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The ICJ Judgment in South Africa v. Israel: An International Law Perspective on the Israel– Palestine Conflict

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Introduction

The judgement by the International Court of Justice in the case of *South Africa v. Israel* has revived the debate regarding the role of international law in the issue of the Israel-Palestine conflict based on a case initiated by South Africa against Israel.¹ This case, accusing Israel of genocide under the Genocide Convention of 1948, raises rather deep contours of legal principles such as over the occupation of Palestinian territories, self-determination, and further implications under international humanitarian law and international human rights law. This article offers critical analysis on the ICJ ruling on aspects of legal reasoning, whether it fits or is in accordance with international legal precedents, and further implications for international law.

This paper aims to critically analyze the ICJ's ruling in *South Africa v. Israel* through a legal perspective, focusing on its alignment with established international legal principles and precedents while also discussing its broader implications. At its core, the argument engages with the conflict between legal instruments such as the Genocide Convention, international humanitarian law (IHL), and international human rights law (IHRL) and the geopolitical dynamics that shape their application.

The ruling touches on fundamental legal questions, including the prohibition of genocide, the rights of occupied peoples, and the obligation of states under international law. The Genocide Convention (1948) provides a stringent legal framework for determining state responsibility, but its application in case of an ongoing conflict raises complex questions. The case also intersects with broader legal principles under IHL, particularly the obligations of an occupying power under the Fourth Geneva Convention (1949), and the right to self-determination enshrined in the UN Charter.

¹ International Court of Justice. (2024, January 26). *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) - Request for the indication of provisional measures*. Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>

Beyond the realm of legal reasoning, the paper raises the question of whether the ruling truly reflect a consistent application of international legal norms or is it rather a product of global power politics. In reality, international law has been used selectively over time, primarily in accordance with the interests of powerful geopolitical players. The ICJ's decision thus poses a moment of reflection: is this the tipping point for both reinforcing legal accountability or at risk of being just another declaration without ensuring enforcement?

The Israel-Palestine conflict remains a case study of the effectiveness of international law. The legal principles that are in question include self-determination, occupation, genocide, and apartheid, all of which relate to legally unique distinct obligations under international treaties and customary law. The South Africa case provides an occasion to rethink the operational meaning of the 1948 Genocide Convention, invoked with real significance for the cases that arose with comparable dynamics in *Bosnia v. Serbia* (2007) and *The Gambia v. Myanmar* (2019). Importantly, the treatment of these principles by the ICJ and their application within the Israel-Palestine context is likely to greatly shape future legal and political developments.

So far, one must not read a disputation against the ICJ ruling in isolation from already existing legal norms; rather, it is an expression of how international law was interpreted and further politicized. This article analyses the Court's judgment and its impact on international legal order and the key principles as highlighted in international legal statutes, particularly in the historical context of this geo-political case.

Background of the case

On December 29, 2023, South Africa brought an ICJ case against Israel for violating the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip. The military confrontation came after the attack by Hamas on Israel on October 7, 2023, leading to also large civilian tragedies in destruction in the Gaza Strip. The application also included a request on the part of South Africa for provisional measures to protect Palestinians in the court's order.

Court recognized *prima facie* jurisdiction, stating that both states were party to the Genocide Convention; it did also recognize that there was a contention as to whether Gaza events did constitute violations of the convention between both parties. Further, the court did recognize that South Africa indeed had standing to institute the case in question, because all states parties to the

convention have a collective interest in preventing the act. The court did deem South Africa's claimed rights plausible and did recognize those of Palestinians in Gaza to be protected from genocide and those of South Africa to compel Israel for compliance with convention. The submissions made by South Africa in the court clearly indicated that there was a clear risk of violation of rights of Palestinians in the Gaza strip and there was “*immediate risk of death by starvation, dehydration and disease as a result of the ongoing siege by Israel, the destruction of Palestinian towns, the insufficient aid being allowed through to the Palestinian population and the impossibility of distributing this limited aid while bombs fall*”.²

Thus, the court ordered on 26th January 2024 that provisional measures should be taken by Israel. This included prevention of acts of genocide, including killing, causing grievous bodily harm, and imposing inhumane living conditions on Palestinians; the military must at all times be ensured not to commit such acts, and punishing direct and public incitement to genocide. “*Israel must take all measures within its power to prevent and punish the direct and public incitement to commit genocide in relation to members of the Palestinian group in the Gaza Strip.*”³ It is important to note that another important court meeting indicated that the order was intended to preserve evidence regarding allegations of genocide against Israel and report to the court within one month on compliance with this order. To which the court would categorically demand that in the ongoing participation of parties in global humanitarian law, urge for immediate and unconditional releases to the hostages.

The ICJ’s ruling on Israel: A legal turning point in the Gaza conflict

Despite being a provisional ruling, the International Court of Justice's decision in the South Africa case against Israel has had a far-reaching effect. The case has turned the ICJ into a forum for global discussion on the Israeli Palestinian conflict using the Genocide Convention as a shared umbrella. The court recognized the severity of the humanitarian crisis in Gaza and the high death and injury toll accompanying the destruction and displacement caused by Israeli military operations. It also

² Ibid

³ Ibid

stated that it was "plausible" Israel had violated at least some of its obligations under the Genocide Convention. Although the court did not stop Israel from conducting military operations, it passed provisional measures on Israel. These include putting in place safeguards so that Israel's military operations do not result in acts of genocide, preventing and punishing incitement to genocide, allowing basic services and humanitarian aid to reach the affected population, preventing destruction and preservation of evidence, and giving a report to the court on compliance within one-month time.⁴ Thus, these provisional measures will restrict Israel and strengthen the legal basis for monitoring, support, and advocacy by a variety of bodies.

The court ruling has also put pressure on Israel's allies, particularly the United States, to reconsider their degree of support for Israel. Moreover, the court's ruling has seen some European partners call on Israel to respect the provisional measures. What must be understood is that the ruling did leave open the very serious issue of whether Israel is involved in genocide in Gaza, and this issue will be discussed in depth for years to come. In its entirety, this judgment contributes to greater public pressure being placed on Israel to mitigate civilian suffering, intensify humanitarian efforts on the ground, and prevent possible disaster scenarios.

Victor Kattan, in cooperation with Gerhard Kemp, examines South Africa's claim filed before the International Court of Justice (ICJ) against the state of Israel in the context of the linkage between genocide and apartheid. South Africa's application draws on Israel's apartheid practices as the broader situation in which they perpetrated alleged genocidal events. Although the application falls under the 1948 Genocide Convention, to which both South Africa and the state of Israel are parties, Kattan points out that the 1973 Apartheid Convention is also of interest, even if neither country has signed the convention.⁵

Kattan draws attention to the close relationship between the concepts of genocide and apartheid. He notes that the preamble to the Apartheid Convention recognizes that some acts in the Genocides

⁴ International Court of Justice. (2024, January 26). *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) - Request for the indication of provisional measures*. Para 78-82. Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>

⁵ Kattan V., and Kemp G. (24 January 2024). Apartheid as a form of Genocide: reflections on South Africa v Israel. *European Journal of International Law*, <https://www.ejiltalk.org/apartheid-as-a-form-of-genocide-reflections-on-south-africa-v-israel/> accessed 30 January 2025

Convention may also constitute apartheid. It suggests that large-scale deaths resulting from systemic oppression could amount to genocide. However, for an act to legally qualify as genocide, the majority of deaths must result from deliberate actions intended to destroy a group. This distinction emphasizes intent genocide requires proof of a targeted plan to exterminate, whereas apartheid involves systematic racial oppression that may lead to mass deaths but does not necessarily meet the strict legal threshold of genocide under the 1948 Convention.

Genocide is intentional destruction of a group, while apartheid is the maintenance of a system of racial hierarchy. According to Kattan, there may be a system of apartheid giving rise to genocide. He cites the cases of Nazi Germany and Rwanda (where deeply entrenched discrimination justified the genocidal attacks).⁶ According to the arguments made by South Africa, Israel's actions in Gaza, including “*killing of Palestinians in Gaza, causing them serious bodily and mental harm, inflicting on them conditions of life calculated to bring about their physical destruction, and the forcible displacement of people in Gaza*” indicate genocidal intent.⁷

Kattan further points out that not only infrastructure devastation and movement limitations can be seen as explicitly creating circumstances with sole intention of achieving physical annihilation, but that the very scale of women and children killed also should be taken into consideration in view of the practice of destroying children in Palestine.⁸

Israel argues that a narrow interpretation of the International Court of Justice (ICJ) ruling permits it to continue its military operations in Rafah. According to Israel, any action is only to be ceased if the actions lead to physical destruction of the Palestinians, meaning that these orders require certain conditions in order to be invoked. As such, Israel argues that since its military actions in Rafah do not generate these conditions, the court's order does not apply to them. Their opinion of

⁶ Kattan V., and Kemp G. (24 January 2024). Apartheid as a form of Genocide: reflections on South Africa v Israel. *European Journal of International Law*, <https://www.ejiltalk.org/apartheid-as-a-form-of-genocide-reflections-on-south-africa-v-israel/>> accessed 30 January 2025

⁷ International Court of Justice. (2024, January 26). *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) - Request for the indication of provisional measures*. Para 21-22. Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>

⁸ Kattan V., and Kemp G. (24 January 2024). Apartheid as a form of Genocide: reflections on South Africa v Israel. *European Journal of International Law*, <https://www.ejiltalk.org/apartheid-as-a-form-of-genocide-reflections-on-south-africa-v-israel/>> accessed 30 January 2025

dissenting judges backs this interpretation. The disputed wording of the ruling, with the placement of a solitary ‘comma’, is at the centre of it all. This has resulted in an interpretation that there must be conditional, rather than an unconditional, ceasefire of military operations. The Israeli ministry of Foreign Affairs stated that it would not act militarily that was likely to bring about the physical destruction of the Palestinian population in Gaza, thus sidestepping the ruling's intent. This approach further exposes the ambiguities and weaknesses in the international legal system and the difficulties of enforcing international law with powerful states.⁹

Israel has insisted that the assault in Rafah that killed 45 Palestinians which happened just after the ICJ order, does not violate the ICJ ruling because it has not created conditions that could replace physical destruction. Such an attitude unveils a serious challenge to enforcing international law whenever powerful states are concerned while showing how states manipulate the nuances offered by legal language in evading compliance.¹⁰

The structural dilemma of International Law: balancing norms and power in the ICJ’s ruling on Israel

The model of justice on the international level has a cognitive trajectory which is depicted by the tension between normativity and concreteness. A paradox is the main feature of the balance between two worlds, one of the norms on the one side, and another of realism on the other. Normativity includes the moral principles that international law is meant to follow and accordingly it places itself above politics, while on the other hand concreteness can be seen as the very fact that international law is able to flexibly adapt to practices and political contexts. It is thus, the basis of the mechanism of principles in international relations because of the opposition that it generates, thus the demand for an adjustment between doctrinaire or forceful stance and the adaptation to state practices. Through the recent South Africa v. The Israel case, the International Court of

⁹ Wintour, P. (2024, May 29). How a single comma is allowing Israel to question ICJ Rafah ruling. *The Guardian*. Retrieved from <https://www.theguardian.com/global/article/2024/may/29/how-a-single-comma-is-allowing-israel-to-question-icj-rafah-ruling>

¹⁰ Ibid

Justice was the proof of the idea. The ICJ did not urge the cessation of the hostilities, even though there was a possibility of genocide charges and ample evidence of war crimes, which illustrates the difficulty of the reconciliation of these two forces. This is a practical issue that has, in particular, been demonstrated in the Israeli Palestinian conflict.¹¹

Martti Koskeniemi, an international law expert, argues that both moral grounding and a more pragmatic approach to law deriving from the actual practices of states are necessary to legitimize international law. Making the ICJ's order one that makes requests for humanitarian assistance and orders Israel to account for its actions while not ordering a ceasefire indicates a certain balancing act. In this way, the court can pause to allow some breathing space whereby the international community can think about its priorities and postpone important decisions of the court, thereby indicating its incapacity against national interests of a powerful state.¹²

Beside a strategy that allowed one to avoid the confrontation of difficult decisions by balancing normative ideals and the actual existence of a state, this deferment can therefore also be conceived of as a political manoeuvre; the ICJ's ruling reflects the very tension of international law. Authors such as Bana Abu Zuluf contests how international law does not function neutrally but displays a reflection of global power balances that hardly functions as a rational approach for justice. She contends that the historical and political environments often overwhelm the legal system, most often worthy of interests for powerful governments, thereby sustaining inequalities and propagating colonial legacies. This is both plain and clear for Palestine, where histories have been edited from legal narratives itself. According to her, the international legal system seems disconnected from the associations with power, racism, and colonialism.¹³

In her critique of the global legal response to the ongoing violence in Palestine, Abu Zuluf underscores the procedural nature of this dissent as a mechanism for deferring action and, as such,

¹¹ Shalbak, I. (2024, February 19). *The International Court of Justice has exposed the inadequacy of international law for Palestinians*. ABC Religion & Ethics. <https://www.abc.net.au/religion/ihab-shalbak-icj-ruling-gaza-genocide-limits-international-law/103485820>

¹² Ibid

¹³ Zulf BA, 'Rethinking International Law after Gaza Symposium: International Law beneath the Rubble – Academic Complicity in Gaza Genocide' (*Opinio Juris*, 8 October 2024) <<https://opiniojuris.org/2024/10/10/rethinking-international-law-after-gaza-symposium-international-law-beneath-the-rubble-academic-complicity-in-gaza-genocide/>> accessed 31 January 2025

sustains institutional inequalities. She would say that the pursuit of legal technicalities allows for "ruse processes" that give priority for legitimacy of processes over the need for urgent action. This inertia, in her belief, reflects a systemic bias that continually seeks to keep Palestinians waiting, forever fighting over time, while violence continues. In her view, the instruments of international law are hopelessly ineffective against settler colonialism and mass violence and were never designed to serve anything but the interests of powerful governments. For that reason, she believes the system is fundamentally incapable of addressing or preventing the most serious violations. The ICJ decision is illustrative of the broader critique that international law might talk of moral authority but is bound to abide with political realities and demands of power analysis.¹⁴

Significance of the ICJ case: A turning point in the Israel-Palestine conflict

The case brought by South Africa against Israel at the International Court of Justice (ICJ) refers to an important point in international law as it reveals some of its strengths and weaknesses. The judgement then highlights the contradictions of international law between its normative values, that is, justice and human rights, and the means by which it is incorporated into day-to-day practice, which is often curtailed by global power dynamics. While acknowledging the possible merit of genocide claims against Israel, the ICJ declined to impose a ceasefire, issuing a clear statement on the institutional constraints associated with invoking international law against powerful states.¹⁵

This signals, in addition, the ongoing global discourse on the Israeli Palestinian question. It stops at the presentation of Israel purely as a victim; rather, it compels a serious interrogation of Israel's liability under international law. Among other places, the discussions, especially in the Global South, have acknowledged the historical suppression and violation of the rights of the Palestinian people.

¹⁴ Ibid

¹⁵ Goldston JA, 'Strategic Litigation Takes the International Stage: South Africa V Israel in Its Broader Context' (*Just Security*, 31 January 2024) <<https://www.justsecurity.org/91688/strategic-litigation-takes-the-international-stage-south-africa-v-israel-in-its-broader-context/>> accessed 30 January 2025

The role played by South Africa is indicative. Its moral position as a country born out of the fight against apartheid helps to strengthen this case, thus amplifying and legitimizing Palestine's voices. This case is significant because it highlights the growing demand for legal accountability. It gives a platform to voices that have traditionally been underrepresented in global governance, paving the way for a historic step forward in international justice.

Conclusion

The case that South Africa brought against Israel creates a bridge, establishing a moment of reflection between international governance and international law. Through this, the limits and strengths of international law become evident, together with the burdens of exacting any account from such great powers; it has a potential to get registers of imagery to change global discourse. It thereby sets out jurisdictional precedence: accepting the possibility of a plea of genocide and the enforcement of provisional measures might enable the ICJ to influence future cases dealing with mass atrocities. Conversely, the refusal by the court to insist on a ceasefire shows the institutionalized barriers it has to contend with whenever a balancing act between legal principles and geopolitical realities is called for.

It was legal thinking that enjoined a political transformation to help reinterpret the global view of the Israeli Palestinian conflict; it forced global reckoning, for Israel's actions in Gaza, with long-held narratives that have protected it from judicial scrutiny. The global south's situation has heightened parallels between Israel's policies and a historical apartheid, thus demands for accountability. This ruling has increased pressure on Israel's allies, particularly the United States and Europe, to explain its continued support to Israel even after it continues to violate every aspect of international law and Human Rights discourse.

Besides the political and legal implications, the lawsuit itself bears great moral significance: it raises the voice of the Palestinian issue above all others, thus contradicting the idea that international law only serves the interests of great nations. Bana Abu Zuluf and others assert that, rather than functioning as an unbiased system of justice, international law has always reflected the greater political balances of powers. This thus serves to display such criticism and to indicate that legal battles may indeed still play a role in shaping the larger political discourse.

Ultimately the case has once again had a long effect even though the last ruling is still outstanding. It has ensured that Israel's activities will always be under legal and diplomatic review, therefore bolstering the increasing demand for justice and responsibility in global relations.

Bibliography

1. <https://opiniojuris.org/2024/10/10/rethinking-international-law-after-gaza-symposium-international-law-beneath-the-rubble-academic-complicity-in-gaza-genocide/> accessed 31 January 2025
2. Krever, T. (2024, July 30). *Gaza and International Law: Critical Reflections on the conjuncture*. Opinio Juris. <http://opiniojuris.org/2024/08/02/gaza-and-international-law-critical-reflections-on-the-conjuncture/> accessed on 29th January 2025
3. International Court of Justice. (2024, January 26). Application of the Convention on the prevention and punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) - Request for the indication of provisional measures. Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>
4. Shalbak, I. (2024, February 19). The International Court of Justice has exposed the inadequacy of international law for Palestinians. *ABC Religion & Ethics*. <https://www.abc.net.au/religion/ihab-shalbak-icj-ruling-gaza-genocide-limits-international-law/103485820>
5. Zulf BA., (8 October 2024) Rethinking International Law after Gaza Symposium: International Law beneath the Rubble – Academic Complicity in Gaza Genocide. *Opinio Juris* <<https://opiniojuris.org/2024/10/10/rethinking-international-law-after-gaza-symposium-international-law-beneath-the-rubble-academic-complicity-in-gaza-genocide/>> accessed 31 January 2025
6. Krever, T. (2024, July 30). *Gaza and International Law: Critical Reflections on the conjuncture*. Opinio Juris. <http://opiniojuris.org/2024/08/02/gaza-and-international-law-critical-reflections-on-the-conjuncture/> accessed on 29th January 2025
7. International Court of Justice. (2024, January 26). Application of the Convention on the prevention and punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) - Request for the indication of provisional measures. Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>
8. Shalbak, I. (2024, February 19). The International Court of Justice has exposed the inadequacy of international law for Palestinians. *ABC Religion & Ethics*.

<https://www.abc.net.au/religion/ihab-shalbak-icj-ruling-gaza-genocide-limits-international-law/103485820>