

Some thoughts about Francesca Albanese's expert lecture
“Legal aspects of human rights violations and the Geneva
Conventions in the occupied Palestinian territories” held in
Maribor, Slovenia

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ABSTRACT

On 8 July 2025, the Department of Criminal Law, Faculty of Law at the University of Maribor, hosted Francesca Albanese, the international law expert and UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. In this contribution, the views shared at her expert lecture titled “Legal aspects of human rights violations and the Geneva Conventions in the occupied Palestinian territories” are outpined. Additionally, some concerns are raised regarding implications of Albanese's views for the EU criminal law, in particular the legislative framework aiming at harmonization of the so-called hate speech offences under the Framework Decision 2008/913/JHA.

Keywords: genocide, hate speech, denial, trivialising, international criminal law

On 8 July 2025, the Department of Criminal Law, Faculty of Law at the University of Maribor, hosted Francesca Albanese, the international law expert and UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.² In this contribution, the views shared at her expert lecture titled “Legal aspects of human rights violations and the Geneva Conventions in

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¹ The event was organized by the Department for Criminal Law at the University of Maribor, Faculty of Law, and Zavod PIP - Legal counseling, education and support services for NGOs, in cooperation with the Association for Participatory Society and the NGO Pekarna Magdalenske mreže.

the occupied Palestinian territories” are presented. Additionally, I reveal my concerns regarding some implications of Albanese’s views for the EU criminal law, in particular the legislative framework aiming at harmonization of the so-called hate speech offences.

However, firstly, the context surrounding the event and Albanese’s work need to be briefly outlined. Francesca Albanese holds a law degree from the University of Pisa and a Master of Laws in human rights from SOAS University of London. She is described as an international lawyer, specialised in human rights and the Middle East.¹ As a scholar, she lectured at various universities in Europe and the Middle East and (co-)authored many publications on human rights and international law, including the 2020 monograph on Palestinian Refugees in International Law (Oxford University Press).² In May 2022, she was appointed by the UN Human Rights Council to take up the post of Special Rapporteur for a three-year term. In April 2025, her mandate has been extended to another three years.

Her visit to Maribor, Slovenia, came just a couple of days after she presented to the UN Human Rights Council her latest report titled “From economy of occupation to economy of genocide”, released on June 16th 2025. In the report, she argues that “The complicity [of multinational companies] exposed by the report is just the tip of the iceberg; ending it will not happen without holding the private sector accountable, including its executives.”³ While her stance towards Israel has been criticized for years,⁴ especially by the Israeli government,⁵ her latest report culminated in the US unilaterally imposing sanctions against her due to her alleged “political and economic warfare” which supposedly threatens the US “national interests and sovereignty”.⁶ As a response, Volker Türk, the UN

² ,Francesca Albanese: Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967‘ <<https://www.ohchr.org/en/special-procedures/sr-palestine/francesca-albanese>> accessed 25 July 2025.

³ Francesca Albanese and Lex Takkenberg, *Palestinian refugees in international law* (Oxford University Press 2020).

⁴ See the summary of the report, 1.

⁵ See for example Tal Fortgang, ‘The “Occupation” Dodge; Anti-Semitism in the anti-Zionist movement is increasingly difficult to deflect or deny‘ (2024) City Journal <<https://link.gale.com/apps/doc/A784368005/AONE?u=anon~87401870&sid=googleScholar&xid=e-9f70af5>> accessed 25 July 2025. For a deep insight into how the academic sector reacted to the controversy, including increased cancellation and prohibition of events on Israel and Palestine, see Stefania di Stefano, ‘Silencing Palestinian voices: On freedom of expression and Gaza‘ (2025) 42 Netherlands Quarterly of Human Rights 3.

⁶ See, for example Francesca Albanese, ‘A Comprehensive Review of Misconduct as a UN Special Rapporteur’ (2025) <<https://govextra.gov.il/mda/francescaalbanese/un-misconduct-review>> accessed 25 July 2025.

⁷ Marco Rubio, ‘Sanctioning Lawfare that Targets U.S. and Israeli Persons‘ (*US Department of*

High Commissioner for Human Rights, and Jürg Lauber, President of the UN Human Rights Council, voiced their concerns and called for a “prompt reversal” of the sanctions.⁷

The event was opened by prof. dr. ddr. h. c. Vesna Rijavec, vice-dean for research and international relations at the Faculty of Law, University in Maribor, and moderated by assist. prof. dr. Miha Šošić from the Department for Criminal Law (a practicing attorney registered as a counsel before the ICC). While Rijavec welcomed the guest on the behalf of the Faculty of Law in Maribor, Šošić already set the tone of the discussion by emphasizing that “in today’s World, where some States are openly challenging the concept of international law, it is important that we as lawyers and as citizens of the World hang on to the concept and seek to improve it. We should not give up on the idea that the World is based on rules and mutual respect of rules—otherwise, we might one day wake up to find a World based on power and conflicts.”

Following this introduction, Albanese started her presentation by explaining the limits of her mandate. As a UN Special Rapporteur, she is limited to explore and report on the situation of human rights in the Palestinian territories occupied since 1967—this is without prejudice to the human rights situation before this date. What is more, she is limited only to a small part of what remains of the *historical* Palestine, as Israel was created inside the territory of Palestine in 1948. She then substantiated at length why each *colony* established by Israeli settlers on the occupied land between 1967 and the 1990s is, in itself, a war crime, including under Art. 49 (deportations, transfers, evacuations) of the Geneva Convention (IV) on Civilians. She also accused Israel of a “plethora of acts which are not only prohibited under the international human rights law and humanitarian law, but are also described as international crimes.”

However, in recent years, the focus of the Special Rapporteur has shifted from individual breaches of human rights (such as establishing settlements, extrajudicial killings or forced displacements) towards examining the system of domination over the Palestinians. Doing so is limiting the right to self-determination of the Palestinians, and thereby their right to exist as a people.

State, 9 July 2025) <<https://www.state.gov/releases/office-of-the-spokesperson/2025/07/sanctioning-lawfare-that-targets-u-s-and-israeli-persons>> accessed 25 July 2025.

⁸ See Volker Türk, ‘Comment by UN High Commissioner for Human Rights Volker Türk on U.S. sanctions against Francesca Albanese’ (*United Nations Human Rights Office of the High Commissioner*, 10 July 2025) <<https://www.ohchr.org/en/press-releases/2025/07/comment-un-high-commissioner-human-rights-volker-turk-us-sanctions-against>> accessed 25 July 2025; ‘Statement by Ambassador Jürg Lauber, President of the United Nations Human Rights Council, on sanctions imposed on Special Rapporteur Francesca Albanese’ (*United Nations Human Rights Office of the High Commissioner*, 10 July 2025) <<https://www.ohchr.org/en/press-releases/2025/07/statement-ambassador-jurg-lauber-president-united-nations-human-rights>> accessed 25 July 2025.

In this light, she also underpinned the importance of the ICJ opinion⁸ of 19 July 2024, which stressed that Israel's policies and practices in the occupied Palestinian Territory constitute an unlawful act of a continuing character.⁹ It called for Israel to "bring an end to its presence in the Occupied Palestinian Territory as rapidly as possible," which includes the obligation to "immediately cease all new settlement activity" as well as "all measures aimed at modifying the demographic composition of any parts of the territory."¹⁰

Albanese argued that none of this was upheld by Israel as it still maintains control of the territories and, even worse, still exploits the occupied territories as well. What to do in face of this blatant disregard of international law? Albanese strongly argued in favour of "not recognizing as legal the consequences of the occupation and refraining from providing aid or assisting this unlawful endeavour."

She also touched upon the escalation of the Israeli-Palestinian conflict in light of the October 7th attacks by Hamas. While condemning the kidnappings of civilians by Hamas, she tried to provide a broader context by pointing out at the Israeli systemic approach towards Palestinian people, for example pointing out at the increasingly escalatory settling efforts, ethnic cleansing of the Jordan valley, and raiding of the Palestinian refugee camps by Israel. Albanese also emphasized that, already the collective punishment of the Palestinian people by the unilateral blockade of Gaza is a war crime in itself.

She compared the situation with a jailor and a tortured prisoner. If the prisoner manages to lose his shackles and turns on his captor, physically hurting him as an act of revenge, how do we assess the prisoner's reaction? Surely we cannot condone such an attack out of revenge, but we also cannot disregard the broader context of the attack.

Be that as it may, focusing on the Israel's response to Hamas attacks, Albanese went straight to the point by calling it a genocide. In how Israel approaches the latest Gaza war, she believes that all the elements of genocide, including the element of intentional destruction of a group "as such" are given. Palestinians are not being target person by person, but indiscriminately, because they are Palestinians, while Gaza is being "pulverized".

She finds unacceptable the opposing views of those who argue for caution in labelling Israel's action as genocide because the courts have not yet decided on

⁸ Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem. Advisory Opinion of 19 July 2024.

⁹ *ibid* para. 265.

¹⁰ *ibid* para. 268.

the matter. This is a legal paradox, Albanese argued. It does not matter if a court has already ruled on the genocide issue or not—if a crime is happening, it must be prevented, stopped and prosecuted!

How to respond to such genocidal action which is also, as maintained by Albanese, destroying the multilateral order? She called for the responsibility of the States (as well as personal responsibility) to prevent this from happening. We need to apply the international law to remind States and leaders of their limits—this is “not the time of kings or queens” anymore. If we fail in this endeavour, lawlessness will be the new normality, Albanese warned.

During the lively discussion following the presentation, Albanese also touched upon her latest report¹¹, including the responsibility of multinational corporations profiting from the Gaza situation, while also providing additional insights into why she considers the latest Gaza war as satisfying all the elements of the international crime of genocide.

However, I believe that Albanese’s strong opinions on classifying the situation in Gaza as genocide open some uneasy questions in terms of the application of national and EU criminal law provisions. To properly understand what is at stake, we should recall some provisions of the Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.¹²

It is widely believed that this Framework Decision aims at the harmonization of (at least particular forms) of hate speech.¹³ Under Art. 1 Para. 1 Lett. (c), MSs are obliged to ensure that the conduct of “publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes [...], directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group” is punishable.

MS may decide to soften this provision by either choosing “to punish only conduct which is either carried out in a manner likely to disturb public order or

¹¹ ‘A/HRC/59/23: From economy of occupation to economy of genocide - Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’ (*United Nations Human Rights Office of the High Commissioner*, 16 June 2025) <<https://www.ohchr.org/en/documents/country-reports/ahrc5923-economy-occupation-economy-genocide-report-special-rapporteur>> accessed 25 July 2025.

¹² Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law [2008] OJ L328/66.

¹³ Jan Stajanko, Petra Weingerl and Miha Šepić, ‘Further Areas’ in: Kai Ambos and Peter Rackow (eds), *The Cambridge Companion to European Criminal Law* (Cambridge University Press 2023).

which is threatening, abusive or insulting” (Art. 1 Para. 2) or make punishable such acts “only if the crimes referred to in these paragraphs have been established by a final decision of a national court of this Member State and/or an international court, or by a final decision of an international court only” (Art. 1 Para. 4). However, when transposing the Framework Decision into national law, not all the MS limited the criminal responsibility for denial of genocide by implementing these clauses.

The question which arises under the situation discussed by Albanese is the following: In MS which have not implemented the clauses for limiting the criminal responsibility, should people who doubt or deny the supposed genocide in Gaza be criminally prosecuted? For example, in Slovenia, *Borut Pahor*, who used to serve as a prime minister, a president of Slovenia and the head of the Social Democrats’ party, recently stated (when interviewed by the national broadcaster) that, while war crimes and crimes against humanity may have been committed, he does not believe that Israeli conduct amounts to genocide.¹⁴ Similarly, there is an ongoing scholarly discussion regarding this topic, where some authors are sceptic towards the genocide position.¹⁵ Should such voices be prosecuted? Scholarly articles and interviews deleted and broadcasters fined? Social media posts removed from social media platforms and access to social media accounts of those who share such content restricted in line with the Digital Services Act?¹⁶

Such cases call for a re-evaluation, I believe, of the hate speech legislation in the EU, particularly for publicly condoning, denying or grossly trivialising genocide and other core international crime. Already for years, critical voices have been warning that such extensive criminalization might be problematic from the perspective of limiting the freedom of expression.¹⁷ However, perhaps due to the symbolic value of this criminal offence, such issues were largely ignored. In light

¹⁴ „Pahor dogajanja v Gazi ne bi označil za genocid. Ostri odzivi iz koalicije“ (*MMC RTV SLO*, 2 June 2025). <<https://www.rtv slo.si/slovenija/pahor-dogajanja-v-gazi-ne-bi-oznacil-za-genocid-ostri-odzivi-iz-koalicije/747698>> accessed 25 July 2025.

¹⁵ See, for example, Paul James, ‘Is it Genocide?’ (2025) 22 *Journal of Bioethical Inquiry* 37. Compare with views held by Zohar Lederman, Anne Irfan and Shmuel Lederman ‘Is it Genocide? Yes, It Is—A Response to Paul James’ (2025) 22 *Journal of Bioethical Inquiry* 471.

¹⁶ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) [2022] OJ L 277/1.

¹⁷ See, for example, Paolo Lobba, ‘Punishing Denialism Beyond Holocaust Denial: EU Framework Decision 2008/913/JHA and Other Expansive Trends’ (2014) 5 *New Journal of European Criminal Law* 75, who argues that „unqualified incrimination of denialism at large ought to be ruled out due to its excessive curtailment of the fundamental right to free speech,“ and Roger Smith, ‘Legislating against genocide denial: Criminalizing denial or preventing free speech?’ (2010) 4 *University of St. Thomas Journal of Law and Public Policy* 137, who fears „that a government that can tell us what not to say can also tell us what we must say.“

of the recent Gaza situation, this issue is returning with a vengeance and should now be critically re-assessed.