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Judaization in Palestine: Is It Genocide According to the 1998 Rome Statute?

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Article

Abstract

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The purpose of this study is to analyse the act of genocide in the attempt at Judaization in Palestine based on the 1998 Rome Statute and examine the possibility of categorizing the Judaization of Palestine as cultural genocide because Judaization has changed various aspects of Palestinian life and the Palestinian territories themselves. In addition, cultural genocide has been eliminated from its history, but there are still actions that are assumed to lead to it. This research is a type of normative legal research using a conceptual, statutory, case, and historical approach. The results of this study indicate that the Judaization of land and people in Palestine is a crime of genocide, as stated in Article 6 (c) of the 1998 Rome Statute. At the same time, the Judaization of identity and holy places can be categorized as cultural genocide, according to experts. However, the opinions of experts contained in legal works are subsidiary legal sources and, until now, have not been recognized as customary international law. In addition, the Judaization of identity and holy places within the framework of international law can only be viewed as genocidal intent, not cultural genocide.

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INTRODUCTION

The Holocaust was a crime of genocide that occurred during World War II, which resulted in around six million Jewish victims, with several ways of execution and inhumane treatment.¹ Polish-Jewish jurist Raphael Lemkin, in his initial draft of the Genocide Convention, divided genocide into three types, namely physical, biological, and cultural genocide. However, in the end, cultural genocide was not mentioned.² Officially, genocide is the most serious crime

¹ "Gambaran Umum Hubungan Negara-Negara Arab Dengan Israel," <http://repository.potensi-utama.ac.id>, accessed April 9, 2023, [http://repository.potensi-utama.ac.id/jspui/bitstream/123456789/4854/1/BAB II.pdf](http://repository.potensi-utama.ac.id/jspui/bitstream/123456789/4854/1/BAB%20II.pdf).

² Stefania Negri, "Cultural Genocide in International Law: Is the Time Ripe for a Change?," *Law Journal* 10, no. 5 (2013): 3.

regulated in Article 6 of the 1998 Rome Statute, with definitions and elements adopted from the 1948 Genocide Convention.³

In the case of Palestine, efforts to prove the existence of Israel spiritually and physically have begun since the beginning of the occupation. When Palestine rejected the idea of immigration, Israel was disappointed, so Judaization began by Judaizing the land and suppressing Palestine's diverse identity and culture.⁴ Judaization is like Islamization or Christianization, which are terms that refer to a process of religious conversion in a society, such as changing people's religion or the demographic and cultural elements of cities and countries being adapted to Judaism. Judaization and the occupation of Palestine are the consequences of Theodor Herzl's dream to establish a Jewish nation-state under the Israeli State. Dr. Sameer Said said that the Judaization of Palestine has at least four forms, namely through land, people, identity, and holy places.⁵

The Judaization of people and land leads to physical destruction. Occupation is the most significant form of direct physical violence⁶, and systematically uproots Palestinians from their homes and land, leaving them homeless and destitute and suffering severe poverty.⁷ Like the 1948 Nakba (catastrophe), the ethnic cleansing and forced mass expulsion of the Palestinian people was deliberately aimed at maintaining and creating a Jewish majority, resulting in millions of refugees⁸ with conditions in refugee camps that are very bad and have far-reaching impacts in various fields. In addition, the Separation Wall which has caused serious humanitarian consequences⁹. To achieve the goal of Judaization of Jerusalem is by reducing the number of Palestinians and through the construction of Jewish settlements, which began immediately and intensified after the Six-Day War of 1967 (the Naksa), as a turning point in Jerusalem's history when Israel occupied and annexed approximately 17,400 hectares of land in East Jerusalem which was under Jordanian authority, and the West Bank to West Jerusalem.¹⁰ In June 2017, in "Israel's Occupation: 50 Years of Dispossession", *Amnesty International* reported that the policies of land confiscation and expropriation, illegal settlements, and discrimination imposed caused immense suffering. In addition to building settlements,

³ United Nations UNRIC Library Backgrounder: Genocide, "UNRIC Library Backgrounder," accessed February 26, 2023, <https://unric.org/en/unric-library-backgrounder-genocide/>.

⁴ Mohammed Abu Oun, "Judaization Policies and Oppression of the Cultural Identity in the 1948 Occupied Lands of Palestine," *PALM Strategic*, 2020.

⁵ Adara Relief, *Meyahudikan Palestina : Upaya Zionis Untuk Menghilangkan Tanah, Etnis, Wilayah, Dan Situs Suci Di Palestina*, 2021.

⁶ Ramy Abdu, "Israeli Persecution in Occupied Jerusalem: Physical and Structural Violence Employed to Change Jerusalem-It's Identity," *Insight Turkey* 23, no. 3 (2021): 30, <https://doi.org/https://doi.org/10.25253/99.2021233.2>.

⁷ Palestinian Central Bureau of Statistics, "PCBS President: Despite Tragic Circumstances, Palestinians Have Multiplied Seven Times Since the Nakba (Catastrophe) of 1948," accessed April 11, 2023, https://www.pcbs.gov.ps/Portals/_pcbs/PressRelease/nakba 60.

⁸ Palestinian Central Bureau of Statistics, "On the 74th Annual Commemoration of the Palestinian Nakba: The Number of Palestinians Worldwide Has Doubled about 10 Times," accessed April 10, 2023, <https://www.pcbs.gov.ps/post.aspx?lang=en&ItemID=4236#:~:text=The Nakba resulted in the, in 1%2C300 villages and towns.>

⁹ United Nations, "Economic and Social Consequences of Israeli Settlements - SecGen Report," accessed April 11, 2023, <https://www.un.org/unispal/document/auto-insert-183659/>.

¹⁰ Mona Farouk M. A., "Judaization of Jerusalem under the Israeli Occupation: Measures and Developments", *Journal* 43, no. 2 (2022): 98, <https://doi.org/10.23015/kames.2022.43.2.004>.

Judaization through school curricula and changing place names to Hebrew or Jewish names was also intensified.¹¹

This direct and structural violence is a means designed by the Israeli authorities to divide the Palestinian people, remove the Arab character from occupied Jerusalem, and create a new identity. This city's identity reflects the identity of Jewish settlers. Thus, it is clear that Israel's goal is to erase Palestinian existence through demographic replacement along with geographical and cultural changes through settlement and Judaization.¹²

As mentioned above, cultural genocide was eliminated in the negotiation process for the formulation of the Genocide Convention. However, cultural genocide has now become a controversial issue that is still an object of study for experts, one of which is the legal work of Tye Tavaras, who uses Lemkin's concept of cultural genocide in formulating her concept.¹³ Works of law or doctrine in International Law are included in the subsidiary sources of law, as stated in Article 38, paragraph (1) of the Statute of the International Court of Justice.¹⁴ This article aims to analyze the act of genocide in the attempt at Judaization in Palestine based on the 1998 Rome Statute because in its history, genocide, as defined in the Genocide Convention, reflects an instrument of international custom. In 1997, the Preparatory Committee voted to reproduce the provisions of Article 2 of the Genocide Convention. During the Diplomatic Conference in Rome, there was no further discussion of the crime of genocide, as the Organizing Committee only gave recommendations on the adoption of the definition of Article 2 of the Genocide Convention, and all delegates accepted the recommendations, except for the delegation from Cuba which insisted on the inclusion of political and social groups.¹⁵ Other objectives are to examine whether or not there is an act of cultural genocide in the attempt to Judaize Palestine. Judaization carried out to this day has resulted in widespread and prolonged suffering and oppression for the Palestinian people, especially in this case, the Palestinian identity and culture, which are threatened by these efforts. In fact, on January 12, 2024, South Africa sued Israel before the International Court of Justice for alleged violations of the Genocide Convention committed in Gaza and has reached the stage of a public hearing. Judaization is one example of the need to formulate international law on cultural genocide so that it can be strictly enforced against the perpetrators of the crime and prevent the spread of the consequences caused to the target group.

RESEARCH METHODS

This research is normative legal research. The approaches used are conceptual approach, statutory approach, case approach, and historical approach. The statutory approach is used to examine a rule relating to the legal issue in this research, namely the 1998 Rome Statute, the 1948 Genocide Convention, the Statute of the International Court of Justice, court decisions, and legal works. The case approach is used to examine cases related to the legal issues at hand. In this case, it has been legally binding the Krstić Case by the ICTY, with observations supported by the International Court of Justice. The conceptual approach is used when no rule

¹¹ Mona Farouk.

¹² Abdu, "Israeli Persecution in Occupied Jerusalem".

¹³ Tye Tavaras, "The Case for Cultural Genocide: The Formulation of a Working Definition" (American University in Cairo, 2011), <https://fount.aucegypt.edu/etds/963>.

¹⁴ Article 38 (1) of the International Court of Justice Statute.

¹⁵Victor Tsilonis, *The Jurisdiction of the International Criminal Court* (Springer, 2019), <https://doi.org/https://doi.org/10.1007/978-3-030-21526-2>.

of law relates to the issue at hand. At the same time, the historical approach is used to find the rule of law from time to time to understand its philosophy and study its development.

ANALYSIS AND DISCUSSION

Judaization in Palestine under the 1998 Rome Statute

At the first International Zionist Conference in Basel, Switzerland, in 1897, it was agreed that Zionism aims to establish a homeland for Jews in Palestine under the law. When the conference was held, the Palestinian Arab population reached 95 per cent, and they controlled 99 per cent of Palestinian land. Some of the steps taken are buying land for Jewish immigrants, making the Palestinian Arab population uncomfortable living in Palestine and expelling the Arab population with terrorism. So, it is increasingly clear that Zionism aims to erase the ownership of the Palestinian Arab population physically and politically, and in that goal, it is not only limited to land but land without a population amid a majority Jewish immigrant population in Palestine¹⁶. Israeli occupation in the history of Palestine has shown that the purpose of the occupation is not only to occupy the territory but also to destroy all the original characteristics of Palestine.¹⁷ It is called Judaization, which also includes the expulsion of the indigenous population and the prevention of return because they were born of the "wrong race" in Israel's view.¹⁸ In "Forced Expulsions", *Oceans of Injustice* reported that The Nakba (catastrophe) drastically changed the cultural, demographic, and ethnic composition of Palestine, during which approximately 78 per cent of Palestinian land was seized and ethnically cleansed by Israel through mass executions, terror attacks, massacres, threats and forced expulsions of approximately 750,000 Palestinians. As much as 22 per cent of the remaining land, Israel is still trying to annex and forcibly evict 300,000 Palestinians. Millions of refugees to date have not been able to return to their homeland, which is emphasized by various Israeli policies, one of which is the Law of Return, which gives exclusive rights to every Jew to enter Israel.¹⁹

Judaization includes the destruction of four main pillars in Jerusalem and throughout Palestine, there are people, land, identity, and holy places.²⁰ First, the Judaization of people. For example, Galilee and the Naqab have been strategic areas for Israel for decades due to the proportionally higher Palestinian population. Galilee became the target of Judaization, which involved land grabbing, creation, and encouragement of Jewish settlements.²¹ While attempting to Judaize the Naqab and ignore the Arab Bedouin lifestyle, seven cities were established in the

¹⁶ Z.A. Maulani, "Gerakan Menaklukan Dunia," in *The Second Edition* (Jakarta: Penerbit Daseta, 2002), 18–19.

¹⁷ Ahmad M. Baker, *The Future of Palestinian Identity: Psychosocial-Political Perception of Identity among Palestinian Youth* (UK: Cambridge Scholar Publishing, 2018).

¹⁸ Sami Abou S, "Jaffa, The Nakba, and Resistance (A Cultural Perspective)," *This Week in Palestine*, 2023, <https://thisweekinpalestine.com/wp-content/uploads/2023/01/297-001.pdf>.

¹⁹ Al-Haq, "Israel's Apartheid Regime Over The Palestinian People and The Denial of Palestinian Self-Determination in Violation of the ICCPR," 2022, https://www.alhaq.org/cached_uploads/download/2022/03/02/final-human-rights-committee-factsheet-1646212241.pdf.

²⁰ Relief, "Meyahudikan Palestina".

²¹ Ben White, "Palestinians in Israel's Democracy": The Judaization of the Galilee," *Middle East Monitor*, 2010, <https://www.middleeastmonitor.com/20140511-palestinians-in-israels-democracy-the-judaization-of-the-galilee/>.

Siyag area to concentrate their population on a minimum of land.²² Judaization was then directed toward Palestinians living in mixed or Green Line cities,²³ comprising Yaffa, Haifa, Al-Lydd, Ramleh, Nazareth, and Akka, as they were ordered removed from the homes they had lived in for decades. The mass expulsions are a dual process of Gentrification, as in the demolition of many properties and Judaization to change the demographic character of the cities to remove the indigenous Palestinian population and erase Palestinian-ness from the landscape.²⁴

In the first half of 1948, West Jerusalem was cleared of its Palestinian population. The Judaization of West Jerusalem was carried out by forcibly evicting around 80,000 Palestinians from their properties and homes.²⁵ The Absentee Property Law 1950 has been used for years as a means to expropriate Palestinian-owned property in East Jerusalem by Israeli settler associations.²⁶ *Institute for Palestine Studies* added that, in addition, the existence of Palestinians is increasingly made precarious by the revocation of residence permits, difficult child registration processes,²⁷ and even the prohibition of family reunification, which in practice is extended almost every year.²⁸ In addition, the use of apartheid practices, such as segregation, isolation and fragmentation, are more subtle mechanisms than traditional forced displacement, designed to eliminate the Palestinian people by undermining its collectivity.²⁹ In the working paper, *BADIL*, in the form of that "intangible" action, seeks to create an environment that forces people to alienate their land so that they seek a better livelihood elsewhere, and masks the fact that their displacement is involuntary and forced.³⁰ The latest report from UNRWA is that there are 5.9 million registered Palestinian refugees.

Second, the Judaization of Palestinian land. Israel's strategy in seizing Palestinian land is to designate land as state land, pretext for public and military needs, and confiscate "absent property", as well as declare private land as unregistered public land.³¹ After the establishment of Israel as a settler colonial state, Israel pursued different policies to marginalize, suppress, and demobilize the Palestinian population. Originally created as a military regime, it officially lasted until 1966. In those days, the territory where the Palestinians were concentrated was declared a military zone and filled with military checkpoints. The suppression of any political

²² Hana Hamdan, "The Policy of Settlement and 'Spatial Judaization' in the Naqab," *Adalah's Newsletter* 11, 2005, http://www.hic-mena.org/documents/Hana_Hamdan_Spatial_planning_2005.pdf.

²³ Al-Majdal, "Palestine Ongoing Nakba," *Double Issue No. 39/40*, 2008.

²⁴ Al-Majdal.

²⁵ M. Alaa Mandour, "Jerusalem: A Tale of a City," *Journal of Islamic Architecture* 1, no. 3 (2017): 1.

²⁶ Norwegian Refugee Council, "The Absentee Property Law and Its Application to East Jerusalem," 2017, https://www.nrc.no/globalassets/pdf/legal-opinions/absentee_law_memo.pdf.

²⁷ Jerusalem Legal Aid and Human Rights Center (JLAC), "How Israel Legalizes Forcible Transfer: The Case of Occupied Jerusalem," accessed March 4, 2023, https://www.palestine-studies.org/sites/default/files/jq-articles/Pages_from_JQ_72_-_JLAC_0.pdf.

²⁸ Center, "How Israel Legalizes Forcible", 116.

²⁹ BADIL Rights, "Forced Population Transfer The Case of Palestine (Segregation, Fragmentation, and Isolation)," Working Paper, 2020.

³⁰ Rights.

³¹ United Nations Beirut, "Palestine Under Occupation III: Mapping Israel's Policies and Practices and Their Economic Repercussions in the Occupied Palestinian Territory," 2021, <https://www.unescwa.org/publications/mapping-israel-policies-economic-repercussions-occupied-palestinian-territory>.

organization matched the restriction of movement.³² In addition, the expropriation of land belonging to the native Palestinians accelerated, along with Israel's efforts to build Jewish settlements and destroy the Palestinian agricultural sector. The same pattern was later applied also in the areas occupied by Israel in 1967. House demolitions and land grabs were still being carried out against native Palestinians in the area in 1948.³³ For example, the expansion of West Jerusalem's borders was legislated under Israeli law and condemned by the UN Security Council.³⁴ However, the resolution on this matter failed to be adopted, even though, according to Dixon, UNSC resolutions are law enforcement efforts against violating countries.³⁵ BADIL, in "Israel's Regularization Law is an Act of Legalization of its Colonialization Policies", reported that Israel's land occupation and forced evictions became clearer and clearer after the Regularization Law was passed on February 6, 2017.³⁶

The Judaization of people and land in Palestine led to some physical destruction. The five objective acts in the formulation of Article 6 of the Rome Statute indicate that the actus reus must be committed to partially or completely destroy the protected group.³⁷ In the context of the crime of genocide as stipulated in Article 6 (c) of the Rome Statute, the phrase "causing physical destruction" indicates that the perpetrator creates a living condition that indirectly kills members of the group against one or more people, but physical destruction is the ultimate goal, such as rape, lack of proper means of residence, starving the population, reducing health services to below the minimum, forced expulsion, and coercion to do hard work both physically and mentally.³⁸ However, in one of the ICTR decisions, it was stated that although the victims were deprived of food, water, and adequate sanitary and medical facilities, such deprivation in a conflict situation was not intentionally created to cause their destruction.³⁹ Institutionalized discriminatory practices, forced displacement and Mass Forced Evictions, demolition of homes and villages, land grabbing, theft of resources, and displacement of settlers to the occupied territories are designed to expand Israeli colonial control and annexation of Palestinian territories,⁴⁰ so that one of the effects is the birth of millions of Internally Displaced Persons (IDPs) and those in the diaspora around the world.⁴¹ Refugee camps that third and fourth-

³² Magid Shihade, "Settler Colonialism and Conflict: The Israeli State and Its Palestinian Subjects," *Settler Colonial Studies* 2, 2021, <https://www.tandfonline.com/doi/abs/10.1080/2201473X.2012.10648828>.

³³ Al-Jazeera, "Israel's Settlements: Over 50 Years of Land Theft Explained," accessed March 4, 2023, <https://interactive.aljazeera.com/aje/2017/50-years-illegal-settlements/index.html>.

³⁴ Rights, "Forced Population Transfer The Case of Palestine (Segregation, Fragmentation, and Isolation)."

³⁵ Sefriani and Nur Gemilang M, "Implementation of the United Nations Security Council Resolution under the Indonesian Legal System," *Jurnal East Asia and International Law* 14, no. 2 (2021): 345, <https://doi.org/http://dx.doi.org/10.14330/jeail.2021.14.2.06>.

³⁶ BADIL, "Israel's Regularization Law Is an Act of Legalization of Its Colonialization Policies," 2017, <https://www.badil.org/press-releases/817.html>.

³⁷ Hata, *Hukum Internasional : Sejarah Dan Perkembangan Hingga Pasca Perang Dingin* (Malang: Setara Press, 2012).

³⁸ Palevic, "Actus Reus of Genocide".

³⁹ International Criminal Law Services, "International Criminal Law and Practice Training Materials," Genocide, 2017, <https://iici.global/0.5.1/wp-content/uploads/2018/03/icls-training-materials-sec-6-genocide.pdf>.

⁴⁰ Penny Green and Amelia Smith, "Evicting Palestine", *State Crime Journal* 5, No. 1, Spring (2016): 104, <https://doi.org/10.13169/statecrime.5.1.0081>.

⁴¹ Norwegian Refugee Council, "Identifying IDPs in Palestine: New Thinking on Monitoring Internal Displacement in the West Bank," 2015, <https://www.internal-displacement.org/publications/identifying-idps-in-palestine-new-thinking-on-monitoring-internal-displacement-in-the>.

generation Palestinians have inhabited continue to increase in population. In addition to ageing buildings, sewage, water, and electricity infrastructure has not been adequately maintained, and social and economic living conditions are deteriorating. Access to sanitation and water is also hampered, especially for vulnerable communities in Area C of the West Bank, refugee communities, and the Gaza Strip, with 1.37 million Palestinians having a severe need for water and sanitation assistance by 2023.⁴² Discriminatory planning procedures and the creation of such situations contribute to poor health and health inequities affecting Palestinian households. In the blockaded Gaza Strip, Israel restricts the entry and exit of goods, including medical devices and medicine. Palestinians must pass through Beit Hanoun or Eretz checkpoints to go to other Palestinian territories to obtain Israeli permits. This poses health risks and even death, as Palestinians are dependent on Israeli permits, which are often delayed and denied.⁴³

The creation of a situation of forced displacement also occurred in the Bosnian genocide, where the Trial Chamber of ICTY found Krstić, as part of a joint criminal enterprise, guilty of having the objective of forcibly removing Bosnian Muslim women, children, and parents from Potočari, as well as creating a humanitarian crisis to support the forced displacement, as they were severely deprived of food, shelter, and services.⁴⁴

In the context of specific intent in genocide, such "intent to destroy" does not require an explicit statement but can be inferred based on a collection of objective facts attributable to the state, including official statements, state policies and laws, general plans, patterns of behaviour, repeated destructive acts that are sequential and have the logical result of destroying the group, in whole or in part.⁴⁵ The International Court of Justice endorsed the observation in the Krstić Case, charged with committing atrocities during the fall of Srebrenica in 1995⁴⁶, and Krstić was the chief of staff and Deputy Commander of the Drina Corps in the army of the Republika Srpska (VRS) from 13 July 1995 until the end of the war, that when there is physical or biological destruction, concurrent attacks on cultural and religious property and cultural and religious symbols of the targeted group often occur. Such attacks can legitimately be taken as evidence of an intention to physically destroy the group.⁴⁷ So, in these cases, in addition to the physical destruction of Palestinians by Israel, the destruction of Muslim and Christian identities, cultural and religious symbols and properties, and sites is also carried out to Judaize identities and holy sites.

The Judaization of Palestinian identity and holy sites is carried out simultaneously with the physical destruction efforts that continue to be carried out. The erasure of Palestinian history and collective memory in various ways that are no less cruel than the Nakba, as well as the destruction of various Palestinian historical buildings. In the online edition of Middle East Eye on 3 June 2020, Akram Al-Waraa mentioned that the Judaization of holy places in

⁴² WHO, "Health Conditions in the Occupied Palestinian Territory, Including East Jerusalem and the Occupied Syrian Golan" A76, no. 15 (2023): 3.

⁴³ WHO.

⁴⁴ United Nations, "Case Information Sheet: Radislav Krstic (IT-98-33)," International Criminal Tribunal for the former Yugoslavia, accessed August 5, 2023, https://www.icty.org/x/cases/krstic/cis/en/cis_krstic_en.pdf.

⁴⁵ Newlines Institute, "The Uyghur Genocide: An Examination of China's Breaches of the 1948 Genocide Convention," 2021.

⁴⁶ I.C.J. Judgment, "Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)," JUSTICE, INTERNATIONAL COURT OF, 2007.

⁴⁷ Radislav Krstić, "Case No. IT-98-33-T," Trial Chamber Judgment ICTY, 2001.

Palestine is also carried out, especially the Aqsa Mosque and Ibrahimi Mosque, which have been divided into synagogues and mosques to change the Islamic Arab, and Palestinian identity features.

In the Bosnian Genocide case, in its submission, the Applicant, Bosnia and Herzegovina, claimed that the Serbian army engaged in the deliberate destruction of the historical, cultural and religious property of protected groups in “an attempt to erase any trace of the Bosnian Muslim”, during the conflict in Bosnia and Herzegovina.⁴⁸ Regarding the findings of Riedlmayer, an expert presented by Bosnia and Herzegovina who had conducted a field survey of the destruction of cultural heritage in the Milosevic case, the Court considered that this was convincing evidence of acts of destruction of cultural, historical, and religious heritage in Bosnia and Herzegovina albeit in a limited area. Although the destruction of such heritage was significant, the Court considered that such acts could not be considered deliberate and not be regarded as intentionally inflicting conditions of life calculated to result in the group's physical destruction.⁴⁹ The International Law Commission confirmed in 1996 that the destruction in question was physical or biological material destruction, not the destruction of a group's national, religious, linguistic, cultural or other identity. Therefore, the Court concluded that the act could not be categorized as genocide, as referred to in Article II of the Genocide Convention.⁵⁰ The ICTY also took a similar view in the Krstic case, finding that, despite recent developments in customary law, it was limited to those seeking a group's physical or biological destruction.⁵¹

Third, the Judaization of Palestinian identity. In the aspect of Judaization of identity, culture and religion, Israel seeks to change the Muslim and Arab aspects of Jerusalem by imposing religious and cultural changes, such as threatening Christian sites and targeting Islamic sites, especially the Aqsa Mosque, which is a dangerous target of Judaization.⁵² In addition, Arab sites, villages, and streets in Jerusalem were renamed to Hebrew names and national parks for the benefit of settlers and the biblical narrative. The occupation in this context has carried out more than 22,000 Judaization of names in Jerusalem since 1948.⁵³ The Yaffa Municipality, too, began to draw up plans for the Judaization of the city, such as demolishing much of the ancient Arab architecture and buildings in the neighbourhoods and surrounding villages that were settled during the Nakba, and replacing the names of Arab streets with the names of Zionist leaders, including introducing an Israeli curriculum that denied the place any Palestinian history at all and that Israeli education system continues to this day.⁵⁴ BADIL on “The Right to Education and Colonial Policies in Palestine” noted that, the Occupied Territories also face difficulties in the education sector, as Israel seeks to colonize cities, isolate the population, hide the Palestinian character, and obliterate the national

⁴⁸ Judgment, “Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro).”

⁴⁹ Judgment.

⁵⁰ Krstić, “Case No. IT-98-33-T.”

⁵¹ Krstić.

⁵² Daily Sabah, “Judaization of Jerusalem: Could It Get Any Worse?,” n.d.

⁵³ Sabah.

⁵⁴ BADIL, “Israel’s Regularization Law Is an Act of Legalization of Its Colonialization Policies.”

identity⁵⁵, by imposing Zionist curricula, concepts, narratives, and values, de-recognizing the existence of the Palestinian people in Palestine, and weakening the national culture and Arabic language, among other measures.⁵⁶

For Palestinians, in addition to being a sacred tree and having a special position in the collective consciousness of the Palestinian population, as well as unique cultural values, the olive tree is also a symbol of constancy and attachment between the Palestinian people and their land, which is associated with their resistance to the Israeli occupation of Palestine.⁵⁷, is being attempted to be disconnected from the Palestinian people in order to take away its sacred ties and facilitate land confiscation.⁵⁸ Since 1967, the Israeli Authorities have uprooted and destroyed around 800,000 olive trees, which has also had an economic impact on 80,000 Palestinians who depend on the olive harvest.⁵⁹ In addition to olives, tens of thousands of books, furniture, music recordings, paintings and other artefacts were also stolen by Israel in 1948 and 1982, and they are prohibited from studying their culture or remembering their past because their memory is seen as a dangerous weapon that must be suppressed and controlled".⁶⁰ Israel has also attempted to steal traditional Palestinian clothing named *tatreez*,⁶¹ even though traditional embroidery arts and practices, skills, and customs were designated as intangible cultural heritage by UNESCO on December 16, 2021.⁶² Typical Palestinian foods are also stolen and marketed by Israel, and normalized by the Western press, such as maftoul, falafel, tabouleh, hummus, fallahi salad as an Israeli salad, and others are also included in the list of claimed foods.⁶³

Fourth, the Judaization of the holy place. The Aqsa Mosque is a symbol of inspiration, national pride, and Palestinian cultural heritage that is also a target for plans to change the physical and spiritual landscape of Jerusalem, such as building the Temple of Solomon, which will have an impact on Palestinian culture.⁶⁴ The latest plan was presented by an Israeli Knesset member from the Likud Party to divide the Aqsa Mosque compound for Jews and Muslims, leaving little for Muslims.⁶⁵ The aggressive Judaization of Jerusalem has successively threatened Muslim and Christian communities through expulsions and expropriation of

⁵⁵BADIL, "The Right to Education and Colonial Policies in Palestine," 2020, https://www.badil.org/cached_uploads/view/2021/04/20/right2education-brochure-eng-1618914430.pdf.

⁵⁶ BADIL.

⁵⁷ Maissoun Sharkawi, "Introducing Olive Culture in Palestine," University of Lorraine-Nancy, 2020.

⁵⁸ Monitoring Israeli Colonization Activities, "Lembar Fakta: Hari Pohon Zaitun Sedunia," accessed April 4, 2023, <http://poica.org/2022/11/factsheet-the-world-day-of-the-olive-tree/>.

⁵⁹ Visualizing Palestine, "Uprooted," accessed April 5, 2023, <https://visualizingpalestine.org/visuals/olive-harvest>.

⁶⁰ Roger Sheety, "Stealing Palestine: A Study of Historical and Cultural Theft," Middle East Eye, 2015.

⁶¹ Luma Zayad, "Systematic Cultural Appropriation and the Israeli-Palestinian Conflict," *DePaul Journal of Art, Technology, and Intellectual Property Law* 28, no. 2 (2019): 18, <https://via.library.depaul.edu/jatip/vol28/iss2/2>.

⁶² UNESCO, Decision of the Intergovernmental Committee: 16.COM 8.B.30, <https://ich.unesco.org/en/decisions/16.COM/8.B.30>

⁶³ Middle East Eye, "Israel-Palestina: Bagaimana Makanan Menjadi Sasaran Penaklukan Kolonial," accessed April 5, 2023, <https://www.middleeasteye.net/opinion/israel-palestine-food-colonial-conquest-target-how>.

⁶⁴ Hanan Chehata, "The Cultural Genocide of Palestine," Middle East Monitor, 2010, <https://www.middleeastmonitor.com/20100529-the-cultural-genocide-of-palestine/>.

⁶⁵ Adara Relief, "Al-Aqsa Dalam Bahaya! Israel Akan Bagi Masjid Al-Aqsa Jadi Dua Bagian, Hanya Segini Bagian Untuk Umat Muslim," accessed June 14, 2023, <https://adararelief.com/al-aqsa-dalam-bahaya-israel-akan-bagi-masjid-al-aqsa-jadi-dua-bagian-hanya-segini-bagian-untuk-umat-muslim-2>.

religious property. Attacks and vandalism against Christian cemeteries in Jerusalem share the same fate as Muslims, as Christians are also often barred from visiting their shrines in Bethlehem and Jerusalem due to Israel's access control over Gaza and the West Bank.⁶⁶ Settlers have invaded the Aqsa Mosque 262 times in 2022. In addition to the Aqsa Mosque, the Ibrahimi Mosque in the West Bank has been divided into two parts, a mosque and a synagogue. Israeli authorities have requested the prevention of the call to prayer 613 times and the closure of the mosque for ten days in 2022. In addition, 24 mosques in the West Bank have also been targeted by settlers for raiding, burning, and destruction.⁶⁷ The warning against Israel's dangerous violations, especially against the Aqsa Mosque, points to repeated closures, digging, and continuous targeting of the women and men guarding Al-Aqsa and the congregation and affirms that the Judaization plan is carried out by closing, restricting the congregation and replacing the mosque's Islamic Arab identity with a Jewish identity.⁶⁸ Jewish settlers also took Palestinian holy sites in the West Bank through Israeli military edicts, then included them in military manoeuvres, official Israeli nature reserves, and archaeological sites and excavations.⁶⁹ Al-Yusufiye Cemetery, which is the oldest Muslim cemetery in Jerusalem, was also destroyed, and the authorities also want to build a city park near the cemetery.⁷⁰

The attack and destruction of cultural and religious objects in another case was carried out against the Arch of Triumph, which was destroyed in mid-2015 by ISIS.⁷¹ Similarly, Hitler's actions in systematically destroying synagogues. Synagogues are important to the identity and life of the Jewish community, comparable to the reverence Timbuktu residents show for the mosques and tombs of Timbuktu.⁷² The ICC Prosecutor described the impact of the destruction of tomb sites in Timbuktu as erasing a civilizational landmark and an element of collective identity built up over centuries. It is at the root of destroying an entire society that affects its attitudes, practices, and social structures irreparably.⁷³ In addition, the policy on Cultural Heritage published by the ICC Prosecutor also recognizes the International Court of Justice's statement that targeting a group's cultural heritage can constitute genocidal intent to destroy that group.⁷⁴

⁶⁶ Al-Jazeera, "Penyerbuan Al-Aqsa Bukan Pertanda Baik Bagi Hak-Hak Beragama Di Israel," accessed April 5, 2023, https://www.aljazeera.com/opinions/2023/1/8/al-aqsa-storming-doesnt-bode-well-for-religious-rights-in-israel?traffic_source=KeepReading.

⁶⁷ Middle East Monitor, "Israel Melarang Adzan Di Masjid Ibrahimi Sebanyak 613 Kali Pada Tahun 2022," accessed April 6, 2023, <https://www.middleeastmonitor.com/20230109-israel-prevented-call-to-prayer-in-ibrahimi-mosque-613-times-in-2022/>.

⁶⁸ Middle East Monitor, "PA Mencatat 73 Pelanggaran Israel Terhadap Masjid Al-Aqsa, Ibrahimi Pada Bulan Juni," accessed April 6, 2023, <https://www.middleeastmonitor.com/20220705-pa-records-73-israel-violations-against-al-aqsa-ibrahimi-mosques-in-june/>.

⁶⁹ Machsom Watch, "Israel's Takeover of Palestinian Sacred and Heritage Sites in the West Bank," 2020, https://machsomwatch.org/sites/default/files/makamim2020_eng.pdf.

⁷⁰ Anadolu Agency, "Israel Menghancurkan Kuburan Muslim Di Dekat Masjid Al-Aqsa," accessed April 6, 2023, <https://www.aa.com.tr/en/middle-east/israel-demolishes-muslim-graves-near-al-aqsa-mosque/2388235>.

⁷¹ Ana Filipa Vrdoljak, "The Criminalisation of the Intentional Destruction of Cultural Heritage," *Faculty of Law, University of Technology Sydney*, 2016, 25–26, <https://ssrn.com/abstract=2676470>.

⁷² Mark S. Ellis, "The ICC's Role in Combating the Destruction of Cultural Heritage," *Journal of International Law* 49, no. 1 (2017): 35.

⁷³ Ellis.

⁷⁴ International Criminal Court, "Policy on Cultural Heritage," 2021.

The Difference Between Intent to Physically Destroy a Group and Cultural Genocide.

Concerning the intention to destroy the group physically, the elements contained in Article 6 (c) of the Rome Statute are *as follows*: *First*, the offender inflicts a certain condition of life on one or more people. *Second*, the individual belongs to a particular nation, race, ethnicity, or religious group. *Third*, the perpetrator intends to destroy, in whole or in part, the national, racial, ethnic, or religious group. *Fourth*, the living conditions are calculated to cause the group's physical destruction, in whole or in part. *Fifth*, the behaviour itself can lead to destruction or occur in the context of a pronounced pattern of similar behaviour directed against the group.⁷⁵ The phrase "inflicting physical destruction" indicates that the perpetrator inflicts a condition of life on one or more people who do not directly kill members of the group, but physical destruction is the ultimate goal., and actions that have an impact on the slow death of people can also be qualified in this regard.⁷⁶ Some examples of such physical destruction are rape, lack of adequate means of shelter, starving the population, reducing health services to below the minimum, forced expulsion, and coercion to do heavy work, both physical and mental.⁷⁷

Cultural genocide includes forcibly transferring children to another group, forcibly and systematically alienating individuals who represent the culture of a group, prohibiting the use of the national language even in personal relationships, systematically destroying books printed in the national language or various religious works or prohibiting new publications, and systematically destroying historical or religious monuments or transferring them to foreign interests, destroying or disseminating documents and objects of historical value, artistic, or religious, and objects used in religious worship.⁷⁸ According to the International Criminal Court, cultural destruction or cultural genocide can be regarded as evidence of an "intent to destroy the group physically".⁷⁹

Opportunity to Categorize Judaization in Palestine As Cultural Genocide

The book *Axis Rule in Occupied Europe* by Polish-Jewish jurist Raphael Lemkin introduced the term 'genocide' for the first time in print in 1944. The crime of genocide in it described the Nazis' actions against the Jews, which were divided into eight techniques, one of which was cultural.⁸⁰ Lemkin attempted to launch a campaign at the first session of the UN General Assembly that led to the adoption of a resolution to condemn the act of genocide as an

⁷⁵ Court.

⁷⁶ Muhammad Hatta, "Kejahatan Luar Biasa (Extraordinary Crime)," in *The First Edition* (Aceh: Unimal Press, 2019), 62.

⁷⁷ Milan Palevic, Bojan, and Zaklina, "Actus Reus of Genocide and Types of Genocidal Destruction," *Journal of Law Ekonomika* 65, no. 4 (2019): 67.

⁷⁸ Draft Convention on the Crime of Genocide, UN Doc E / 447 (1947), p.26-28.

⁷⁹ Vladyslava Bakalchuk, "Cultural Genocide as International Crime Committed by The Russian Federation in Ukraine," *Strategic Panorama*, 2022, 76, <http://dx.doi.org/10.53679/2616-9460.specialissue.2022.07>.

⁸⁰ Raphael Lemkin, "Genocide: Axis Rule in Occupied Europe," Chapter IX, accessed May 21, 2023, https://www.academia.edu/5846019/Raphael_Lemkin_Axis_Rule_in_Occupied_Europe_Laws_of_Occupation_Analysis_of_Government_Proposals_for_Redress_Chapter_IX_Genocide_.

international crime.⁸¹ The original draft of the crime of genocide, Article II of the Secretariat Draft, identified three techniques of genocide, namely physical genocide, biological genocide, and cultural genocide. However, the final version of the Convention deliberately omitted the provision on cultural genocide⁸², as it aimed to protect the interests of states that have a history of policies that threaten the cultural existence of members of their population and/or those living in their areas of control.⁸³

The issue of cultural genocide remains a contentious one in international law. One view is that cultural genocide is not recognized in international law because it was eliminated during the negotiation process, and on the other hand, although cultural genocide was rejected, the only remaining formulation of cultural genocide is Article 2 (e) of the Genocide Convention, which is the forcible transfer of children from one group to another.⁸⁴ Furthermore, the Declaration on the Rights of Indigenous Peoples also removed the provision explicitly mentioning "cultural genocide", which is now stated in Article 8 paragraph (1) as "forced assimilation or cultural destruction".⁸⁵

Bilateral and multilateral treaties are primary sources of law. Traditionally, the writings of jurists are not in themselves a source of international law, but help courts identify the scope of customary law, the proper interpretation of a treaty, or the existence of general principles.⁸⁶ Article 38(1) of the Statute of the International Court of Justice provides for sources of international law, one of which is court decisions and the teachings of the most eminent scholars of various countries, known as doctrine or works of law. In general, the opinions of legal experts are assumed to have the same position as court decisions as a secondary source of international law.⁸⁷ However, a subsidiary source of law can only stand with a primary source of law or is only complementary in nature. Despite their importance, some argue that the writings of authors do not carry the same weight as court decisions and do not have the potential to crystallize nascent law in the same way as those decisions.⁸⁸

Lemkin's concept of cultural genocide is still used positively to ensure the development of human rights law towards the protection of cultural rights for minorities and indigenous peoples,⁸⁹ as well as in drafting legal works by legal scholars such as Tye Tavaras, David Nersessian, Stefania Negri, and Kevin Chamberlain. Ascertaining who the highly qualified

⁸¹ William Schabas, "From the Holocaust to the Genocide Convention," 2013, <https://menschenrechte.org/wp-content/uploads/2013/05/From-the-Holocaust-to-the-Genocide-Convention-A-Human-Rights-Learning-Process..pdf>.

⁸² Negri, "Cultural Genocide in International Law".

⁸³ Negri, p. 57.

⁸⁴ Jayme Herschkop and Julie Hunter, "Genocide Reinterpreted: An Analysis of the Genocide Convention's Potential Application to Canada's Indian Residential School System," 2011, https://law.yale.edu/sites/default/files/area/center/schell/canadian_trc_paper_final.pdf.

⁸⁵ Payam Akhavan, "Cultural Genocide: Legal Label or Mourning Metaphor?," *McGill Law Journal* 1, no. 62 (2016): 256, <https://doi.org/https://doi.org/10.7202/1038713ar>.

⁸⁶ Anonim, http://law.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751/Custom/UNIT_II.pdf, p. 4-5. Accessed 21 May 2023.

⁸⁷ Bankole Thompson, "International Criminal Justice Series," in *Seri 3* (Springer, 2015), 10.

⁸⁸ Carlos Ivan Fuentes, "The Imperfect Paradigm: Article 38 of the Statute of the International Court of Justice," in *Ius Gentium: Comparative Perspectives on Law and Justice* 57 (Springer, 2016), 74, https://doi.org/http://dx.doi.org/10.1007/978-3-319-43929-7_3.

⁸⁹ Jeremie Gilbert, *Perspectives on Cultural Genocide: From Criminal Law to Cultural Diversity* (Roehampton University, 2018), <https://doi.org/http://dx.doi.org/10.1093/oso/9780190272654.003.0018>.

international law experts are is problematic, although the teachings of public law experts are regularly cited in court decisions and the International Criminal Court. However, court decisions tend to command more respect and influence than the teachings of public law experts.⁹⁰

The destruction of cultural heritage, whether in whole or in part, has the consequences of cultural genocide. Kevin Chamberlain concludes that the destruction of a nation's cultural heritage means destroying the memory, collective consciousness, and identity of a nation or ethnic cleansing.⁹¹ In this case, the Palestinians have been subjected to policies that are often described as genocidal and aimed at destroying the culture and national will and political autonomy in the struggle for independence and the right to self-determination.⁹²

In relation to the case of the Judaization of Palestinian identity and holy sites, Israel's actions illustrate one of the elements of Lemkin's concept of cultural genocide in letter e, namely "the destruction of historical or religious monuments or diverting them for foreign use, as well as the systematic destruction or dispersal of documents and objects of historical, artistic, or religious value, and objects used in religious worship".⁹³ The destruction of cultural heritage, historical buildings, and archaeological sites directly impacts negatively on the development of indigenous Palestinian communities. Judaization involves the destruction or significant alteration of sacred, cultural, or historical landmarks.⁹⁴ The deliberate targeting of Islamic sites in Jerusalem, particularly the Aqsa Mosque, as well as threats to Christian sites such as the attack and destruction of Christian cemeteries and bans⁹⁵ or restrictions on visiting holy sites.⁹⁶ Ongoing efforts to implement the Talmudic plan to destroy the mosque and build a temple on its ruins. Serious cracks have been observed in the sanctuary's buildings, ceilings, walls, facilities, and floors, including leaks when it rains. The paving stones on Via Dolorosa close to Al-Ghanamwa Gate and the stones on the west side of the Dome of the Rock have collapsed.⁹⁷ In addition, the Ibrahimi Mosque was also targeted for Judaization, that began with restrictions on the Muslims' right to worship,⁹⁸ excavations in the mosque's southern outer courtyard, the

⁹⁰ Aldo Zammit Borda, "A Formal Approach to Article 38(1) (d) of the ICJ Statute from the Perspective of the International Criminal Courts and Tribunals," *European Journal of International Law* 24, no. 2 (2023): 660.

⁹¹ Daud Abdullah, *A Century of Cultural Genocide in Palestine* (Canada: Routledge, 2019).

⁹² Abdullah.

⁹³ Pablo Gavira D, "The Physical, Biological and Cultural Dimensions of Genocide: An Expansive Interpretation of the Crime?," *Journal on Ethnopolitics and Minority Issues in Europe* 21, no. 1 (2022): 119, <https://doi.org/https://doi.org/10.53779/CNWQ2236>.

⁹⁴ Al-Quds Jerusalem, "Apa Arti Yudaisasi Dan Bagaimana Implementasinya," accessed May 12, 2023, <https://alqudsjerusalem.com/geography/what-does-judaization-mean-and-how-is-it-implemented/#ftnt1>.

⁹⁵ Al-Jazeera, "Penyerbuan Al-Aqsa Bukan Pertanda Baik Bagi Hak-Hak Beragama Di Israel."

⁹⁶ Middle East Eye, "Polisi Israel Memblokir Peziarah Dari Mengakses Gereja Makam Suci Pada Paskah," accessed May 10, 2023, <https://www.middleeasteye.net/news/israel-police-block-pilgrims-holysepulchrechurcheaster#:~:text=Israeli police block pilgrims from accessing Holy Sepulchre church on Easter,Israel capped the&text=Israeli forces on Saturday restricted,Church of the Holy>.

⁹⁷ Middle East Monitor, "Penggalian Israel Dan Pemblokiran Restorasi Menggerogoti Struktur Masjid Al-Aqsa," accessed May 10, 2023, <https://www.middleeastmonitor.com/20230223-israeli-excavations-and-blocking-of-restoration-eat-away-at-the-fabric-of-al-aqsa-mosque/>.

⁹⁸ Michelle D. Weitzel, "Access Denied: Temporal Mobility Regimes in Hebron," *Culture, Politics, Law, and Earth Journal* 21, no. 1 (2022): 190–92, <https://doi.org/https://doi.org/10.21307/borderlands-2022-008>.

building of an elevator, which was approved by Israeli authorities and the Central Court,⁹⁹ and to change the mosque's features like a synagogue.¹⁰⁰ These actions, which fall entirely within the scope of Judaization, aim to change the historical and cultural landmarks of the mosque, and constitute serious violations, including of freedom of worship.¹⁰¹

Israel's acts of destruction also extend to cemeteries¹⁰² or other holy sites. The Judaization of holy sites is closely linked to Palestinian identity. As in the case mentioned above, the names of graves are only written in Hebrew and English, plaques and monuments are placed to commemorate Israeli military officers or settlers, and there are signs next to graves that contain sentences glorifying the continuation of Jewish domination over the entire country. In fact, maps at several observation points only mention the names of Jewish settlements and the surrounding Palestinian villages are not mentioned.¹⁰³ In addition, the establishment of prayer sites established by Palestinians to honour relatives of the Prophet Muhammad or local holy figures, have been ignored and targeted for vandalism, and they are forbidden to even approach based on military orders.¹⁰⁴ The prevention of using libraries, schools, museums, historical places, places of worship or other cultural institutions and objects of the group is included in one of the acts of cultural genocide in Article III of the Draft Genocide Convention despite its rejection¹⁰⁵, and in Tye Tavaras' formulation of cultural genocide.¹⁰⁶

The Judaization of Palestinian identity in relation to acts of cultural genocide, such as the targeting of Palestinian cultural institutions and identities, continues even today in various forms in Palestine and against Palestinians in the diaspora.¹⁰⁷ Israeli soldiers and civilians from the occupied territories have removed many objects of historical, cultural, and archaeological value that have never been accessible to researchers.¹⁰⁸ "Rescue excavation" activities are used by Israel to legalize and continue its actions in destroying or preventing the use of various Palestinian historical, archaeological, and other cultural heritage sites, including diverting or replacing them for foreign establishments or uses that suit its interests, as referred to in the concept of cultural genocide mentioned above. Not only on holy sites, but the attack on Palestinian identity also extends to the Arab school education curriculum, the destruction of olive trees, and even the theft of Palestinian food and embroidery. However, these other attacks on identity are not clearly mentioned in Lemkin's concept of cultural genocide.

⁹⁹ Al-Monitor, "Israel Mengimplementasikan Proyek Yahudisasi Di Masjid Ibrahim Di Hebron," accessed May 21, 2023, <https://www.al-monitor.com/originals/2021/08/israel-implements-judaization-project-ibrahimi-mosque-hebron>.

¹⁰⁰ Middle East Monitor, "Israel Melanjutkan Yahudisasi Masjid Ibrahim, Kata Warga Palestina," accessed May 21, 2023, <https://www.middleeastmonitor.com/20220217-israel-continuing-to-judaize-ibrahimi-mosque-palestinians-say/>.

¹⁰¹ Parliamentary Union of the OIC Member State (PUIC), "PNC Menginformasikan Kepada Parelemen Dunia Tentang Yahudisasi Masjid Ibrahim," accessed May 21, 2023, <http://en.puic.org/news/11815>.

¹⁰² Machsom Watch, "Israel's Takeover of Palestinian," n.d.

¹⁰³ Watch.

¹⁰⁴ Watch.

¹⁰⁵ GROW, "Accountability for Uyghur Cultural Genocide Under International Law: Call For an Overhaul of the International Treaties Framing the Crime of Genocide," Policy Brief: Uyghur Tribunal, 2022.

¹⁰⁶ Tavaras, "The Case for Cultural Genocide," n.d.

¹⁰⁷ Tavaras.

¹⁰⁸ Tavaras.

To prove the intention of cultural genocide in Judaization, given that the purpose of cultural genocide is to destroy it in whole or in part or to prevent its preservation or development by the aforementioned measures against the protected group. Therefore, rooted in Israel's goal of establishing an exclusive state for the Jewish people and minimizing the presence of Arabs there, everything related to Arab identity, history, and cultural heritage will automatically be erased and replaced with things related to Jews. This goal is manifested in the Judaization of Palestinian identity and holy places implemented in various government policies and military orders, which are targeted at the protected group, namely the Palestinians. Thus, the intention is clearly and strongly embedded and can be seen in various actions and policies, even today.

When added through the lens of international law, although Article 2(e) is the only remaining formulation of cultural genocide in international law, the Statute of the Ad Hoc Tribunals for the Former Yugoslavia and Rwanda, as well as the Statute of the International Criminal Court, literally reproduce genocide as contained in the Genocide Convention, and therefore reject cultural genocide.¹⁰⁹

Systematic attacks by the Chinese government on sites, property, and religious and cultural symbols were also experienced by the Uyghurs. This is considered by the International Court of Justice to be evidence of an intent to destroy the group, rather than cultural genocide physically.¹¹⁰ In addition, the International Criminal Court in September 2016 issued its first judgment relating to cultural destruction - *Prosecutor v. Al-Mahdi*, which recognized the link between attacks on a group's cultural heritage and its destruction, but the Court did not view the destruction of the group as genocide and indicted the accused for the limited war crime of destruction of cultural property.¹¹¹

Thus, as in the aforementioned cases, the various attempts at Judaization of identity and holy sites in Palestine cannot be considered as stand-alone cultural genocide but can only be considered as evidence of genocidal intent to physically destroy the group in whole or in part, and/or included in other extraordinary crimes, namely war crimes for destroying and attacking the cultural and religious property of a group as stipulated in the 1954 Hague Convention on the protection of cultural property.

CONCLUSION

The Judaization of land and people is the physical destruction referred to in article 6(c) of the Rome statute, directed against Palestinian Arabs to eliminate the Arab identity and presence in Palestine to create a Jewish state. Meanwhile, based on the interpretation of article 6(c) of the Rome statute, the Judaization of identity and sanctuary can be used as evidence of intent to physically destroy the group, either in whole or in part, as was the observation supported by the International Court of Justice in the *Krstić* case.

In the author's view, the Judaization of identity and holy places in Palestine can be categorized as cultural genocide based on the draft genocide convention on cultural genocide,

¹⁰⁹ Gilbert, "Perspectives on Cultural Genocide," n.d.

¹¹⁰ Newlines Institute for Strategy and Policy, "The Uyghur Genocide: An Examination of China's Breaches of the 1948 Genocide Convention," 2021.

¹¹¹ Leora Bilsky and Rachel Klagsbrun, "The Return of Cultural Genocide," *The European Journal of International Law* 29, no. 2 (2019): 374, <https://doi.org/https://doi.org/10.1093/ejil/chy025>.

as well as the opinions of experts set forth in legal works, although it is still an additional source of law. Because it has not been recognized as customary international law. Thus, in the perspective of international law, cultural genocide cannot yet be categorized as a stand-alone crime but can only be categorized as evidence of intent to commit genocide because there are no rules that regulate it explicitly and firmly. The case is one of the important and critical circumstances regarding the need for regulation of cultural genocide in international law, in addition Palestine can ask the prosecutor to immediately investigate the Judaization, given that Palestine has become a member of the ICC so that it has jurisdiction over Israel.

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