

Mr. Jørn Sigurd Maurud,  
Director General of Public Prosecutions,  
Norwegian Prosecuting Authority,  
P.O.Box 2102 Vika, 0125,  
Oslo, Norway.

**Re: Activate Norway's passive personality jurisdiction against Israeli officials**

**Date:** 28 February 2025

Dear Mr. Jørn Sigurd Maurud,

As the General Director of the Palestinian human rights organization Al-Haq, I refer to the [complaint](#) submitted by Defend International Law and ICJ Norway on 28 November 2023 to the National Authority for Prosecution of Organised and Other Serious Crime (NAST). This complaint alleged that Yoav Gallant, Israeli former Minister of Defense, Benjamin Gantz, a former member of Israel's war cabinet, and Herzl Halevi, Chief of Staff of the Israel Occupying Forces (IOF), aided and abetted the commission of crimes against humanity in the Gaza Strip from 7 October 2023 onwards, including the crimes of inhuman acts, murder, forcible transfer, persecution and extermination, against approximately 270 Norwegian citizens forming part of the Palestinian civilian population in Gaza.

As mentioned above, two of these Israeli individuals no longer hold their official positions: Yoav Gallant was [dismissed](#) as the Minister of Defence on 5 November 2024; Benjamin Gantz [stood down](#) on 9 June 2024; and Herzl Halevi [announced](#) that he will resign on 6 March 2025. However, these developments do not deprive this complaint of its relevance. Further, as a matter of customary international law there is no [statute](#) of limitations for international crimes. Accountability for these crimes is crucial considering the decades-long prevailing impunity of Israeli perpetrators of international crimes against Palestinians, as well as the unprecedented severity of Israeli attacks on Gaza over the period covered by this complaint.

Since its filing, the situation in Gaza has further deteriorated, depriving 2.3 million Palestinians therein of access to items essential for their survival, imposing conditions of life which has brought Gaza into [famine](#), with Israeli forces [shooting](#) to kill Palestinians securing food supplies, in a documented pattern of attacks. Already on 26 January 2024, the International Court of Justice (ICJ) [determined](#) that Israel has plausibly committed genocidal acts, including killings, causing serious bodily or mental harm and deliberately imposing on Palestinians in Gaza conditions of life calculated to bring about their destruction in whole or in part. These underlying crimes have been added to the complaint at the appeal stage on 25 June 2024. By the time of the ceasefire, on 19 January 2025, Israel had killed [47,161](#) Palestinians since October 7. This figure does not account for the entire decimated Palestinian population, with a further estimated [10,000](#) Palestinians still buried under the rubble or killed in Israeli custody.



## A. The Limitations of the International Criminal Court

As “a [direct response](#) to Israel’s aggravated military assault, which has nearly destroyed all of Gaza and denied the conditions for the very survival of the civilian population”, Pre-Trial Chamber I of the International Criminal Court (ICC) issued arrest warrants against one of the persons accused in this complaint, namely Yoav Gallant, among other suspects. In this decision, the Chamber found reasonable grounds to believe that Gallant bears “criminal responsibility for [...] the war crime of starvation as a method of warfare; and the crimes against humanity of murder, persecution, and other inhuman acts”, which are also charged in the complaint at hand. The Chamber further found reasonable grounds to believe that Gallant is responsible as a civilian superior for the war crime of intentionally directing an attack against the civilian population”.

It is worth noting that the Court resorted to the “residual category” of crimes against humanity, namely other inhuman acts, designed to criminalise conduct that does not specifically qualify as any of the other crimes under Article 7(1) of the Rome Statute of the ICC. Such an inhuman act refers to Gallant’s intentional “limiting and preventing of medical supplies and medicine from getting into Gaza, in particular anaesthetics and anaesthesia machines”, which forced doctors “to operate on wounded persons and carry out amputations, including on children, without anaesthetics, and/or were forced to use inadequate and unsafe means to sedate patients, causing these persons extreme pain and suffering”.

This investigation at the ICC does not mean Third States’ investigations into the crimes committed in Gaza through their criminal personal jurisdiction are not necessary or relevant. First of all, the scope of application of the investigation conducted by the ICC does not exactly mirror the scope of application of the complaint. Notably, Benjamin Gantz and Herzl Halevi, charged under the complaint, are not investigated by the ICC. As for the material scope of application, the abovementioned arrest warrants do not include the crime of forcible transfers as crimes against humanity. Second, regardless of a future trial in Norway, the investigation requested by the complaint constitutes a crucial accountability avenue at the disposal of Norway. It would send a strong signal to Israel that their current and former officials are not above the law, and their criminal conduct is being examined, which may deter further serious violations and alleviate Palestinian suffering — especially as Israel is intensifying [operations](#) in the northern West Bank with impunity.

## B. Why the Application of Universal Jurisdiction is Necessary

Israel has been able to blatantly violate Palestinians’ rights for more than 70 years due to the special treatment it enjoys. For decades States have deliberately failed to hold Israel to account for its wilful breach of peremptory norms of international law, while Israeli courts shield the perpetrators with deference to “security” arguments, secret evidence and continual delays. For this reason, Al-Haq and partner organisations have had no other option but to take universal jurisdiction cases against Israeli soldiers to counter the impunity.

In [November 2024](#), a group of non-governmental organisations, French and Palestinian organisations, including Al-Haq, prepared a complaint that would have been filed with the French war crimes unit against Bezalel Smotrich, Israel’s Minister of Finance as soon as he entered the French territory, where he was invited to attend a Gala organised by an organisation linked to the Israel far-right and settler movements, “Israel is Forever”. The complaint outlined Mr. Smotrich’s complicity in torture in Gaza – – a potential arrest in France possibly deterred Mr. Smotrich from visiting France.



Norway could produce the same effect by opening this investigation and issuing a European Arrest Warrant against Yoav Gallant, Benjamin Gantz and Herzl Halevi, who would as a result fear being arrested in European States and transferred to the Norwegian authorities in application of the European Convention on Extradition. Domestic cases against Israeli alleged perpetrators, whether based on universal jurisdiction or criminal personal jurisdiction, can isolate Israel. While it might not lead to the arrest of these alleged perpetrators and accountability, these cases can encourage Israel to comply with international law.

### C. Norway's Obligation to Prevent Genocide

As a State party to the UN Convention on the Prevention and the Repression of the Crime of Genocide, Norway is under the obligation to prevent genocide “and the corresponding duty to act” as soon as it “learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. From that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (*dolus specialis*), it is under a duty to make such use of these means as the circumstances permit.”<sup>1</sup>

Despite the abovementioned ceasefire agreement between Hamas and Israel, the inhuman conditions Palestinians of Gaza are being forced to live in subhuman conditions, denied reconstruction materials and humanitarian aid at scale, imposing of continuing conditions of life leading to the destruction of the Palestinian group. Israel's continued killing of Palestinians in Gaza, [destruction](#) of homes in Rafah, restrictions impeding the [delivery](#) of lifesaving relief, the [entry](#) of mobile homes into Gaza, as well as the [transfer](#) of solid waste to ensure a sanitary environment therein, amounts to conduct in breach of peremptory norms of international law. Under Article 41 of the Draft Articles on State Responsibility for Wrongful Acts, violations of peremptory norms, including the prohibition of the use of force and genocide trigger the obligation of Third States to, inter alia, bring these violations to an end.

### D. Norway's Obligation to Investigate Deaths of Nationals

In terms of Norway's [procedural obligation](#) to investigate the deaths of its nationals in Gaza, the European Court of Human Rights (ECtHR) “has underlined that, in general, the procedural obligation [to investigate violations] falls on the Contracting State under whose jurisdiction the victim was at the time of death”.<sup>2</sup> In this regard, the complaint justified this extraterritorial jurisdiction by “circumstances” where:

“there is also a duty to investigate serious crimes committed abroad circumstances may be precisely that otherwise a situation of total exclusion of criminal liability could arise because neither the territorial State nor the State of nationality wishes or is in a position to prosecute the act”.

This assertion finds support in the ECtHR's jurisprudence on “special features” which require a departure from the abovementioned general approach based on jurisdiction as required by Article 1 of the European Convention of Human Rights (ECHR).<sup>3</sup> This undefined notion has been increasingly used by the Court to [justify](#) the inference of extraterritorial jurisdiction. While these cases concern extraterritorial activities that Member States engaged in, this jurisprudence could apply to Norway,

<sup>1</sup> *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, para 431.

<sup>2</sup> *Emin and Others v. Cyprus, Greece and the United Kingdom* (December 2010).

<sup>3</sup> *Rantsev v. Cyprus and Russia*, Application no. 25965/04, Judgment, ECHR, 2010, para. 241-242.



considering other “special features” present in this case, such as the seriousness of the violations and Norway's obligations to prevent genocide.

Furthermore, the obligation to ensure respect “in all circumstances” under Common Article 1 of the 1949 Geneva Conventions, which is of a [customary nature](#), should be taken into account. Similarly, [Rule 158](#) of the International Committee of the Red Cross Study on International Customary Humanitarian Law provides that States must “investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.” Article 31(3)(c) of the Vienna Convention on the Law of Treaties which provides that treaty interpretation shall take into account “any relevant rules of international law applicable in the relations between the parties”, warrants such a contextual interpretation of the ECHR.

Finally, Al-Haq stresses that the immunity of heads of State and other official capacities cannot be invoked when it comes to core international crimes. This is expressly specified in Article 27 of the Rome Statute of the ICC and confirmed in its most [recent jurisprudence](#). In light of the above, and for the purpose of a meaningful judicial investigation by Norway, we not only urge the prosecution of the named perpetrators, but further recommend extending the scope of proceedings to more Israeli officials who have been involved in the violations that are the object of the complaint.

Yours sincerely,

Shawan Jabarin

