International Court of Justice

The Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa vs Israel)



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Forum	International Court of Justice
Issue:	The Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa vs Israel)
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Introduction

The International Court of Justice (ICJ) is one of the six organs that composes the United Nations. Its purpose of ICJ is similar to the International Criminal Court (ICC) but rather than a case prosecuting a singular individual, it settles legal disputes between states. The court is composed of 15 judges, a registrar and opposing councils that bring their case to the court. The ICJ is located in The Hague where over 200 court cases[1] have been dealt with. The International Court of Justice is currently deliberating over South Africa's genocide case against Israel since December 29th 2023. The case consistutes of the first time a State, South Africa, has formmally accused Israel of commiting a genocide against Palestinians, following the Hammas's attack on October 7th 2023. The attack involved hundreds of Hamas gunmen crossing the borders of Gaza into Israel, resulting in the death of 1,200 and 252 hostages. Since then, Israel has launched a military campaign against Hamas and in response, 35,800 individuals have been killed within Gaza[2].

South Africa's application to the International Court of Justice alleges that Israel has violated provisions of the UN 1948 Genocide Convention, specifically Article II and III. The following includes; the mass killing of civilians, the forced displacements of millions of individuals and the "genocidal in

[1] International Court of Justice. "Cases | INTERNATIONAL COURT of JUSTICE." *Www.icj-Cij.org*, www.icj-cij.org/cases. Accessed 30 July 2025.
[2] Berg, Raffi. "What Is South Africa's Genocide Case against Israel at the ICJ?" *Www.bbc.com*, 10 Jan. 2024, www.bbc.com/news/world-middle-east-67922346. Accessed 14 June 2025.

character because they are intended to bring about the destruction of a substantial part of the Palestinian national, racial and ethnic group"[3]

Definition of Key Terms

Genocide

Under International Law, Genocide[4] is defined as committing one or more acts with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group.

Dolus Specialis (Special Intent)

A legal term that refers to the specific intent required to commit a genocide[5].

Self Defense

The right of a State to use force in response to an armed attack[6].

Intervention

When a State is not directly involved in a case intervenes in another State's internal affairs, in violation of the latter's sovereignty. Such interventions[7] are prohibited by the United Nations Charter Article 2.7.

Armed Attack

The use of force that authorises the exercise of self defense according to Article 51 of the United Nations Charter[8].

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[3] "Community Screening: International Court of Justice Hearing – South Africa's Case on Israel's Crime of Genocide." *The People's Forum*, 10 Jan. 2024, peoplesforum.org/events/icj-hearing/. Accessed 14 June 2025.
[4] "19. Genocide (18 U.S.C. 1091)." *Www.justice.gov*, 19 Feb. 2015, www.justice.gov/archives/jm/criminal-resource-manual-19-genocide-18-usc-1091. Accessed 14 June 2025.
[5] "The Meaning of the Special Intent Requirement in the War Crime of Pillage under the Rome Statute of the International Criminal Court." *International Review of the Red Cross*, 2022, international-review.icrc.org/articles/for-private-or-personal-use-special-intent-requirement-pillage-rome-statute-icc-915. Accessed 15 June 2025.
[6] "Legal Dictionary." *Law.com Legal Dictionary*, 2019, dictionary.law.com/Default.aspx?selected=1909. Accessed 14 June 2025.
[7] Doctors Without Borders. "The Practical Guide to Humanitarian Law." *Guide-Humanitarian-Law.org*, guide-humanitarian-law.org/content/article/3/intervention/. Accessed 14 June 2025.
[8] "Armed Attack." Oxford Public International Law, 2023, opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e241. Accessed 14 June 2025.

Due Diligence Obligation

Under international law, States must take all measures reasonably within their power to prevent genocide and other international crimes[9].

Article IX

Article IX[10] is the provision that allows any dispute of states concerning genocide be brought before the International Court of Justice.

Occupation

Occupation[11] is the military control of a territory without full sovereignty.

Complete Siege

A term used by the Israeli officials[12] to describe the cut off of food, water and electricity to Gaza.

Hostage

A hostage[13] may be an individual or group of individuals who are captured by force into the opposing member states' custody during a time of war.

General Overview

The case of South African vs Isreal before the International Court of Justice concerns the alleged violation of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip. On 29 December 2023, South Africa filed an Application instituting proceedings under Article 36 (1) of the Statue of the Court and Article IX of the Genocide Convention, claiming that Israel's conduct

[9] Koivurova, Timo, and Krittika Singh. *Horizontal Complementarity*. 2025. 2021.
[10] United Nations. "Convention on the Prevention and Punishment of the Crime of Genocide." *United Nations*, United Nations, 9 Dec. 1948, www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf. Accessed 14 June 2025.
[11] Staff, TLD. "Occupation." *The Law Dictionary*, 4 Nov. 2011, thelawdictionary.org/occupation/. Accessed 14 June 2025.
[12] Al Jazeera. "Israeli Defence Minister Orders 'Complete Siege' on Gaza." *Www.aljazeera.com*, 9 Oct. 2023, www.aljazeera.com/program/newsfeed/2023/10/9/israeli-defence-minister-orders-complete-siege-on-gaza. Accessed 14 June 2025.
[13] "Hostage." *LSD.Law*, 2025, lsd.law/define/hostage. Accessed 14 June 2025.

in the Gaza Strip violates meets the legal definition of genocide as set out in Article II of the Convention. South Africa allege that Isreal has failed to fulfill its duties to act and punish genocide as intended in Article I and IV of the Genocide Concention.

Jurisdiction is invoked under Article IX of the Genocide Convention which allows any State to ask the court to look into "interpretation, application, or fulfilment" of the Convention. This provision operates on the erga omnes partes basis, allowing any State party to bring a claim regardless of direct injury.

Israel disputes these allegations and is expected to argue that its actions do not meet the legal definition of genocide under Article II of the Convention and its conduct is consistent with its rights and obligations under relevant international law, including the inherent right of self defense recognized in Article 51 of the UN Character.

The main legal questions in this case include:

- Did Israel commit acts listed under Article II of the Genocide Convention?
- Was there specific intent (dolus specialis) to destroy the Palestinian population, in whole or in part?
- Did Israel breach its due diligence obligation to prevent genocide?
- Are Israel's actions justified under self-defense?
- Should provisional measures be maintained or expanded?

The proceedings will require the court to determine whether the acts attributed to Israel fall within the scope of genocide as defined by the convention and whether provisional measures under Article 41 of the Statue of the Court should be indicated to safeguards rights pending final judgement.

Major Parties Involved

South Africa (Applicant)

South Africa is responsible for filing the case to the International Court of Justice on December 29th 2023. The State claims that Israel has violated multiple provisions of the 1948 Convention on the Prevention and Punishment of the Crimes of Genocide through its millitary

operations in the Gaza Strip. South Africa asserts that Israel's actions have the deliberate intent to destroy the Palestinian people in Gaza. The country's involvement between Israel and Palestine is for reason that there is the legal and moral obligation to invoke the Genocide Convention. Simply not due to South Africa's status as a member of the treaty but rather due to its historical experience with Apartheid and state perpetrated violence. Therefore the nation's legal approach that provides evidence to call for international members with the obligation to prevent genocide.

Israel (Respondent)

Israel is the member state being prosecuted by South Africa for genocide but strongly rejects the allegations. Israel argues that its military actions in Gaza were necessary for the right of self defense against Hamas, who killed 1,200 Israelis. The country continues to assert that there is no intent to target Palestinians and therefore should not be accused of genocide. A crime that requires the specific intent (dolus specialis) to destroy, in whole or part, of a population. They have reiterated that their military campaigns were directed solely towards Hamas and other armed groups that pose a direct threat to Israeli citizens. Israel views South Africa's application as legally unfounded and accuses the nation of ignoring the crimes committed by Hamas.

International Court of Justice (ICJ)

The International Court of Justice, based in The Hague, is the principal judicial organ of the United Nations as it deals with resolving disputes between States under international law. For the case of South Africa vs. Israel, the ICJ holds jurisdiction under Article IX of the Genocide Convention where both South Africa and Israel are ratified. The court plays a fundamental role in determining wether Israel has breached its obligations under the Genocide Convention and must therefore issue binding provisional measures once ruling over the merits of the case.

Hamas

Hamas is a Palestinian military group that was founded in the 1980s by Sheikh Ahmed Yassin. After defeating their rival political group, Fatah, in 2006, Hamas took over control of the Gaza Strip. In 1988, Hamas published a charter that called upon the murder of the Jews and the destruction of Israel and later adjusted the charter in 2017 to remove the references of killing Jews[14]. This group is recognised as a terrorist group for the United States and European Union due to their suicide

[14] Robinson, Kali. "What Is Hamas?" *Council on Foreign Relations*, 17 Oct. 2024, www.cfr.org/backgrounder/what-hamas. Accessed 15 June 2025.

bombing attacks and other crimes committed upon Israel. The first suicide bombing occured on April 1993, 5 months before Palestine Liberation Organization (PLO) leader Yasser Arafat and Israeli Prime Minister Yitzhak Rabin signed the Oslo Accords. The Oslo Accords[15] is an agreement between Israel and Palestine to establish peace between the two member states. The deadliest attack on Israel occurred in October 2023, where 1,200 individuals were killed and 200+ hostages were taken. In response, Israel declared war aimed at eradicating the group[16].

Human Rights Organisations

Human rights organisations are non governmental entities that advocate to protect human rights and the freedom of individuals[17]. Most notably, Amnesty International, Human Rights Watch and Civil Rights Defenders[18]. Their primary role is to document events, collect testimonies and find evidence related to the mistreatment of individuals to ensure all member states and groups adhere to international law. Throughout the Gaza conflicts, some of these organisations have published reports addressing the incidents, casualties and the destruction of the environment around. These can be found under the form of media pages, reports and claims made by the organisations[19].

Relevant ICJ Precedents

Bosnia and Herzegovina v. Serbia

This case occurred in 2007, where ICJ ruled upon the responsibility of a state for genocide. It is important to note that the court clarified the definition of genocide under Article II as emphasizing the necessity of proving specific intent to destroy a protected group. The Court further established that a state not only has the duty to refrain from committing acts of genocides but must also prevent it[20]. These are key outcomes from such a court case that is crucial for the advocates on the case of South Africa vs. Israel to present evidence for the Court's verdict.

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[15] Britannica. "Oslo Accords | Palestinian Liberation Organization-Israel [1993] | Britannica." *Encyclopædia Britannica*, 2020, www.britannica.com/topic/Oslo-Accords. Accessed 15 June 2025.
[16] Robinson, Kali. "What Is Hamas?" *Council on Foreign Relations*, 17 Oct. 2024, www.cfr.org/backgrounder/what-hamas. Accessed 15 June 2025.
[17] Arvola, Bill. "LibGuides: Human Rights: An Overview: Organizations." *Libguides.law.illinois.edu*, libguides.law.illinois.edu/c.php?g=937587&p=6778150. Accessed 15 June 2025.
[18] Human Rights Careers. "25 International Human Rights Organizations." *Human Rights Careers*, 13 Oct. 2019, www.humanrightscareers.com/magazine/international-human-rights-organizations/. Accessed 15 June 2025.
[19] France 24. "South Africa Accuses Israel at ICJ of Breaching Genocide Convention." *France 24*, FRANCE 24, 11 Jan. 2024, www.france24.com/en/middle-east/20240111-israel-to-face-south-africa-s-charge-it-has-committed-genocidal-acts-in-gaza-at-icj. Accessed 15 June 2025.
[20] International Court of Justice. "Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovin." *Www.icj-Cij.org*, 2007, www.icj-cij.org/case/91. Accessed 30 July 2025.

Gambia v. Myanmar

Such an ongoing case since 2020, where Gambia brought proceedings against Myanmar for acts of genocides against the Rohingya population. The Court has implemented provisional measures to prevent irreparable damage under the Genocide Convention[21]. Although no verdicts have been issued yet, these provisional measures highlight the importance of the rights being involved are plausible and therefore actions must be taken to prevent further harm. Furthermore showing how although South Africa has no direct connection towards the conflict in Gaza, it has the right, as a party of the Genocide Convention, to bring a case against Israel if they believe the party is in breach of such acts.

Croatia v. Serbia

This case was brought by Croatia, accusing Serbia of committing genocide during the 1990's Yugoslav conflict. Although serious crimes had been committed, the Court thought that there was a insufficient evidence to prove the specific intent to destroy a group[22] (required under the Genocide Convention). This ruling emphasized that mass killings and destruction, even during wartime, do not automatically constitute genocide without the presence of dolus specialis. It is the key to prove the distinction between warcrimes and genocide and underlines the importance of strong factual evidence for the Court to reach a verdict.

Timeline of Key Events

Date	Description of event
1967	Israel occupied the West Bank and Gaza Strip during the Six Day War.
December 1987	Sheikh Ahmed Yassin founded Hamas during the first Palestinian uprising against the Israeli occupation.
1988	Hamas published its charter to eradicate Israel and kill all Jews.
April 1993	Hamas first suicide bombing.

[21] "INTERNATIONAL COURT of JUSTICE." *Icj-Cij.org*, 2019, www.icj-cij.org/case/178/provisional-measures. Accessed 30 July 2025.
[22] ICJ. "Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)." *Www.icj-Cij.org*, 2015, www.icj-cij.org/case/118. Accessed 30 July 2025.

1997	The United States officially recognize Hamas as a foreign terrorist organisation.
2004	Israeli forces killed Sheikh Ahmad Yassin, founder of Hamas.
2011	Hamas leaders established a presence in Qatar.
2017	Hamas removed the references to kill the Jews from their charter but continued to refuse recognition towards Israel.
October 7th 2023	Hamas attack on Israel. Resulted in the death of 1,200 individuals and over 200 hostages.
October 8th to 10th 2023	Israel declares state emergency and begins an aerial bombardment on Gaza. The Israeli Defense Force (IDF) announced a military campaign[23] to eliminate Hamas infrastructure within Gaza.
October 9th 2023	Israeli Defence Minister Yoad Gallant announces a "complete siege" on Gaza, resulting in cutting electricity, food and water necessities across the region.
Across October 2023	Over 1 million Palestinians are displaced.
October 17th 2023	An explosion happened at Al Ahli Hospital[24] in Gaza, killing over 450 individuals, destroying all medical equipment.
Across October to November 2023	Further air strikes and ground operations by Israel contributed to the killing of thousands, destroying homes, hospitals and refugee camps within the process.
December 29th 2023	South Africa officially filed application against Israel for violation of the 1948 Genocide Convention at the ICJ[25].

UN involvement, Relevant Resolutions, Treaties and Events

- Resolution 181, 29 November 1947 (A/RES/181(II))

[23] Burke, Jason, and Malak A. Tantesh. "Israeli Army Begins 'Extensive' New Ground Operations in Gaza." *The Guardian*, The Guardian, 18 May 2025, www.theguardian.com/world/2025/may/18/gaza-ceasefire-talks-continue-as-israel-carries-out-fresh-wave-of-strikes. Accessed 14 June 2025.
[24] Human Rights Watch. "Gaza: Findings on October 17 Al-Ahli Hospital Explosion | Human Rights Watch." *Human Rights Watch*, 26 Nov. 2023, www.hrw.org/news/2023/11/26/gaza-findings-october-17-al-ahli-hospital-explosion. Accessed 14 June 2025.
[25] International Court of Justice. "Proceedings Instituted by South Africa against the State of Israel on 29 December 2023." *Www.icj-Cij.org*, INTERNATIONAL COURT OF JUSTICE, 29 Dec. 2023, www.icj-cij.org/case/192. Accessed 14 June 2025.

- Recommended Partition of Palestine into separate Jewish and Arab States.

- Resolution 194, 11 December 1948 (A/RES/194(III))

  - Addressed the Palestinian right of return and compensation of refugees.

- Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), 9 December 1948

  - Treaty defingin genocide and obligating countries to prevent and punish it.

- Geneva Convention, 12 August 1949

  - Establishing standards for humanitarian treatment in war, including occupation.

- International Convention on the Elimination of All Forms of Racial Discrimination,7 March 1966 (UNTS, Vol. 660, p. 195)

  - Ruled the West Bank Barrier illegal under International Law

- Resolution 242, 22 November 1967 (A/RES/242(1967))

  - Called for Israel's withdrawal from territories occupied in the 1967- Six Day War

- Resolution 338, 22 October 1973 (S/RES/338)

  - Called for ceasefire in Yom-Kippur War and implementation of Resolution 242

- UN Security Council Resolution 465, 1 March 1980 (S/RES/465)

  - Condemned that Israeli settlements in occupied Palestinian territories as illegal

- UN Security Council Resolution 478, 20 August 1980 (S/RES/478)

  - Called on both countries to withdraw their diplomatic relations from Jerusalem

- UN Security Council Resolution 497, 17 December 1981 (S/RES/497)

  - Denied Israel to take control of the Golan Heights Area. Rejected Annexation

- International Court of Justice Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004

  - Ruled Israel's separation barrier violated International Law

- UN Security Council Resolution 2334, 23 December 2016 (S/RES/2334)

  - Reaffirmed that Israeli settlements in Palestine impeded peace and have no legal authority.

Current Procedural States

- **United Nations Partition Plan 1947**

  Divided the British Mandate Palestine into a Jew and Arab state due to growing conflict between the two groups. This rejection triggered a series of armed conflicts that continue till this day over the boundaries of each territory.

- **Oslo Accords, 1993-1995**

  Series of agreements between Israel and Palestine Liberation Organization in early 1990's. It marked the first time both sides officially recognized each other and aimed to lay the groundwork for peace. Norway helped facilitate these talks however this argument did not settle the toughest question like the status of Jersaulem. Thus both sides had suspicions of each other and conflicts still continued.

- **Camp David Summit, 2000**

  President BIll Clinton of USA attempted to mediate a conversation with Israeli Prime Minister Ehud Barak and Palestinian leader Yasser Arafat for a final peace agreement at Camp David. However no agreement was reached and led to the Second Intifada, a period of intensified Israeli-Palestinian violence.

- **Roadmap for Peace, 2003**

  Proposed by the UN, USA, Europe and Russia, outlining steps toward a two state solution. However its implementation was stalled and ignored due to the ongoing crisis and lack of trust.

- **Annapolis Conference, 2007**

  Restarted talking aiming for a two state solution within a year. Despite renewed hopes, the talks collapsed due to shifts in political leaderships of both nations and continued violence on ground.

- **UN Security Council Resolutions**

Called for Israeli Withdrawal from occupied territories and recognition of all states' right to live in peace. This formed a basis but never fully was implemented.

- **International Court of Justice Advisory Opinion**

  Declared Israel's West Bank barrier under International Law and called for its removal. However this increased international pressure but no enforcement, making the barrier still remain.

- **Boycott, Divestment, Sanctions (BDS) Movement, since 2005**

  A campaign aiming to pressure Israel politically and economically to change policies towards Palestinians. This raised global awareness, but deepend political divisions. Some countries resist the pressure on Israel and thus it was not a unified global enforcement.

Possible (ICJ) Outcomes

1. Provisional measures ordering Israel to prevent genocidal acts and ensure that all humanitarian aid is delivered to civilians in Gaza

2. Judgement on the merits that Israel committed genocidal act and therefore have breached the Genocide Convention, they may be held internationally responsible to pay the reparations, hold accountable those responsible and most importantly, to cease all genocidal acts.

3. Judgement on the merits that Israel has not committed genocidal acts but has violated other obligations under international humanitarian law or the Genocide Convention. For instance, failture to prevent genocide, then the nation may still carry legal consequences

4. Judgement on the merits that Israel is in no violation to the Genocide Convention. Although the damages and high amount of civilian casaulties do not meet the legal threshold for genocide under international law, the case would be dismissed along with South Africa's claim but may still bring attention towards the humanitarian situation in Gaza.

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Appendix or Appendices

1. The United Nations “Convention on the Prevention and Punishment of the Crime of Genocide.” www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

The following provides legal definitions and obligations under international law concerning genocide. It includes the following information; what genocide constitutes of, who can be held accountable and what actions states must take to prevent and hold states accountable for.

2. The Council on Foreign Relations article about “What is Hamas?” https://www.cfr.org/backgrounder/what-hamas

This source provides insight towards the Hamas history, foundation, intentions and recent events against Israel. It allows both councils to understand the conflict in depth, including details of individuals and officials involved throughout.

3. About the Oslo Accords between Israel and Palestine, provided by the Office of The Historian https://history.state.gov/milestones/1993-2000/oslo

A webpage that explains the historical context for the Israel Palestine conflict by outlining the rise and collapse of the Oslo Accords. The Oslo Accords had established the Palestinian Authority and attempted to negotiate permanent peace. By reading through this source, advocates may understand

the failed peace processes, settlement disputes and longstanding political tensions that the current case revolves around.