will enter Gaza” (newarab, 2023).

This declaration of a total blockade, cutting off water, food, electricity, and fuel for over two million people, constitutes a clear instance of Article 2(c) of

the Genocide Convention, i.e., “inflicting conditions of life calculated to bring about the physical destruction, in whole or in part, of a group” (Convention on the Prevention and Punishment of the Crime of Genocide, 1948, Art. 2(c)). These measures, which have caused widespread famine and the collapse of the health system, reflect a deliberate policy to render Gaza uninhabitable, stemming from a specific motive.

This action goes beyond a military tactic and constitutes a clear case of “deliberately inflicting living conditions designed to physically destroy all or part of a group” (Art. 2, Genocide Convention). Cutting off essential resources for over two million people, half of whom are children, creates conditions making the group’s survival impossible. Alongside repeated orders for mass forced displacement, these policies, combined with the officials’ statements, form a powerful circumstantial basis for proving specific intent to commit genocide.

5.3. Linking Motive to Behavioral Patterns

The connection between declared motive and the behavioral patterns of military forces in the field strengthens the legal argument for the existence of specific intent.

Israel’s pattern of attacks in Gaza is characterized by:

- Disproportionate scale and mass killing of civilians: By early 2025, death tolls exceeded 50,000, the vast majority of whom were women and children. Such scale of killings, coupled with the destruction of over 80% of buildings, exceeds any justification based on “self-defense” or “military necessity” and is inconsistent with a precise, limited military objective.
- Systematic attacks on critical infrastructure: The deliberate and extensive destruction of hospitals, schools, universities, mosques, churches, and water supply systems has been a consistent pattern in Israeli military operations. These actions undermine the group’s ability to survive and create conditions unfit for human habitation.
- Forced displacement and destruction of living conditions: Compelling more than 85% of Gaza’s population to leave their homes and the complete destruction of residential areas indicates intent beyond military objectives, pointing to ethnic cleansing and the elimination of Palestinian presence in the area.

Therefore, the combination of the behavioral pattern described above (mass killings and systematic destruction) with strong evidence of

destructive motives (dehumanizing rhetoric and blockade policies) makes the inference of “specific intent” to destroy a substantial part of the Palestinian national and ethnic group a logical and legally defensible conclusion. These pieces of evidence indicate that Israel’s objective is not merely to combat Hamas but rather to destroy Gaza as a living space for the Palestinian people.

6. CONCLUSION

This study aimed to examine the role of “motive” in the process of proving “specific intent” in the crime of genocide.

Analyzing international judicial practice and applying it to the situation in Gaza after 7 October 2023 yielded the following key findings:

Summary of findings: The main finding of this research is that, although criminal law doctrine draws a clear distinction between “intent” as the will directed toward a result and “motive” as the reason behind an act, this theoretical distinction becomes blurred in judicial practice, particularly in complex cases such as genocide. International criminal tribunals, from Rwanda to the former Yugoslavia, demonstrate that motive plays a crucial role as an evidentiary tool. In the absence of direct evidence revealing the perpetrators’ mindset (such as a written order to destroy a group), it is the motive that serves as a conceptual bridge, linking the material element of the crime to its mental element and situating criminal acts within a deliberate destructive plan.

Answer to the main research question: In response to the central question of the study, it can be stated with confidence that: “In the absence of direct evidence, motive—discernible through indicia such as dehumanizing rhetoric, discriminatory policies, and the broader context of the crime—becomes the most important and effective interpretive tool for inferring and proving the specific intent of genocide.” Cases such as *Akayesu* demonstrated how inhuman rhetoric can serve as evidence of a destructive motive, while cases like *Jelisić* and *Stakić*,

in which the accused were acquitted due to lack of sufficient evidence of such intent, highlighted the significance of these indicia inversely.

7. RECOMMENDATIONS

The findings of this study carry significant theoretical and practical implications for the future of international criminal law:

- Recommendation for the Office of the Prosecutor at the International Criminal Court (ICC): Given ongoing investigations into the situation in Palestine, it is recommended that the Prosecutor’s Office pay particular attention to verbal evidence and the political context indicative of genocidal motives. Repeated and systematic statements by high-ranking Israeli officials, describing Palestinians as “subhuman animals” or referring to the complete destruction of “Amalekites,” should not be dismissed merely as political rhetoric. As confirmed by international judicial practice, these statements constitute direct indicia of discriminatory and dehumanizing motives, which can serve as a foundational basis for proving specific intent to destroy part of the Palestinian population.
- Recommendation for the development of doctrine: The literature on international criminal law should revisit the relationship between intent and motive with greater precision. This review should not aim to merge the two concepts as constitutive elements of a crime, but rather to focus on the evidentiary and interpretive role of motive. Legal scholarship should provide cohesive analytical frameworks for how motive-based evidence can be employed in judicial inference. Refining this relationship will not only enrich the theoretical foundations of law but also equip prosecutors and judges with practical tools for investigating and punishing perpetrators of the most egregious international crimes.

REFERENCES

- aa. (2023, November 20). Far-right Israeli politician calls for complete destruction of Gaza. Anadolu Ajansi.
- Abedini, A., & Bahri Khiavi, B. (2022). “Filing a Case against the Israeli Regime for Genocide before the ICJ: Possible Scenarios.” *Quarterly Journal of Islamic Jurisprudence and Law*, 19(74), 77–111.
- Aliabadi, A. H. (2006). *Criminal Law* (Vol. 1). Tehran: Ferdowsi Publications.
- Arashpour, A., & Haghseresht, M. (2018). “Cultural Destruction from the Perspective of International Law with Emphasis on Actions of the Israeli Regime in the Occupied Territories.” *Quarterly Journal of Public Law Studies*, 48(2).
- Azari, H. (2006). “Defining Genocide in Light of the Rulings of the ICTY and ICTR.” *Legal Research Journal*, 5(10), 55–84.
- Cassese, A. (2008). *International Criminal Law* (Translated by H. Piran et al., Vol. 1). Tehran: Jangal Publications.

- Cassese, A. (2013). *International criminal law* (3rd ed.). Oxford University Press.
- Cryer, R., Friman, H., Robinson, D., & Wilmschurst, E. (2019). *An introduction to international criminal law and procedure* (4th ed.). Cambridge University Press.
- Friedman, M. (2011). "Interview with Rabbi Manis" (Translated by H. Akbarzadeh). *Moment*. Retrieved July 7, 2025, from <https://irannewspaper.ir/8315/1/72367>
- Gaeta, P. (Ed.). (2009). *The UN Genocide Convention: A commentary*. Oxford University Press.
- Ghyasi, J. D., & Mohtaram Qalati, I. (2017). "Analysis of the Element of Mens Rea in the Jurisdiction of the ICC." *Criminal Law Research*, 6(21), 155–196.
- <https://www.google.com/search?q=https://sarajevotimes.com/netanyahu-mentioned-amalek-in-the-context-of-the-conflict-in-gaza>.
- <https://www.google.com/search?q=https://www.aa.com.tr/en/middle-east/far-right-israeli-politician-calls-for-complete-destruction-of-gaza/3060193>
- <https://www.google.com/search?q=https://www.itv.com/news/2023-10-13/israeli-president-says-entire-nation-of-palestine-responsible-for-war>
- <https://www.google.com/search?q=https://www.jordannews.jo/Section-10/Middle-East/Defense-Minister-Complete-siege-on-Gaza-31011>
- International Court of Justice (ICJ). (2023, December 29). *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel): Application instituting proceedings*.
- International Criminal Tribunal for Rwanda (ICTR). (1998, September 2). *Prosecutor v. Jean-Paul Akayesu (Case No. ICTR-96-4-T), Judgment*.
- International Criminal Tribunal for Rwanda (ICTR). (1999, May 21). *Prosecutor v. Clément Kayishema and Obed Ruzindana (Case No. ICTR-95-1-T), Judgment*.
- International Criminal Tribunal for the Former Yugoslavia (ICTY). (1999, December 14). *Prosecutor v. Goran Jelisić (Case No. IT-95-10-T), Judgment*.
- International Criminal Tribunal for the Former Yugoslavia (ICTY). (2003, July 31). *Prosecutor v. Milomir Stakić (Case No. IT-97-24-T), Judgment*.
- itv News. (2023, October 13). *Israeli president says 'entire nation' of Palestine responsible for war*. ITVX.
- Jordan News. (2023, October 9). *Defense Minister: 'Complete siege' on Gaza*.
- Khan, K. A. A. (2024, May 20). *Statement of ICC Prosecutor Karim A. A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine*. International Criminal Court (ICC). <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-palestine-20-may-2024>
- Kitti Chaisaree, K. (2008). *International Criminal Law* (Translated by H. Aghaei Janatmakan). Tehran: Jangal Publications.
- Media sources:
- Office of the High Commissioner for Human Rights (OHCHR). (2023, November 16). *Gaza: UN experts call on international community to prevent genocide against the Palestinian people*. United Nations Human Rights Office of the High Commissioner. <https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against>
- Pourmohammadi, N., Sobhani, M., & Janipour, M. (2023). "Examining Direct and Public Incitement to Commit Genocide in International Criminal Law." *Scientific Quarterly of Criminal Law Research*, 11(43), 193–228.
- Rezazadeh, H., & Ranjbaryan, A. (2019). "Collective Recognition of Palestinian Membership in the UN." *Quarterly Journal of Public Law Studies*, 49(1), 77–95.
- Sadeghi, M. H. (2014). *International Criminal Court*. Tehran: Dadgostari Publications.
- Sadeghi, M. R. (2024). "Feasibility of Genocide in Gaza by Israel in Light of Operation Al-Aqsa Storm (7 October 2023)." *Journal of Legal Studies*, 16(1), 259–288.
- Sarajevo Times. (2023, October 29). *Netanyahu mentioned 'Amalek' in the Context of the Conflict in Gaza*.
- Schabas, W. A. (2009). *Genocide in international law: The crime of crimes* (2nd ed.). Cambridge University Press.
- Shambiyati, H. (1999). *General Criminal Law*. Tehran: Zhubin Publications.
- Shayegan, F. (2009). *Genocide in International Criminal Law*. Tehran: Jangal Publications.
- United Nations. (1948, December 9). *Convention on the prevention and punishment of the crime of genocide*

(78 U.N.T.S. 277).

United Nations. (1998). Rome Statute of the International Criminal Court (UN Doc. A/CONF.183/9).

Zamani, S. Q. (2014). *International Criminal Law: International Crimes* (3rd ed.). Tehran: Shahr Danesh Publications.

Ethical Statement: This study was conducted in accordance with the ethical standards of research. No experiments involving humans or animals were carried out by the authors. All secondary data used were obtained from publicly available and credible sources, ensuring compliance with ethical research principles.

Conflict of Interest: The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

Author Contributions: Dr. [Khawaja Mirajuddin Nail Dr. Seyed Zuhair Al-Mesilini &] conceptualized the research idea, designed the study, and prepared the manuscript. All authors contributed to the analysis, interpretation of data, and approved the final version of the manuscript.

Data Availability: The data that support the findings of this study are available from the corresponding author upon reasonable request. No restrictions apply to the availability of data.

Funding: This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

Acknowledgement: The authors wish to express their gratitude to the reviewers and editorial team of the *International Journal of Innovative Research and Scientific Studies* for their valuable comments and assistance during the review process.