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Nomor : 332A/Dir.DPPAI/10/DPPAI/XI/2023
Lamp. : ---
Hal : Permohonan narasumber IHTIMAM

Yang terhormat
Nur Gemilang Mahardhika, S.H., LL.M.
Dosen Universitas Islam Indonesia
Di - Yogyakarta

Assalamu'alaikum warahmatullahi wabarakatuh

Dengan hormat kami sampaikan, merespons tragedi memilukan atas serangan Israel terhadap rakyat Palestina, Direktorat Pendidikan dan Pembinaan Agama Islam akan merilis *Podcast* IHTIMAM Seri 4 bertajuk 'Kejahatan Perang dan Genosida di Palestina'. Bersama surat ini kami memohon kesediaan Ibu untuk menjadi **narasumber** pada kegiatan yang insyaAllah akan diselenggarakan pada:

hari, tanggal : Jum'at, 1 Desember 2023
waktu : 09.30 – 11.30 WIB
tempat : Studio Dakwah DPPAI, Gedung Masjid Ulil Albab Lt. 3

Demikian, atas perhatian dan kesediaan Ibu kami ucapkan terima kasih.

Wassalamu'alaikum warahmatullahi wabarakatuh

Yogyakarta, 10 Jumadilawal 1445 H
24 November 2023 M

Direktur DPPAI,



Drs. Nanang Nuryanta, M.Pd.

Palestine-israel Conflict in October 2023: IHL & Islamic Law of War

Status Quo

Umbrella term: war

Legal term:

1. Invasion of Palestine by Britain in 1917-1918 (UN Charter did not exist, hence Britain cannot be held accountable for violation of *Jus Ad Bellum* – law that dictates the states to refrain from use of force)
2. Occupation of Palestine by israel; International Armed Conflict between Palestine and israel

Hence International Humanitarian Law (IHL) applies. But the rules of IHL that apply are interchangeable between Law of Occupation (a condition where a territory falls under the effective control of foreign military force) and Conduct of Hostilities (rules on means and methods of warfare that apply when parties to the conflict effectively engage in military battles). What is currently applicable considering the *status quo* is Law of Occupation.

Laws that are Violated

The question is not whether israel violates International Law (or more specifically IHL), the question is whether there are any remaining rules of IHL that israel has not violated.

First of all, the israeli occupation is illegal.

ICJ rulings on illegality of occupation: see *Nicaragua*. An occupation may be considered illegal in the beginning (violation of JAB/UN Charter Art. 51); or somewhere along the timeline of the occupation (disproportionate use of force), prolonged occupation, denial of rights.

IHL rules on illegality of occupation: *Geneva Convention IV*, art. 27-34, 47-78

israel's violation on Law of Occupation:

1. Occupation does not render sovereignty of the occupier
2. Occupation is temporary
3. Fulfilment of fundamental human rights becomes the obligation of the occupier
4. Transfer of population to and fro is prohibited
5. Collective punishment is prohibited
6. Confiscation/destruction of property is prohibited

October 2023 Course of Events

israel violated many, many IHL rules:

1. Hamas' "attack" does not justify the counterattack → violation of proportionality principle
2. Indiscriminate airstrikes → violation of distinction principle
3. Bombing of al-Ahli hospital and St. Porphyrius church → violation of distinction principle, limitation principle, principle of balance between military necessity and humanity
4. Access blockade; cutting of powerline and water supply; over 8,000 deaths of civilians

IHL rules have many commonalities with Islamic Law of War (i.e. Al-Baqarah 190: principle of distinction and limitation; An-Nahl 126: proportionality principle)

The situation has also amounted to genocide (to be assessed under International Criminal Law, a different body of law entirely): see *Rome Statute* Art. 6; *Elements of Crime to the Rome Statute*, Art 6a, genocide by killing:

1. Killed one or more person → over 8,000, duh
2. The persons belong to certain group → Palestinian Arabs
3. Intention → statement of israeli's leaders themselves
4. Destructive conduct → decades of oppression

Number of victims in the course of less than 1 month surpasses that of the Srebrenica Genocide.

Proposed Solution

1. Two-state solution is outdated
2. UNSC should declare breach of peace and impose sanction based on Chapter VII of the UN Charter
3. States independently impose sanctions to israel and allies

**"WE ARE DROPPING
HUNDREDS OF TONS
OF BOMBS ON GAZA.
THE **FOCUS** IS ON
DESTRUCTION, NOT
ACCURACY."**



Daniel Hagari

Israeli army spokesman

October 10th in Haaretz newspaper

**„WE WILL TURN
GAZA INTO AN
ISLAND OF RUINS“**



Benjamin Netanyahu

Israeli Prime Minister

October 8th, television speech

**„NOW THERE IS ONLY ONE
GOAL: NAKBA (EXPULSION
OF THE PALESTINIANS). A
NAKBA IN GAZA THAT WILL
DWARF THE NAKBA OF
1948“**



Ariel Kallner

Israeli politician of the Likud party

October 7th on X (Twitter)

"IT IS AN ENTIRE NATION WHO ARE RESPONSIBLE. THIS RHETORIC ABOUT CIVILIANS SUPPOSEDLY NOT BEING INVOLVED IS ABSOLUTELY UNTRUE (...) AND WE WILL FIGHT UNTIL WE BREAK THEIR BACKS."



Yitzhak Herzog

President of Israel

press conference in front of the international press

**"THERE WILL BE NO
ELECTRICITY, NO FOOD,
NO FUEL, EVERYTHING
IS CLOSED. WE ARE
FIGHTING **ANIMAL
PEOPLE**, AND WE ARE
ACTING ACCORDINGLY."**

A portrait of Yoav Gallant, the Defense Minister of Israel, wearing a dark suit, white shirt, and blue tie. The portrait is set against a white background with a red glow effect around the edges.

Yoav Gallant

Defense Minister of Israel

October 9th in a televised address

"JERICHO MISSILE! DOOMSDAY WEAPON! THAT'S MY OPINION. POWERFUL **ROCKETS TO BE FIRED WITHOUT BORDERS, **GAZA** TO BE SMASHED AND RAZED TO THE GROUND. **WITHOUT MERCY!!**"**



Tally Gotliv

Israeli politician, Likud party

October 9th on X (Twitter)

„ **WIPE OUT** THEIR
FAMILIES, THEIR
MOTHERS AND THEIR
CHILDREN. THESE
ANIMALS MUST NOT
BE ALLOWED TO LIVE
ANY LONGER.“

A portrait of an elderly man, Ezra Yachin, wearing a dark blue military cap and a dark green military jacket. He has a serious expression and is looking slightly to the right. The portrait is set against a white background with a red glow effect around the edges.

Ezra Yachin

Veteran of the Israeli army

in an address to Israeli reservists

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

UCAPAN TERIMA KASIH

337A/Dir.DPPAI/10/DPPAI/XII/2023

Direktorat Pendidikan dan Pembinaan Agama Islam (DPPAI)
Universitas Islam Indonesia Yogyakarta, dengan ini mengucapkan
terima kasih kepada:

NUR GEMILANG MAHARDHIKA, S.H., LL.M.

Atas kesediaanya sebagai

NARASUMBER

Podcast IHTIMAM SERI 4

Dengan Tajuk

**Kejahatan Perang dan Genosida
di Palestina**

Yogyakarta, 6 Desember 2023 M

Direktur DPPAI



Drs. Nanang Nuryanta, M.Pd.