

Is suicide murder? Is self-destruction genocide?

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One puts his family into a car, steps on the accelerator, and slams the car into a wall. There are no survivors.



A bunch of questions arise. Who is responsible for the death of the family? The wall? The car? The guy in the driver's seat?

Correspondingly, how does one describe what happened? Was it murder? Was it suicide?

If the car's steering was fine, then it isn't the car's fault. Two options remain: it is the fault of the wall, or that of the driver. And if the wall is at fault – on a theory that it should have opened up and let the speeding car through – this was a murder. But if it was a driver's decision to slam the car into the wall, then this was suicide.

Given that it is rather unusual for walls to open up in front of speeding cars, anyone with a modicum of common sense would conclude that this was indeed suicide, and blame the guy steering the car.

But this is far too simple for some folks. There is a class of people who won't be content with such assignment of blame –

namely, lawyers. Proverbially clever, they find it almost a professional challenge to show that the wall was at fault, and that the case is actually that of murder, not suicide.

This is the gist of the very lengthy and very learned [article in Lawfare titled "Can Armed Attacks that Comply with IHL Nonetheless Constitute Genocide?"](#) penned by Gabor Rona, Professor of Practice at Cardozo Law School, and Natalie Orpett, the executive editor of Lawfare. You can read the whole thing if you've got too much time on your hands, but let me summarize its argument for you if you don't. To be sure, is not about cars and walls, but about Israel's war on Hamas – and the authors argue that even if Israel sticks to every letter of the International Humanitarian Law that is binding upon the parties in an armed conflict (the "IHL" of their title) this does not necessarily absolve the country from accusations of "genocide" that are levelled at it.

What I want to focus on here is not so much the legal argument, though it is replete with casuistry and is deficient in logic, but on who the authors blame for what befell Gaza. Not Hamas – the driver that violently slammed Gaza into Israel (causing by the latest count some 36,000 Gaza deaths) – but Israel. They provide no explanation for this strange assignment of blame, unthinkingly following South Africa's ICJ accusations – and this, above all else, is the problem with their article. Whatever you call what befell Gaza – which South Africa and its ilk insists on describing as "genocide," Israel is simply not the party that's causing it. Israel is merely being a wall that in absorbing the shock of Hamas' slamming into it on October 7, caused a bunch of Hamas-driven Gaza passengers to die. That's all there is to it, professor Rona and Ms. Orpett (and South Africa's legal team, for that matter.) Yes, the Israeli wall did not obligingly step aside – but walls aren't supposed to. Nowhere does IHL obliges them to, as the article's authors themselves acknowledge. Yes, plenty of Gazans got killed on impact – but

isn't this the fault of the Hamas drivers of the Gaza car?

The problem with the South Africa ICJ case is not that South Africa's lawyers are stupid – but that they are too smart by half. While they think that they are smart, they have no clue of what is going on in Gaza: namely, not the murder of Gazans – but their suicide. Not the “genocide” of Gazans – but their self-inflicted self-destruction. Even if one is to insist on calling this a “genocide” of the Gazans, at least the proper party should be blamed for it: it is Hamas who is committing this suicidal “genocide” of Palestinians, and not Israel. What we witness is Palestinian self-destruction by Hamas' drivers of Gaza, and nothing else. It is Hamas whom South Africa ought to have accused of Palestinian “genocide” in ICJ – for a simple reason that Israel has nothing whatsoever to do with it. It is simply being a wall hit by a Hamas-driven car.

This said, the odd thing about the Lawfare article is that it actually isn't a bad piece of legal writing. Its problem is that it blames the wrong (and in fact, the wronged) party on what it calls “genocide.” Bizarrely, it blames the Israeli wall that refused to budge and let the Gaza car smash full-speed into Israelis, perpetrating the Hamas-intended genocide on the Israel side of the border.

This is bonkers. Lawfare could use better peer reviewers – of not better writers. I strongly recommend the article's authors to make a small, but key correction – blaming what they call Gaza's “genocide” on the right culprits, i.e. on Hamas' drivers of Gaza who, while intending a genocide of the Israelis, subjected Gaza's population to suicidal self-destruction. Admittedly, law is a notoriously confusing subject, yet even in a law article, at least a modicum of common-sense sanity should be present, one would think.