

Rektorat Universitas Islam Indonesia Gedung GBPH Prabuningrat

Jl. Kaliurang Km 14,5 Yogyakarta 55584

T. (0274) 898444 (Hunting)

F. (0274) 898459

E. rektorat@uii.ac.id

W. www.uii.ac.id

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:

- Hamas' "attack" does not justify the counterattack → violation of proportionality principle
- 2. Indiscriminate airstrikes → violation of distinction principle
- 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 \rightarrow 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



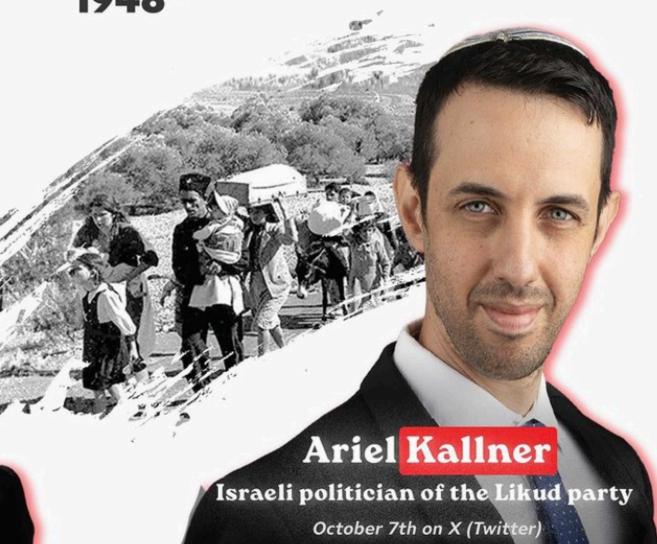
Daniel Hagari Israeli army spokesman

October 10th in Haaretz newspaper





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



"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."



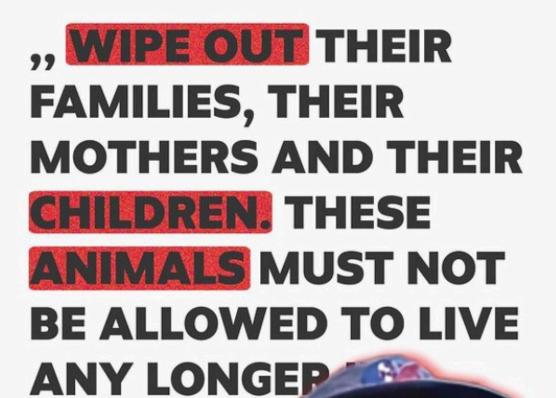


PEOPLE, AND WE ARE ACTING ACCORDINGLY."



"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!"









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.