

# International Court of Justice in The Hague Genocide Proceedings

## Legal Opinion on the Allegation Submitted to the ICJ in The Hague Stating that References to the Term 'Amalek' Imply a Clear Intention to Commit Genocide

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### 1 Background

In December 2023, the Republic of South Africa submitted to the International Court of Justice in The Hague a complaint against the State of Israel, alleging that it is committing genocide against the Palestinians in the Gaza Strip. One claim included in its application is that the many references by senior members of the Government and the military to the biblical precept to wipe out the memory of the ancient Amalekites is evidence of a real and present intention to commit genocide.

Thus, Section 101 of the application quotes a remark by the Prime Minister of Israel, Benjamin Netanyahu, on October 28, 2023: "You must remember what Amalek has done to you, says our Holy Bible. And we do remember."<sup>1</sup> It also quotes (albeit incorrectly; see below)

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<sup>1</sup> Here the Application relies on an inaccurate English translation. (1) All standard translations of the verse employ the past tense— "what Amalek DID to you [in the past]"—and not the present perfect, which indicates a continuing action and the implication that Amalek is still active today. The difference is significant. (2) Netanyahu actually said, "We were commanded." He did not mention "our Holy Bible."

from a letter that the Prime Minister sent to soldiers and officers on November 3, 2023, in which he again quoted the biblical verse, “Remember what Amalek did to you.” In Paragraph 103, the Application refers to soldiers who, on December 12, 2023, sang a song with the lyrics being, “It is our duty to “wipe out the seed of Amalek.” Paragraph 105 refers to MK Boaz Bismuth’s post on X (October 16, 2023) that “the memory of Amalek must be protested [sic].”

I hereby state my professional opinion with regard to the meaning of these locutions and the use made of them in the Application.

## **2 Foreword**

Under the impact of the bloody conflict that has raged for years, and certainly after the atrocities of October 7, 2023, Israeli citizens and elected officials have been voicing harsh, belligerent and irresponsible statements about the enemy. This is the typical discourse of the home front in wartime, anywhere in the world, and should certainly be condemned. But by no means do these sentiments guide the actions of the combat units and the operational commands issued to them, which strictly distinguish uninvolved populations from members of Hamas. The Application quoted a long string of statements, but amplified out of all proportion their influence on Israelis’ actual state of mind and on the policy of the State of Israel.

A correct understanding of statements about “Amalek” and “Simeon and Levi” requires knowledge of the historical and cultural context in which they originated, of the Jewish interpretation of these terms, and of the weight assigned them in Jewish history. The present document does not pretend to discuss the intentions of any individual who made such statements, but only asserts that the use of such terminology does not constitute an actual call to commit genocide.

## **3 The Effective Deletion from the Jewish Law Book of the Precept to Wipe Out Amalek**

In post-biblical Jewish culture, the precept to wipe out the biblical tribe of Amalek was remote from the real world and deemed an obligation that was no longer in effect. . In practice, Jewish law is determined not only by the Bible and its commandments (“the written Torah”) but also- and mainly, by how they have been interpreted over the generations by the Sages (“the Oral Torah”). This is how Jewish tradition constantly adapts the ancient text to suit the needs, circumstances, and challenges of each age, while maintaining an unbroken and intact line of transmission from generation to generation and sustaining the text’s moral and ethical demands. The Bible remains the source of Jewish belief, history, and principles, but some of its precepts are no longer understood literally. When persons who are at home in Jewish culture hear the name “Amalek” they do not hear a call for annihilation, but only the echo of a villain who lived thousands of years ago, a foe who can no longer be identified today and has no physical descendants, but only ideological heirs.

For example, in the twelfth century, the greatest sage of Jewish history, Maimonides, wrote that although in principle the command to wipe out Amalek continues to be valid from generation to generation, the target of that precept, the Amalekite people, “have vanished”

from the world and the stage of history, “their remnants scattered and mixed in with the other nations, until none of them remains.”<sup>2</sup> In other words, the impossibility of identifying the descendants of Amalek effectively abrogates the precept to wipe out Amalek. Other traditional commentators defer fulfillment of the precept to the Messianic Era, a distant and unidentifiable future,<sup>3</sup> or abolish the commandment as incumbent on human beings and leave it to the exclusive responsibility of the deity<sup>4</sup>—a heavenly law rather than a human law—citing the verse in Exodus, “The Lord will be at war with Amalek from generation to generation.”<sup>5</sup> The war against evil is indeed an eternal war, but it is not a human task or affair and is waged by God alone. Another line taken by the commentators<sup>6</sup> turns the concrete biblical war against the people of Amalek into a battle against the concept of evil and violence represented by Amalek. Human beings do bear this responsibility, but it has nothing to do with killing and physical destruction.

*We see that the Jewish legal tradition abolished the precept to wipe out Amalek on the practical level, , , just as it did for other precepts that may have been acceptable in the ancient Near East, thousands of years ago, but that over the generations have been discarded and have become a dead letters.*<sup>7</sup>

## **4 Amalek as a Cultural Myth that has nothing to do with Concrete Action**

Every culture adopts ancient myths, for better or for worse. In Jewish culture, the biblical Amalek is a metaphor for iniquity and evil. Uttering the name “Amalek” is not a call for action, but rather—the expression of deep psychological shock in the face of pure evil. The word was whispered, with panic and fear, whenever Jews, weak and defenseless, were attacked throughout history. The terror inspired by Amalek’s spiritual descendants reigned in the ghettos and extermination camps of the Second World War, during the Holocaust. When contemporary political and military leaders describe murder, terrorism, and injustice, it is no wonder that “Amalek” is the term that comes to their mind.

### *The Misquoting of the Verse and its Context*

The Application cites two occasions when Prime Minister Netanyahu made use of the verse, “Remember *what Amalek did to you.*”

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<sup>2</sup> Maimonides (12<sup>th</sup> c.), *The Book of the Commandments*, Positive Precept 187.

<sup>3</sup> R. Moses of Coucy (13<sup>th</sup> c.), *Sefer Mitzvot Gadol*, Negative Precept 226; R. Eleazar Segal Landa (19<sup>th</sup> c.), *Yad Hamelekh* commentary on Maimonides’ *Code*, Laws of Kings 12:2.

<sup>4</sup> E.g., R. Meir Leibush Malbim (19<sup>th</sup> c.), *Sefer ha-Torah ve-ha-Mitzvah* (commentary on the *Mekhilta*), on Exodus 17:14; R. Yitzhak Zev Halevi Soloveichik (20<sup>th</sup> c), *Novellae*, §160; and others.

<sup>5</sup> Exodus 17:14–16.

<sup>6</sup> R. Naftali Zvi Yehuda Berlin (19<sup>th</sup> c.), *Ha’amek davar* commentary on Exodus 17:14; R. Samson Raphael Hirsch (19<sup>th</sup> c.), commentary on the Pentateuch, on Exodus 17:8 and 14 and Deuteronomy 25:18; and many others.

<sup>7</sup> E.g. with regard to corporal punishment (“an eye for an eye and a tooth for a tooth”) and capital punishment of the rebellious son and the destruction of a city all of whose residents have become idolaters.

In fact, with regard to the second occasion, the Application does not quote the verse actually spoken by the Prime Minister, which deals with historical memory, but instead—refers to a verse from a different book of the Bible—a one-time directive by a prophet to the king of Israel, some 3000 years ago, to show the Amalekites no mercy.

The quotation of the wrong verse and the attempt to interpret it as an instruction to commit genocide is misleading. It diverts attention from what Netanyahu actually said—a verse that prescribes later generations’ obligation to remember the attack on the people of Israel, more than three millennia ago.<sup>8</sup>

That verse fits the context of Netanyahu’s remark on October 28, when he was speaking about the bitter historical memory of the Jewish people, who have been persecuted in every generation. He continued: “We have always said, ‘Never Again.’ ‘Never Again’ is now.” This line was quoted by Margaritis Schinas, the vice-president of the European Commission, on November 5, 2023, when he published a statement about the increase in the number of antisemitic incidents in Europe: “Hate has no place in the European Union. ... Never again is now.” References to Amalek provide a painful historical context to the Jewish people’s constant struggle for life and liberty, as Prime Minister Netanyahu wrote in the letter to the troops quoted in the Application: “The current battle against the Hamas murderers is another chapter in the story of our national resistance over the generations. ... We are all the scions of a line of heroes who were not deterred and did not retreat—Joshua, Deborah, King David, Judah Maccabee.”

### *The Target of the Quotation*

As is apparent from the remarks by the Prime Minister and those of other senior officials about the historical precept to remember Amalek’s deeds, *they are comparing the wickedness of Amalek to the “Hamas murderers” and not to the Palestinian people. It is a protest against vile criminal acts, not against an ethnic group, not against a national identity, and not against the residents of a specific region.*

The conceptual leap the Application makes from the mythical, cultural, and literary use of metaphors and symbols to the current situation and operation is incoherent and is unjustifiable.

## **5 The Biblical Code Obligates the Jewish People to Adhere to Laws of War**

The biblical Amalekites became the classic foe of the Israelites and Jewish people because they were seen as a merciless enemy that exploited every weakness and adhered to no moral principles in combat: “He surprised you on the march, when you were famished and weary, and cut down all the stragglers in your rear.”<sup>9</sup> Amalek was the first nation to attack the

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<sup>8</sup> Prime Minister Netanyahu actually quoted the verse about the duty to remember for all generations, “Remember what Amalek did to you” (Deuteronomy 25:17), and not the verse cited in the Application (1 Samuel 15:3), which was a specific directive to King Saul: “Now go and smite Amalek, and utterly destroy all that they have; do not spare them, but kill both man and woman, infant and suckling, ox and sheep, camel and ass.”

<sup>9</sup> Deuteronomy 25:17.

Israelites after they left Egypt. It was seen as the polar antithesis of the biblical Israelites, who were bound by a higher standard of morality in combat than other ancient peoples, in keeping with the dictum, “your camp must be holy.”<sup>10</sup> To a large extent, humanity’s earliest laws of war are found in the Bible. Long before the modern West, the Bible stipulated rules of war that set limits on plunder and on the abuse of prisoners; ban the destruction of fruit-bearing trees unless absolutely necessary;<sup>11</sup> the obligation, when besieging a town, to leave open a “fourth side” (what today we call a “humanitarian corridor”) so that civilians not involved in the fighting can escape;<sup>12</sup> and even mandate a duty to propose peaceful terms before launching an attack on a city—and, if they are accepted, to call off the war.<sup>13</sup>

This last law, according to Maimonides, applies even to the mythical Amalekites: if they agree to peace and accept the bare minimum of universal ethical principles (the “seven Noachide laws”), they are no longer “Amalek.”<sup>14</sup> This is quite incompatible with the idea of genocide, which is based entirely on race and ignores how a people conduct themselves.

In all the biblical appearances of Amalek they threaten to annihilate the Israelites, who must take arms to resist them. This was the case right after the exodus from Egypt, when a new people of former slaves was taking its first steps through the wilderness—but Amalek tried to keep it from being born; and again, in the book of Esther, when Haman the Aggagite—a descendant of Amalek—sought “to destroy, massacre, and exterminate all the Jews, young and old, children and women”<sup>15</sup>—precisely the goal proclaimed by Hamas today.

## 6 Simeon and Levi: Ethical Censure in the Bible

Section 02 of the Application refers to a battalion commander who released a video on December 21, 2023, in which he reported that the IDF had entered Beit Hanoun and acted there in the same way as the biblical Simeon and Levi did in Nablus. The biblical narrative reports that Jacob’s sons slew all the males of Shechem (now Nablus) when they were weak, after they had been circumcised, in the hope that Jacob would agree for their prince to marry his daughter Dinah, even though he had abducted and raped her. The Application would portray the two brothers as biblical heroes whom today’s soldiers are eager to emulate. Because the current debate relates to biblical concepts and myths and to how they are understood by Jewish soldiers today, we need to consider how Jewish tradition sees the story of Jacob, Simeon, Levi, and Dinah. Simeon and Levi are not triumphant heroes who win praise and glory. Quite the opposite: in the wake of their action the two brothers are condemned and rejected by their father. The biblical account judges them harshly: immediately after the

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<sup>10</sup> Deuteronomy 23:15.

<sup>11</sup> “When you besiege a city for a long time, making war against it in order to take it, you shall not destroy its trees” (Deuteronomy 20:19).

<sup>12</sup> Thus, e.g., in Maimonides’ interpretation (Laws of Kings 6:7) of a biblical verse: “When a siege is placed around a city to conquer it, it should not be surrounded on all four sides, only on three. A place should be left for the inhabitants to flee and for all those who desire, to escape with their lives, as it is written Numbers 31:7: ‘And they besieged Midian as God commanded Moses.’”

<sup>13</sup> “When you draw near to a city to fight against it, offer terms of peace to it” (Deut 20:10).

<sup>14</sup> Maimonides, *Laws of Kings*, 6:1–4, and the *Kesef Mishnah* commentary ad loc.: If Amalek agrees to peace “it is no longer considered to be Amalek.”

<sup>15</sup> Esther 3:13.

massacre, and again right before his death, their father criticizes them severely, lashing out at them with moral censure, rejection, ostracism, and a curse instead of a blessing.<sup>16</sup> The State of Israel does not wish to follow the path of Simeon and Levi or repeat their destiny.

## 7 Conclusion

To sum up, we assert that the Application, which sees references to the biblical tribe of Amalek as equivalent to a call for genocide, is mistaken and misleading:

- (1) The precept to wipe out Amalek, which it cites, has in fact been deleted from the Jewish law book and become a dead letter.
- (2) The Application misquotes the Prime Minister, citing the wrong verse, and fails to distinguish between “remembering” and “wiping out” Amalek.
- (3) The Application fails to note that when Israeli speakers mention Amalek, they note that they are referring to members of Hamas, and not to the Palestinian people in Gaza.
- (4) The Jewish people have been committed to stringent laws of war since they came into being, more than 3,000 years ago.
- (5) The Bible does not see Simeon and Levi as role models to be emulated, given that their deed led to their censure and ostracism.