

Law firm refers Australian Prime Minister Albanese to International Criminal Court for complicity in Gaza genocide

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7 March 2024

In a notable but little reported development, a team of lawyers from the Birchgrove Legal firm in Sydney this week referred Australian Prime Minister Anthony Albanese and his Labor Party government to the International Criminal Court (ICC) under an accusation of complicity in the Gaza genocide. The action, they state, has been endorsed by more than one hundred lawyers, as well as members of the community, including those of Palestinian background.

To the extent that the case has been referenced in the media, the coverage has largely been dismissive. The unlikelihood of the ICC examining an action brought by a private legal firm has been noted. The international court is not only ineffectual but is deeply compromised by its close alignment with American imperialism and its military operations.

The referral, though, has an undeniable significance. It appears to be the first time that a legal complaint of complicity in genocide has been levelled against an Australian prime minister.

Whatever action may or may not follow, moreover, the meticulous 92-page legal brief is an unanswerable indictment. Under conditions where the Labor government is seeking to distance itself from the consequences of Israel's crimes, including by shedding crocodile tears over mass civilian deaths, the brief demonstrates that Australia has supported the Zionist onslaught, politically, diplomatically and materially.

In a press release, the lawyers stated that they had written to the government twice, warning that Albanese and his cabinet were "encouraging and supporting war crimes" by Israel against the Palestinians. Both communications were ignored. The lawyers also noted that under Australian law, international crimes can only be prosecuted domestically with the approval of the attorney-general. Given that the chief law officer is a senior member of the government, this is a clear conflict of interest.

The brief cites the Genocide Convention, which defines

that crime as any of a series of acts "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group," including: "Killing members of the group; Causing serious bodily or mental harm to members of the group; Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part..."

Meeting the legal threshold requires proof of intent on the part of the perpetrator. The brief cites extensively comments by senior Israeli leaders establishing that intent. This began with a statement by Prime Minister Benjamin Netanyahu on October 7, the day of the Palestinian military uprising, which read "All of the places which Hamas is deployed, hiding and operating in, that wicked city, we will turn them into rubble."

Perhaps the most useful and damning aspect of the brief is an annexure entitled "Israeli statements and actions and Australian Minister replies." In a detailed, day by day chronology, it juxtaposes statements such as that made by Netanyahu, along with the carpet bombing and war crimes committed by Israel, with the responses of senior members of the Labor government.

For instance, the entry for October 16 noted that "in a speech to the Israeli Parliament, Prime Minister Benjamin Netanyahu said: 'This is a struggle between the children of light and the children of darkness, between humanity and the law of the jungle.' He also tweeted this quote but removed it after significant backlash." To that point, the brief notes, at least 1,000 children had been killed in Gaza, and more than 60 health facilities targeted.

On the same day, Australian Foreign Minister Penny Wong proclaimed: "Australia stands with Israel, and always will." Responding to the reports of mass civilian deaths, Wong effectively defended the Israeli onslaught and blamed the victims, trotting out the line of "human shields," which the lawyers point out has no basis in international law.

The brief records that on October 19, Israeli forces

operating a US-provided Apache helicopter indiscriminately opened fire on a group of civilians, mostly children. The next day, Prime Minister Albanese responded “The responsibility for what is happening now rests firmly with Hamas and the actions they have taken.”

The chronology, extending throughout October, documents multiple other instances of gross Israeli crimes and enunciations of genocidal intent, coupled with a carte blanche endorsement from Labor. The irrefutable conclusion is that the Labor leaders were well aware that a genocide, involving the mass murder of civilians and the deliberate destruction of civilian infrastructure, was underway and chose to support it.

The brief explains that Australia’s backing for the genocide has extended beyond the provision of political and diplomatic, to active material involvement. This includes:

- “Since 2017, Australia has approved 322 defence exports to Israel, including 49 permits for Israel-bound exports in 2022 and 23 in the first three months of 2023, which may cover both military-specific goods and also dual-use devices.” The contents are hidden behind national security provisions.

- “Australia is a member in the Lockheed-Martin F-35 Joint Strike Fighter global supply program and part of the global supply chain... No bombs could be dropped on Gaza by an F-35 without parts manufactured for the F-35s by Melbourne company, Rosebank Engineering (RUAG Australia).” Other firms are also involved.

- “Other material support provided by Australia includes a dispatch of a ‘significant contingent’ of troops and two aircraft to the Middle East amid the ongoing Israeli attack on Gaza.”

- “Further, Australians have been permitted by the Federal Government, whether explicitly or implicitly, to travel to Israel to join the IDF and its attacks on Gaza.” Australian citizens are banned from serving in any foreign defence force, aside from that of Israel.

- “During the Premiership of Prime Minister Albanese, Australia also appears to have provided not insignificant intelligence assistance to Israel. The US-run Pine Gap surveillance base, located outside of Alice Springs in Australia’s Northern Territory, collects an enormous range of communications and electronic intelligence from the Gaza-Israel battlefield—data which is then provided to the IDF and which may aid its campaign in Gaza.” The role of Pine Gap was revealed by *Declassified Australia* in November, and has been buried by the official media ever since.

- “Australia has supported Israel’s genocidal intentions in the Gaza Strip by suspending key humanitarian support to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (‘UNRWA’), which supports

Palestinians across the Occupied Territories.” That move, based on now discredited Israeli allegations, means Australia is a direct party in the use of starvation against the Palestinians as a means of ethnically-cleansing them.

In arguing for the ICC to pursue a case of complicity in genocide against the government, the brief summarises its argument. “Australia has supplied Israel with military equipment, intelligence data, and significant and ongoing political support. Prominently, one of the most steadfast points of rhetorical and political support that Australia has provided to Israel concerns the posited “right to self-defence” that Israel allegedly has in perpetrating these attacks against Palestinians in Gaza. As demonstrated by Australian ministerial public statements, the Australian government has defended Israel’s genocidal actions against Palestinians in Gaza on the basis of Israel’s right to self-defence.”

The response from the government has been utterly contemptuous. Albanese, speaking as vaguely as he possibly could, said “there has been substantial amounts of misinformation about what is occurring.” The legal brief had “no credibility going forward.” Turning reality on its head, Albanese presented the government as a partisan of an immediate ceasefire, and as having been motivated throughout the conflict by humanitarian principles. The brief itself shows those assertions to be bald-faced lies.

Albanese’s response again underscores the impossibility of ending the genocide through appeals to or pressure being placed upon the governments that have facilitated this historic war crime. In their support for the mass murder of civilians, these governments have shown that there is no red line they will not cross. As in the 1930s, capitalism and its political representatives offer a future of carnage and catastrophe.

The full brief can be accessed here.



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