

International Court of Justice

Research Report

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Forum: International Court of Justice (ICJ)

Issue: Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)

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Introduction

The Republic of South Africa (hereafter referred to as “South Africa”) filed this case against the State of Israel (hereafter referred to as “Israel”) on 29th December 2023, concerning violations of the Convention on the Prevention and Punishment of the Crime of Genocide (the “Genocide Convention”), defined below, in the context of the ongoing conflict in the Gaza Strip (also referred to as “Gaza” in this report). In addition to filing the case, South Africa also requested that provisional measures be implemented to prevent the continued violation of Palestinian Human Rights and ensure Israel’s compliance with treaties / conventions defined below. The violations of Human Rights (with South Africa citing, in particular, the issue of mass starvation) by Israel are in reference to the Israel-Hamas War, which began in October of 2023.

Over 38,000 Palestinians have been killed in the resulting conflict, with unrelenting attacks being launched on the Gaza Strip. The concerning death toll is the onslaught of a retaliation to Hamas’s attack on Israel on 7th October, which resulted in the death of 1,200 Israelis and the capturing of 251 hostages.

South Africa thus filed this case to bring about the implementation of provisional measures to bring an end to the ongoing crisis in Gaza. With UN humanitarian chiefs indicating that the humanitarian crisis has become “terrifying” and “unspeakable”, the crisis has become concerning, especially with obstacles preventing the flow of humanitarian aid to Palestinians in Gaza. Although South Africa filed this case, 18

nations have declared Israel to be a perpetrator of genocide. Public hearings for this case began on 11th January, 2024.

Definition of Key Terms

Israel-Hamas War

On 7th October, 2023, Hamas, a political and military faction governing portions of Israel-occupied territory, launched an attack on Israel, resulting in the death of over 1,200 Israelis and the capturing of 251 hostages. Israel's Prime Minister, Mr. Benjamin Netanyahu declared a war against Hamas, launching a military operation that has seen the destruction of over 355,000 Palestinian homes as of 29th December 2023, and violations of Palestinian Human Rights and treaties / conventions to which Israel is party.

The Gaza Strip

A strip of land bordered by the Red Sea, the Gaza Strip is north of Egypt and west of Israel. Along with the West Bank, the Gaza Strip constitutes one of two Palestinian territories. As of 29th December 2023, approximately 2.3 million people inhabit the Gaza Strip. Despite disengaging from the Gaza Strip in 2005, Israel continues to hold control over utilities (water, electricity, etc.), which is a concern in the context of the humanitarian crisis.

Genocide

The following definition for 'genocide' was outlined in the Genocide Convention (explained below): *"a crime committed with the intent to destroy a national, ethnic, racial or religious group, in whole or in part."*

Humanitarian Aid

Support, in the form of food and funds, to those in need. Humanitarian aid has been a

contentious point of interest in this case.

Major Countries and Organizations Involved

The Republic of South Africa

The Republic of South Africa initiated proceedings in the ICJ on 29th December 2023, citing their obligation to fight the case as a state party to The Genocide Convention. The Republic of South Africa claims that the State of Israel is in violation of The Genocide Convention and the Universal Declaration of Human Rights.

The State of Israel

Country accused of violating the Genocide Convention and the Universal Declaration of Human Rights as part of the war waged against Hamas, carried out in Gaza. Israel had previously been ordered to respect provisional measures created by the ICJ as part of the Order of 26 January 2024. Since then, the humanitarian crisis in Gaza has worsened, thus necessitating further action.

IDF (Israel Defense Forces)

The IDF, also referred to as the "Tzahal", is Israel's national military. The IDF is responsible for military operations in Gaza.

Hamas

Hamas, whose official name is Harakat al-Muqawama al-Islamiy, is responsible for launching the attack of 7th October, 2023 and capturing 251 hostages. Hamas is a military and political faction that governs portions of the Israeli-occupied Gaza Strip that brought several groups together to launch the attack. Mr. Benjamin Netanyahu waged war against Hamas, vowing to bring an end to the organization. Hamas is led by Ismail Haniyeh, who previously held the position of Prime Minister of the State of Palestine.

The State of Palestine

Gaza is one of 2 Palestinian territories, the other being the West Bank. Although Israel declared war against Hamas, the destruction has wreaked havoc on the people of Palestine and Palestinian infrastructure. Mahmoud Abbas is the current President of Palestine.

Timeline of Events

Date	Description of Event
9th December 1948	The Genocide Convention is approved.
10th December 1948	The UDHR is adopted.
December 1987	Hamas is founded during the First Intifada.
7th October 2023	Hamas attacks Israel, killing over 1,200 Israelis and capturing 251 hostages. Israeli PM Benjamin Netanyahu declares war on Hamas; Israel begins bombing of the Gaza Strip.
13th October 2023	Ground operations begin in the Gaza Strip.
27th October 2023	Full scale invasion launched.
30th October 2023	The South African Department of International Relations and Cooperation issues a statement calling for nations to hold Israel accountable for breaches of international law.
7th November 2023	South Africa's International Relations Minister makes a statement saying that there is a looming threat of genocide.
10th November 2023	South Africa's Department of International Relations and Cooperation holds a formal meeting with the Ambassador of the State of Israel to South Africa, informing him that South Africa condemns ongoing war crimes.

17th November 2023	The President of South Africa announces that South Africa will be referring the case to the International Criminal Court (ICC).
12th December 2023	Resolution ESIO/22 is approved.
21st December 2023	South Africa sends a Note Verbale to the Ambassador of the State of Israel to South Africa, raising concerns about potential violations of the Genocide Convention. No response from Israel.
22nd December 2023	Security Council Resolution - 2720 (2023) is adopted.
29th December 2023	South Africa files a case against Israel in ICJ.

Relevant UN Resolutions, Treaties, and Events

Convention on the Prevention and Punishment of the Crime of Genocide

Also known as “The Genocide Convention”, the Convention on the Prevention and Punishment of the Crime of Genocide, hereafter referred to as “The Convention”, was approved on 9th December 1948 and actioned on 12th January 1951. The Convention defines genocide to be an act committed to “destroy, in whole or in part, a national, ethnic, racial or religious group”. Under The Convention, genocide is deemed a crime under international law, “contrary to the spirit and aims of the United Nations and condemned by the civilized world”. The Convention contains 19 Articles which define acts considered to be genocide and outline the repercussions for committing genocide. Israel signed the Convention on 17th August 1949 and ratified it on 9th March 1950, one of the earliest nations to do so. South Africa is justified in bringing the case to the ICJ, in keeping with Article IX of The Convention, as per which any disputes regarding the application of The Convention may be raised in the ICJ.

South Africa cites Article IX and Article III in its Application Instituting Proceedings. Article III states the following:

“The following acts will be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide. ”

Article IX states the following:

“Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.”

Resolution ESIO/22

Adopted on 12th December 2023, this resolution expresses concern regarding the crisis in Gaza, calling for an immediate ceasefire, the unconditional release of all hostages, and all nations to comply with their obligations under international law. This Resolution was passed with 153 nations voting in favor of the Resolution.

Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) is a document that sets forth inalienable rights universally accorded to all people. The UDHR contains 30 rights, the most relevant to the case being Article 3 (the right to life, liberty, and security), Article 25 (the right to an adequate standard of living), and Article 30 (no person's rights or freedoms may be attacked / destroyed).

Security Council Resolution - 2720 (2023)

Approved on 22nd December 2023, this resolution calls for “Protection of civilians and enabling of immediate humanitarian assistance to Palestinians in Gaza.”

Previous Attempts to Solve the Issue

Ceasefire

A temporary ceasefire took place between 24th November and 30th November, 2023. During this period, 50 hostages were released from Gaza.

Egyptian Plan

The Egyptian Plan calls for the protracted release of hostages in Gaza and the formation of a government of Palestinian experts. This government will oversee governance of the Gaza Strip and occupied West Bank.

Possible Solutions

The attack by Hamas on 7th October, 2023 elicited a response from Israel which escalated the conflict to an unprecedented scale. The initial objective of “total victory” over Hamas has spread to an annihilation of the Gaza Strip. Solutions to the crisis must involve the repatriation of all Israeli hostages, given that an extended ceasefire is agreed on. During this period, diplomatic negotiations should take place between representatives from Israel, Palestine, Hamas, and the UN. The primary topics of discussion should be an end of all military operations in the Gaza Strip and the provision of adequate humanitarian aid to Palestinians in Gaza. Discussions should also be held regarding reparations made to Palestine for the destruction of infrastructure wrought since 7th October, 2023. During the ceasefire, UN Blue Helmets (i.e. Peace Corps) should be deployed in the Gaza Strip to facilitate the inflow of humanitarian aid and opening of

centers for medical aid. In the case that no solution is arrived at during the ceasefire, and Israel continues military operations following the end of the ceasefire, more severe provisional measures should be implemented. This may include trade embargos and an end to funding / support provided to Israel. It must be made clear to representatives from Hamas that any future threats to Israel's national security will be severely punished; arrests of leaders and soldiers shall be made, with the destruction of Hamas' underground hideouts carried out by UN Blue Helmets. Following these talks, fair trials of Palestinian prisoners in Israel must be held. Those found innocent following a fair legal process must be repatriated; those convicted must be held in safe prisons.

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