

Annual Dries Van Agt Memorial Lecture

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Excellencies, Friends and Colleagues,

I wish to express my deepest gratitude to the Rights Forum for the invitation to address you at this special occasion, in this magnificent setting. The beautiful light installation by Alaa Minawi is haunting, and his words and testimony even more.

To the esteemed guests before me who honour me with their presence. Among them, H.E. Ammar Hijazi – Palestinian ambassador to the Netherlands. H.E. Vusimuzi Philemon Madonsela – Ambassador of South Africa to the Netherlands, the indefatigable Professor John Dugard, my esteemed predecessor as Special Rapporteur and now representative of the South African Legal Team in the ICJ Genocide Proceedings; I would also like to acknowledge my dear friend and colleague, Lex Takkenberg, and Liesbeth Zegveld, lawyer extraordinaire, who among the many hats she wears is representing The Rights Forum and other Dutch NGOs in the pioneering case against Dutch F-35 exports to Israel. You are all part of the winds of change that are sweeping the world, striving to make rights justiciable.

To all other distinguished guests and the representatives of the Palestinian and Jewish communities in the Netherlands.

And last but not least, to the relatives of the Honorable Dries van Agt, who are present here this evening. It is an honour to speak in memory of the late Prime Minister and Professor.

During his life, Dries van Agt not only became a committed proponent of the rights of the Palestinian people, but also an ardent believer - as with many of us gathered here today - that upholding international law and respecting universal human rights is the only path to a peaceful world order, in ‘the Holy land’, as he used to call it, and beyond.

Following his retirement from politics, he dedicated his life to challenging the complacency of the Netherlands and Europe, tirelessly calling for concrete measures, including sanctions against Israel for its systematic violations of international law. His fundamental critique of diplomacy being invoked at the expense of justice, resonates more than ever. As Dries van Agt insisted, international law is not optional: it is a system of binding commitments, one that

is also enshrined in the Dutch constitution. The Rights Forum, that he established in 2009, is the culmination of this conviction and commitment.

As we meet here tonight in the city of international peace and justice, the international legal order teeters at the edge of a precipice. Palestine/Israel, call it whatever you like, lies at the centre of this collapse.

Israel has been permitted and emboldened to flagrantly violate international law with impunity since its existence, and the Palestinian people have endured unimaginable suffering and injustice in their existential struggle not to be erased or permanently be subjugated in the little that remains of their homeland. They are Nakba survivors. No Palestinian in this world has not been touched by this tragedy. The call to uphold international law and to deliver justice for the Palestinian people is not just a serious and compelling legal obligation; it is also a moral imperative, that because of our history as Europeans, we should really honor.

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In the year that I have been forced to become a chronicler of genocide, I have come to realize that the *denialism and obscurantism*, which have enveloped the facts that constitute this current and absolutely foreseeable human-made disaster, are unprecedented in their magnitude, pervasiveness and dangerousness. Yet, neither is coincidental.

The present situation in the occupied Palestinian territory - Gaza, the West Bank and East Jerusalem - what I am mandated to report on as a UN Special Rapporteur is nothing less than catastrophic, but it's also extremely CRUEL.

Following the suspension of hostilities and the ceasefire agreement in Gaza, the Palestinians who survived 15 months of brutal assault were allowed to look around at the other survivors; to take a breath; to return to their homes and cities that no longer exist; to look for their loved ones - alive or dead - especially those who were buried alive under the rubble or incinerated, and to give dignified burials to them and the many others whose bodies were left to rot in the street, amidst rubble, unexploded ordnances and waste.

Against this background, cruelty is that by the time the ceasefire came into force, over 50K Palestinians, at least, in Gaza had been killed by Israeli bombs and snipers; excluding the many still undiscovered under the rubble and the many who have died or will die due to the lack of medical treatment, hygiene and adequate sustenance. The Lancet, the most authoritative medical journal, way back in June estimated almost 200K were likely to have been slaughtered.

Cruelty is to finally allow people to return to the devastated North of Gaza, while Trump and Netanyahu are openly promoting if not preparing their ethnic cleansing. While those leaving

Gaza for urgent life-saving medical treatment are departing with grossly inadequate reassurances in line with international law for their return.

Cruelty is that two days after the ceasefire came into effect, Israel intensified its already ongoing assault on the occupied West Bank, conducting indiscriminate attacks in the north - Jenin, Tulkarem, Nablus, Tubas - and neighboring villages. This tragically but predictably evoked the methods and typology we witnessed in Gaza - *by the way, Israeli leaders and military leaders refer to the West Bank as "Mini-Gaza", "We will kill them", "We will give them the same lesson we gave to Gaza", and, and, and, and.* The destruction of entire residential blocks, depopulation and levelling of refugee camps, killing any Palestinian in the wrong place at the wrong time. In the 12 months to October 2024, 692 Palestinians had been killed, that figure is now 870 in the West Bank alone. At any other moment, that would have raised alarm and international condemnation. Today, it barely registers with some of us. Palestinians in the West Bank remain ignored.

Cruelty is also that ALL this is unfolding *after* 15 months of flagrantly unlawful warfare against a civilian population, broadcast to the world in real-time by its helpless victims and truth tellers. The scale of the crime is known to all of us. Israel's constant bombing, sniper and artillery fire spared nothing and no one, showing the most ruthless face of modern warfare: large-scale indiscriminate bombings, the use of AI-based targeting systems, the persistent surveilling of unmanned drones overhead, automatic snipers firing civilians as they shopped in markets, collected water, sought medical help or even as they slept in tents.

It is also the disturbing frequency and callousness of the intentional killing and infliction of serious harm on civilians. Six-year-old Hind Rajab, killed with 355 bullets after pleading for help for hours; the fatal mauling by dogs of Muhammed Bhar, who had Down Syndrome; the premature babies deliberately left to die a slow death and decompose in the intensive care unit at Al-Nasr Hospital; or the elderly man, Bashir Hajji, killed evacuating to southern Gaza after appearing in a propaganda photograph of a "safe corridor"; and the tortured killing of Dr Al Bursh and we cannot rest fearing this may yet be the fate of Dr Abu Sufiya. The mass graves too have become ubiquitous. The chilling scenes of skulls littering streets as people return north, evoke a profound sense of tragedy and abandonment. Each grave, skull and bone serves as a silent testament to the horrors endured by millions of Palestinians, countless stories now lost to the void of the unknown, leaving a community engulfed in endless grief and unimaginable suffering; a fate imposed on them *by design*.

What is unfolding before our eyes, is - put simply - a monstrosity. In my role as Special Rapporteur, I could not possibly have imagined that magnitude of the task that would stand before me. In my function as an impartial and informed witness it has been my role to draw attention to this reality. It is a role I take extremely seriously. Nonetheless, my arrival in the Netherlands reminds me that the *perception* of impartiality remains contentious, especially among those who ignore both what my mandate entails and what Impartiality means

Impartiality entails an obligation to investigate and establish facts objectively, studying them against applicable international law. Once the assessment is done, my job is to insist on measures to restore legality, to undo injustice and prevent further abuses. Impartiality does not require equidistance between victims and perpetrators. Instead, some treat impartiality just like “a pompous name for indifference and an elegant name for ignorance”.

Rather, in the case at hand, impartiality implies exposing the fundamental asymmetry in power, resources, and agency between Israelis and Palestinians. Recognising that beyond the perception of them as equal “parties” (or rivals), the two remain bound by an unequal and iniquitous relationship: one between occupier-occupied, and colonizer-colonized. While we must recognize and seek accountability for the crimes committed by the Palestinians, the settler-colonial nature of the decades-long occupation must be kept forefront in our minds if we are to honestly achieve a future built on justice for both Palestinians and Israelis.

What has unfolded would not have happened, but for the conditions deliberately created by Israel’s sustained denial of the right to self-determination of an entire people for the past 75 years. I find that we, Europeans in general, struggle to understand what self-determination *really means*. Self-determination is a very simple right: it's the right to exist as a people, free to determine themselves as a people - political, economically, and culturally.

Those who have not experienced the denial of self-determination do not comprehend how its denial impacts every facet of life, politically, economically and culturally, psychologically. Without self-determination, the focus on other human rights - the rights to water, food, of women, children and persons with disabilities, excuse me - become an exercise in intellectual rhetoric.

If we do not understand self-determination, and its centrality to what far too many call “the Israeli-Palestinian conflict” *tout court*, without context, we can neither comprehend the ongoing genocide nor imagine a future based on justice for all those that live between the Jordan river and the Mediterranean sea. It is not a coincidence, I realise, now, that my first report focuses on the right to self-determination of the Palestinian people is a critical complement to the focus on my last two reports, where I focus on the question of genocide, first, as an x-ray, *Anatomy of a Genocide*, and then I said, let’s explain also the context, because some continue not to get it, it’s *Genocide as (settler-)Colonial Erasure*.

I insist on describing the ongoing situation as genocide, in a legal way, because it speaks to the long trajectory of the Israeli colonial project, and the increasingly real risk of erasure Palestinians face inside their homeland.

Genocide is not defined by personal opinions or particular histories, no matter how painful they are, with all due respect. It is not just a single act, rather it is a process. This is why it is critical to understand the given context.

Legally, genocide is a crime defined in the 1948 Convention as a very specific crime, insidious to prove, but because it should be insidious to commit. It involves a set of acts - killing, infliction of physical or mental harm, creation of the conditions of life to physically destroy a group, prevention of births and forcible transfer of children - when these acts are committed with the intent to destroy, in whole or in part, the group as such, where the individuals don't matter (that is, as long as you belong to the group, you become a target for destruction). The group is identified as a national, ethnic, racial, or religious group, as such

What we are all bearing witness is clearly genocide, but also what settler-colonial genocide looks like. This is why the case that South Africa has initiated before the ICJ is monumental, because this is the first settler-colonial genocide to be litigated before an international tribunal. This is why it resonates so strongly with Indigenous communities across the world, from New Zealand, Australia, Canada, even Norway with the Sami people, and of course in the United States. The destruction is physical and biological, its devastation of the group in order to take control of the land. This is another critical point. Land is central to understanding the intent that drives Israel's genocide.

We must step outside our Western understandings of land and place and property - that is not to say Palestinians do not also understand private property. But for the Palestinians, as with all Indigenous people, their land is not just the place where they live - it is *who* they are - as is so evident in the dignity and resilience Palestinians in Gaza have shown us all. This is why the displacement, the dispossession, the cultural destruction and the devastation of sovereignty, including food sovereignty, that we have seen in recent months are to be seen as intended to sever the cultural belonging and connection to land. These deliberate acts are genocidal. They have led us to this very precarious moment.

The colonial amnesia of so many Western states has led us to forget the hundreds of millions of people who suffered genocide from Latin America to Namibia, the Indonesian archipelago (*I was told not to say that because of Maluku but you are Dutch so you are brutally honest like me*) and Australia to North America, justified through the logic of Western settler-colonialism and in the name of 'civilization' and 'security'. Indeed, this denial and obscurantism is not by accident. The invisibilization of the victims of past colonial repression is integral and functional to sustaining the present manifestations of colonialism and imperialism. If we don't see it, we don't have to address it.

This too is why, when confronted with this deliberate human-made catastrophe that has been created in Gaza, the high level discussion regarding the possibility of Israel having committed acts of genocide remains - astonishingly - a contested one among states, particularly, again, in the West. At most, we see broad recognition that Israel has committed war crimes and crimes against humanity, as if it were a light thing, in its all-out assault on Gaza, but such framings reflect no more than what Palestinians already endured for decades BEFORE the current escalation.

When we speak of genocide, we are identifying the *thread of intent that keeps together various components intended to destroy the people as such*. This singular thread runs through the *collective conduct*. This is why the focus of my last report, we cannot miss the genocidal intent in this case, not only because the intent is direct, it has been said, has been acted upon, and is there. But we need to understand where it comes from, we need to look at the totality of the conduct and crimes, against the totality of the people as such, in the totality of the land. This is why I insist, not only as an intellectual exercise, but that we see the genocidal violence that has been committed against the Palestinians in Gaza leaking out into the West Bank, and this is something I was already seeing in November last year.

If we fail to understand that these accumulated *acts constitute genocide*, we risk leaving the *totality of Israeli destructive conduct camouflaged behind a distortion of international humanitarian law, human shields, evacuation orders, safe zones, collateral damage*. We have normalized the monstrosity that Israel has committed, I was saying that in March last year, “Look, this is going to become the new script to wage wars”. Six months later, Lebanon. It creates a distortion compounded by overly technical and reductive reasoning and, frankly, ill-informed speculations about what genocide truly entails. The still-developing international jurisprudence on genocide shall not be used as an excuse not to apply the label of genocide to what is happening.

It is not only that genocide has been overlooked; it has been fully justified, enabling Israel to continue it, and third states to evade their responsibilities under the Genocide Convention, which obliges states to prevent, then to stop, and then to punish genocide. Appallingly, the reaction of the international community has exposed the enduring legacy of colonialism and imperialism in our post WWII world and is jeopardizing the international law-based multilateral order as we speak. Every morning in this part of the world we look at our phones and we see a different piece of the multilateral order falling down.

But here is where I urge us not to despair. In a way that is akin to a Clockwork Orange, we cannot allow the live-streamed genocide and its associated apathy to desensitise us to the violence, normalise the oppression, dissociate us from its moral failure, legitimise the illegitimate. We have to speak accurately and coherently, in calling this what it is - a genocide, the end result of a protracted unlawful occupation, apartheid and aiming to take the land and the resources without the people. We need to act accordingly. We must resist framing the situation as a chronic humanitarian crisis to be managed, rather than a political question to be redressed in accordance with international law. We cannot allow this to clockwork us into a conditioned acceptance of the unthinkable.

In a moment where international law has rarely faced such a challenge, it has paradoxically also proved a pivotal tool in our struggle.

International law has moved – no, international justice has moved. We may all complain about the lack of justice, no no, they are there, and the ICJ and ICC have lived up to their

responsibilities. It is states who must move in accordance with their obligations under the Genocide Convention.

So while the ICJ and ICC will continue their investigations, and as we wait for the dust to settle as investigators gradually uncover the extent of the violations committed in Gaza and the West Bank, we must also turn to look to the responsibilities of third states, including the Netherlands. And that pressing question: what do UN and EU member states actually DO to fulfill their legal obligations and bring Israel's unlawful occupation, apartheid, and genocide - as declared last year by the ICJ to now end. No longer should the concern of states be constrained to particular Israeli acts, such as the building of settlements, or the widespread arrest and detention of Palestinians including children. It has now been established that its monumental advisory opinion of July 2024 that Israel's presence in the occupied Palestinian territory is *as a whole* unlawful. Not just the troops, not just the settlements, everything, including the control of the natural resources of the Palestinians, including the borders, including the airspace, everything. Tangible or intangible, material, immaterial everything. And the GA has also given a deadline to Israel to comply with it, 12 months. So the countdown has started and the deadline to pack and go is September 13. This is already known, this is something that was already clear, and now even the ICJ has said it. States must cease to engage with the unlawful presence that Israel maintains in the occupied Palestinian territory. And states must ensure the impunity that has obscured, muted and sacrificed the plight of the Palestinians on the altar of political convenience for decades, and crescendoed into this monstrosity, finally comes to an end.

We must urge governments to do more. The situation of illegality that results from Israel's presence in the West Bank, East Jerusalem in Gaza means that diplomatic, political, and economic interactions with Israel should be under careful scrutiny to ensure they do not support or provide aid or assistance to Israel's unlawful presence in the oPt - for example: arms export licences must be canceled...*(I appreciate the government officially hairsplitting, they have to check what does what harm – no, it's very easy, you just cut it. Stop, end, khalas)*. Arms export licenses must be cancelled, transparency on third state indirect transfers is an imperative. Businesses must be regulated and sanctioned if they engage and profit from this illegality.

The magnitude of the crimes, and the sustained impunity that has enabled Israel's violations of international law to remain unchecked for decades, will come to an end. *Inshallah*. Those who commit crimes, including dual nationals, serving in the Israeli army, or living as illegal settlers in occupied territory, must be held accountable for their possible crimes. So too must companies that are profiting from the unlawful occupation and this genocide, including banks and pension funds, research centers, and charities.

It is in the spirit of these principles that Van Agt himself acted – and I'm really again all the more honored to speaking these, I understand, quite blunt words here tonight – that I commend that this very city - in the tradition honoured by Van Agt - hosted a few weeks ago The Hague Group: an initiative by nine member states to take effective measures against Israel's unlawful

endeavour - such as no arms to and no harbor for ships bound for Israel - and to hold Israel accountable under international law. It is what the international legal order desperately needs to see at this moment: integrity and actions. Deeds, no more words.

In a better world, the Netherlands would have been among the states spearheading this noble group. After all, we are here meeting in the capital of international peace and justice, which bestows upon the Netherlands the special responsibility towards universal human rights and international law. Yet, to the contrary, it was only yesterday afternoon that a right-wing majority in the Foreign Affairs Committee of the Dutch Parliament cancelled the committee's conversation with me scheduled for tomorrow morning.

Such a sad state of affairs must not deter us from seeking change. As politicians, leaders and stewards of international law, there are many sitting now in this room who have influence on the duty to act decisively. *The mechanisms of legal accountability exist. They depend on your humanity and political will to defend and use them. And to the civil society, committed academics, students, young people, ordinary people from all walks of life, who have not sat idle in the face of this grotesque injustice, you are the antibody of a healthy rule-of-law system, and for that, I thank you.*

In this time of utter despair that many of us experience, and which we do so from the comfort of our homes, while we enjoy our families, friends, workplaces and communities, we have neither the time nor the choice to tire or be hopeless.

As African-American educator Mariame Kaba says "Hope doesn't preclude feeling sadness or frustration or anger or any other emotion that makes total sense. Hope, though, isn't an emotion. Hope is not optimism. Hope is a discipline."

And it's a discipline that we must practice together, standing in solidarity. Drawing from my Latin ancestors ... The word solidarity comes from the Latin "solidum," which means *entire sum*; unity; togetherness.

Solidarity, as a value and a social value, cannot be passive. Togetherness cannot be passive. It is an active noun that must mirror collective feeling and collective action.

Together we need to think. Together we must act towards a common goal.

Which today, for Palestine, means: end the genocide, end the occupation, end the apartheid.

And may our rallying call be: let it be Justice.