

THE SIGNIFICANCE OF SOUTH AFRICA'S GENOCIDE CASE AGAINST ISRAEL AT THE INTERNATIONAL COURT OF JUSTICE

A IMPORTÂNCIA DO CASO DE GENOCÍDIO DA ÁFRICA DO SUL CONTRA ISRAEL NO TRIBUNAL INTERNACIONAL DE JUSTIÇA

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Abstract

The genocide case filed by South Africa against Israel at the International Court of Justice (ICJ) stems from concerns over the escalation of violence in Gaza following the Hamas attack on October 7, 2023, which allegedly involved serious violations of the Genocide Convention as a jus cogens norm. This study aims to analyze the legal and political significance of the lawsuit, including its implications for Israel's international responsibility and the global response to its military operations. The methods used include a descriptive legal approach to describe the application of international legal norms in practice, as well as a normative approach to assess the legal obligations that should be complied with under the Genocide Convention. The two approaches are combined through case study analysis and comparison with the practices of other countries. The results of the study show that Israel's actions potentially fulfill the elements of genocide and that the ICJ's Provisional Measures have had a major political impact, as evidenced by Israel's increasing international isolation and the suspension of military aid by a number of countries. In conclusion, this case is not only important in upholding international law, but also plays a strategic role in encouraging Israel's compliance with humanitarian law and strengthening global accountability mechanisms.

Keywords: Genocide. International Court of Justice. Provisional Measures.

Resumo

O processo por genocídio movido pela África do Sul contra Israel na Corte Internacional de Justiça (CIJ) decorre de preocupações com a escalada da violência em Gaza após o ataque do Hamas em 7 de outubro de 2023, que supostamente envolveu graves violações da Convenção sobre o Genocídio como norma jus cogens. Este estudo visa analisar a importância jurídica e política do processo, incluindo suas implicações para a responsabilidade internacional de Israel e a resposta global às suas operações militares. Os métodos utilizados incluem uma abordagem jurídica descritiva para descrever a aplicação das normas jurídicas internacionais na prática, bem como uma abordagem normativa para avaliar as obrigações legais que devem ser cumpridas de acordo com a Convenção sobre o Genocídio. As duas abordagens são combinadas por meio de análise de estudo de caso e comparação com as práticas de outros países. Os resultados do estudo mostram que as ações de Israel potencialmente configuram genocídio e que as Medidas Provisórias da CIJ tiveram um grande impacto político, como evidenciado pelo crescente isolamento internacional de Israel e pela suspensão da ajuda militar por diversos países. Em conclusão, este caso não é apenas importante para a defesa do direito internacional, mas também desempenha um papel estratégico no incentivo ao cumprimento do direito humanitário por Israel e no fortalecimento dos mecanismos globais de responsabilização.

Palavras-chave: Genocídio. Corte Internacional de Justiça. Medidas Provisórias.



1 INTRODUCTION

The Hamas attack from the Gaza Strip into Israeli territory on October 7, 2023 which killed 1400 people, mostly civilians and took 240 hostages, has been responded to by Israel with counterattacks and military operations.¹ The first 100 days of large-scale Israeli military operations in Gaza saw the deaths of 23,000 Palestinians, of whom two-thirds were women and children, and resulted in extensive damage or destruction to homes, hospitals, schools, restaurants, places of worship, water systems, and United Nations facilities.² Following the attack on October 7, 2023, Israel initiated a war against Hamas, which was the first formal declaration of war by the state since the Yom Kippur War of 1973.³

The conflict between Hamas and Israel, which reignited after the October 7, 2023 attack, escalated to the point of entering the international legal process when South Africa filed a lawsuit against Israel at the International Court of Justice on December 29, 2023. The lawsuit alleges that Israel has violated its obligations under the 1948 Genocide Convention by failing to take the steps that a state should take to prevent acts of genocide and by failing to take action against parties suspected of inciting genocide in a clear and direct manner.⁴ Hamas and Israel themselves are not the first time they have been involved in armed conflict, but they have often had conflicts, such as what happened in 2008, 2012 and 2014.⁵

Although South Africa is not a party to the Israeli-Palestinian conflict, it still has legal grounds to file a lawsuit with the International Court of Justice because Israel is bound by the same Genocide Convention. This convention provides the first formal definition of what constitutes genocide, while also regulating the obligations of signatory

¹ CSIS, "Hamas' October 7 Attack: The Tactics, Targets, and Strategy of Terrorists," CSIS, November 7, 2023, <https://www.csis.org/analysis/hamas-october-7-attack-tactics-targets-and-strategy-terrorists>.

² Liz Throssell, "Israel-Occupied Palestinian Territory Situation, 100 Days," UN Office of the High Commissioner for Human Rights, January 12, 2024, <https://www.ohchr.org/en/press-briefing-notes/2024/01/israel-occupied-palestinian-territory-situation-100-days>.

³ Britannica, "Israel-Hamas War of 2023," Britannica, January 19, 2024, <https://www.britannica.com/event/Israel-Hamas-War>.

⁴ United Nations, "Explainer: What Is the Genocide Convention?," United Nations, January 11, 2024, <https://news.un.org/en/story/2024/01/1145432>.

⁵ History.com, "Palestine," History.com, October 24, 2023, <https://www.history.com/topics/middle-east/palestine>.

states to prevent, control, and punish acts that fall under the category of genocide wherever such acts occur. With provisions that apply universally to 153 member states, South Africa argues that it has the right and responsibility to challenge alleged violations of the convention, even though the conflict in question does not directly involve its territory or national interests.⁶

Genocide is one of the darkest humanitarian tragedies in 20th century history. Various events that occurred in several countries showed a similar pattern: the existence of groups that wanted to destroy other groups through systematic violence. For example, the Holocaust by the Nazis against the Jews, the atrocities of the Khmer Rouge against the Cambodian people, the genocide in Rwanda, and the ethnic cleansing carried out by Serbia in Yugoslavia.⁷

To uphold global justice, the international community then established special judicial institutions. After the Nuremberg Trials, which tried Nazi leaders, the international community began to establish ad hoc tribunals such as the ICTY for the Yugoslavia case and the ICTR for the Rwanda case. These institutions became the foundation for the creation of the International Criminal Court (ICC) as a permanent body that deals with serious crimes such as genocide, war crimes, and crimes against humanity. However, before these international tribunals were established, several countries had taken the initiative to prosecute perpetrators of genocide through their national legal systems. One of the most famous examples is the trial of Adolf Eichmann in Jerusalem.⁸ Eichmann, as the chief architect of the Holocaust, was arrested and tried by Israel under the Law for the Punishment of Nazis and Their Collaborators. This law contains elements that are consistent with the internationally recognized definition of genocide.⁹

In the genocide case brought by South Africa against Israel before the International Court of Justice (ICJ), Hamas is not involved because the Court only has jurisdiction over disputes between states. The ICJ does not have authority over non-state actors, militant groups, or other non-governmental entities. This reflects the ICJ's

⁶ United Nations, "Explainer: What Is the Genocide Convention?"

⁷ Ridarson Galingging, "Adjudikasi Internasional Bagi Kejahatan Terorisme Internasional Dalam Perspektif Hukum Internasional" (Universitas Padjadjaran, 2021).

⁸ Ben Brandon, Max Du Plessis, and others, "The Prosecution of International Crimes: A Practical Guide to Prosecuting ICC Crimes in Commonwealth States," 2005 36.

⁹ Antonio Cassese, *International Criminal Law* (Oxford university press, 2003) 97.

character as an inter-state judicial body, which differs from the International Criminal Court (ICC), where individuals can be prosecuted for international crimes.¹⁰

During the proceedings, the ICJ Statute provides a mechanism for other states to become involved if they have a legal interest in the interpretation of an international convention at issue. Article 63 of the ICJ Statute allows third states to intervene when the interpretation of a convention may affect their legal interests. On this basis, countries such as Germany and Bangladesh have announced their intention to participate in South Africa's case against Israel through this intervention mechanism.^{11 12}

The dispute between South Africa and Israel has also exposed divisions within the international community. Western countries, including the United States, the United Kingdom, and France, tend to support Israel, while many developing states such as Bangladesh and Indonesia as well as members of the Non-Aligned Movement and Islamic countries, express support for Palestine.¹³ However, Palestine faces significant obstacles to intervening in the ICJ proceedings, primarily because it is not a full UN member state and is not a party to the ICJ Statute. Although more than 135 UN member states recognize Palestine and the UN has granted it "non-member observer state" status since November 2012, key actors such as the United States, Israel, and several Western countries do not recognize it as a sovereign state. Nonetheless, Palestine is a member of certain UN agencies, including UNESCO, and of the ICC, where the Prosecutor has been investigating alleged crimes in the Palestinian territories since 2021.^{14 15}

Multiple attempts by the global community to broker peace between Palestine and Israel, including the Camp David Accord, the Oslo Accords, and many UN Security Council and General Assembly resolutions, have failed to establish an independent

¹⁰ International Court of Justice, "The Court," International Court of Justice, January 28, 2024, <https://www.icj-cij.org/court>.

¹¹ Biranit Goren, "Germany Says It'll Intervene in ICJ Case on Israel's Behalf, Blasting Genocide Accusation," *The Times of Israel*, January 12, 2024, Germany says it'll intervene in ICJ case on Israel's behalf, blasting genocide accusation.

¹² Farhaan Ahmed, "Bangladesh's Right of Intervention in the Genocide Convention Cases," *The Daily Star*, January 24, 2024, <https://www.thedailystar.net/opinion/geopolitical-insights/news/bangladeshs-right-intervention-the-genocide-convention-cases-3527376>.

¹³ Irene Sarwindaningrum, "Panggung Penjajah Dan Terjajah," *Kompas*, January 21, 2024.

¹⁴ BBC, "Palestinian Territories Profile," BBC, June 26, 2023, <https://www.bbc.com/news/world-middle-east-14630174>.

¹⁵ Balkees Jarrah, "Countries Should Back ICC Investigating on Israel-Palestine," *Human Rights Watch*, October 25, 2023, <https://www.hrw.org/news/2023/10/25/countries-should-back-icc-investigation-israel-palestine>.

Palestinian state living peacefully next to Israel.¹⁶ Furthermore, the UN General Assembly brought Israel before the International Court of Justice in 2003 concerning the security wall construction in the Palestinian Territory.

Since cases before the International Court of Justice typically span many years, South Africa requested Provisional Measures, or interim rulings, which sought an ICJ order for Israel to stop military operations in Gaza to ensure civilian protection. The ICJ issued this Provisional Measures ruling on January 26, 2024, briefly concluding that the legal requirements were satisfied, notably that it was plausible genocide was occurring in Gaza.¹⁷

The two main questions this article seeks to answer are the legal implications of South Africa's case against Israel from an international law viewpoint, and the political impact of the lawsuit on Israel's status in global affairs. To find these answers, the author will review literature on law and politics, along with relevant rulings on genocide from international justice bodies.

First, the article will explain the background of South Africa's genocide lawsuit against Israel, contending that Israel's military actions after the October 7, 2023 Hamas attack amount to genocide prohibited by the 1948 Convention. It will then examine international genocide law and relevant court rulings before analyzing the lawsuit. The article highlights the suit's importance: legally, it seeks to enforce accountability under the Genocide Convention; politically, it may prompt sanctions and isolation for Israel, particularly following the ICJ's interim decisions. The piece concludes by asserting that Israel's self-defense rationale cannot justify the alleged genocidal acts.

2 METHOD

This article was written using two main approaches in legal research, namely descriptive and normative legal analysis. Through the descriptive approach, the author attempts to clearly describe how international legal rules and principles are applied in

¹⁶ International Court of Justice, “Request for Advisory Opinion by the General Assembly on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,” International Court of Justice, December 10, 2003, <https://www.icj-cij.org/case/131/request-advisory-opinion>.

¹⁷ Marko Milanovic, “ICJ Indicates Provisional Measures in South Africa v. Israel,” *Opinio Jurist*, January 26, 2024, <https://www.ejiltalk.org/icj-indicates-provisional-measures-in-south-africa-v-israel/>.

practice, particularly through real case examples. This approach helps to show the factual conditions and how the law works in a particular context. Meanwhile, the normative approach is used to examine what is ideally regulated and required by international law. The two approaches are then combined through analysis of case studies, comparisons with other countries' legal systems or practices, and a search for relevant legal findings. Thus, this article explains how the law is applied and provides an understanding of how the law should regulate the situation under review. This comprehensive approach facilitates a more in-depth discussion, both from the perspective of legal theory and its application in the international reality.

3 RESULT AND DISCUSSION

3.1 Genocide in international law

The concept of genocide emerged from Rafael Lemkin's efforts to name the atrocities he witnessed during the Holocaust. He realized that the planned mass murder of certain groups was not just ordinary violence, but a strategy to eradicate the identity and existence of an entire group. That is why he coined the term “genocide” in 1944.¹⁸ Lemkin took two words from different languages, “*genos*” and “*caedere*” to emphasize that genocide is not only about physical killing, but also includes the destruction of the culture, society, and existence of a group. In his view, the essence of genocide lies in the motive to attack a group based on who they are, not what they have done. This means that groups are targeted simply because of their identity, such as ethnicity, race, or national group.¹⁹

The definition of the crime of genocide, as proposed by Rafael Lemkin, is this:

“A coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objective of such a plan would be disintegration of the political and social institutions of culture, language, national feelings, religion, and the

¹⁸ Robert Cryer, Håkan Friman, Darryl Robinson, et al., *An Introduction to International Criminal Law and Procedure* (Cambridge University Press, 2007) 205.

¹⁹ Carsten Stahn, “Core Crimes Genocide,” *Youtube* (Youtube, 2017), <https://youtu.be/WbpP8BYBsis?si=q0ePIYQm9eHqGBGK>.

*economic existence of national groups and the destruction of the personal security, liberty, health, dignity and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individuals capacity, but as members of the national group.”*²⁰

The concept of genocide first introduced by Raphael Lemkin was not entirely the same as the definition that was eventually adopted by the international community through the 1948 Genocide Convention. The scope of victim groups was narrowed down to only national, ethnic, racial, and religious groups. This difference shows that the international agreement was more cautious in determining which groups would be protected. At the Nuremberg trials, the concept of genocide was already known and used in the indictment of the Nazis, but the court did not establish it as a separate crime. Instead, the acts we now know as genocide were recognized as part of crimes against humanity, particularly acts of persecution and mass murder.²¹

The 1948 Genocide Convention defines genocide as one of the most serious crimes under international law. However, despite the existence of legal norms since 1948, the international community did not immediately establish a permanent court to prosecute such crimes. It was not until the 1990s, after major tragedies in Eastern Europe and Africa, that the ICTY and ICTR were established as ad hoc tribunals specifically to prosecute perpetrators of genocide and other serious crimes.²² In a subsequent development, the International Criminal Court (ICC) was established as a permanent court that can try genocide cases whenever and wherever they occur. Through the authority of the UN Security Council to refer a situation under Chapter VII, the ICC can prosecute any country, even those that are not parties to the Rome Statute, in order to prevent impunity for the most serious crimes.²³

Article II of the Genocide Convention provides a very broad definition of various acts that are considered attempts to destroy a group. Not only direct killings are

²⁰ Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (The Lawbook Exchange, Ltd., 2014) 79.

²¹ William Schabas, “The Genocide Convention at Fifty,” The United States Institute of Peace, January 7, 1999, <https://www.usip.org/publications/1999/01/genocide-convention-fifty>.

²² Gerhard Werle and Florian Jessberger, *Principles of International Criminal Law* (Oxford University Press, 2014) 190.

²³ Cryer, Friman, Robinson, et al., *An Introduction to International Criminal Law and Procedure* 166.

categorized as genocide, but also other acts that gradually destroy the existence of a group. For example, serious physical or mental injury can damage the social, psychological, and health structure of a group, thereby threatening its survival. Similarly, creating unlivable conditions such as cutting off food supplies, denying access to health care, blockading areas, or forcing large-scale displacement are understood as methods of indirect extermination. Restricting births within a group is also considered an attack on the group's future, as it hinders regeneration. Meanwhile, the forced removal of children represents a more covert form of genocide, namely by erasing the group's identity and cultural continuity through the younger generation.

Article II reveals that genocide is characterized by three necessary elements: protected groups, the specific intent to destroy (genocidal intent), and actual destruction. Notably, the protected groups specified in the Genocide Convention exclude political groups and the concept of cultural genocide.²⁴ The core of the crime of genocide is the group dimension of the required intent (*mens rea*), defined as the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”.²⁵

Based on the definition in Article II of the Genocide Convention, the crime of genocide requires a special intent (*dolus specialis*). Actual destruction of the protected group isn't mandatory; a person can be held accountable for genocide even without killings, as attempt and conspiracy are also punishable offenses.²⁶ Genocidal intent is present if the perpetrator aimed for the group's destruction, in whole or in part, when committing a prohibited act, regardless of the outcome of that intention. The establishment of genocide necessitates proving this genocidal intent beyond a reasonable doubt.^{27 28}

Under Article IV, the Genocide Convention imposes an obligation on states party to prevent and punish genocide by creating appropriate legislation and prosecuting all perpetrators, including constitutionally responsible rulers, public officials, and private individuals. This duty, along with the prohibition against genocide, is viewed as a norm

²⁴ Malcom N Shaw, *International Law*, 9th ed. (Cambridge, 2021) 316.

²⁵ Roger O'Keefe, *International Criminal Law* (Oxford University Press, 2015) 146.

²⁶ International Commission of Jurist, “Legal Briefing Note,” *International Commission of Jurist*, August 2018.

²⁷ International Criminal Tribunal for Rwanda, *The Prosecutor v. Jean-Paul Akayesu* (Trial Judgement) (September 2, 1998) para 497.

²⁸ International Commission of Jurist, “Legal Briefing Note.”

of international customary law, meaning it is binding on every state, regardless of its ratification of the Genocide Convention.²⁹

Further details of the state's obligations stipulated in the Genocide Convention are as follows:³⁰

1. A requirement forbidding the act of genocide (Article I);
2. States must act to prevent genocide (Article I), regardless of where the atrocity is taking place;
3. The duty to prosecute and penalize those responsible for genocide (Article I);
4. The duty to create the internal statutory framework necessary for the Convention's enforcement (Article V);
5. States must ensure that those found responsible for criminal actions under the Convention face effective penalties (Article V);
6. The Convention requires (Article VI) that those facing genocide charges be brought before a relevant domestic tribunal of the territorial state or a mutually agreed-upon international penal court;
7. States must grant extradition for genocide charges based on relevant laws and treaties (Article VI), but must withhold extradition if human rights law prohibits sending the person to the receiving country due to a real risk of serious rights violations.

Various international courts have made important contributions in determining certain events as genocide. The ICTR, for example, stated that the ethnic cleansing of Tutsis in Rwanda in 1994 fulfilled all the elements of genocide, as it was carried out with the intent to systematically destroy the group. Similarly, the ICTY classified the 1995 Srebrenica tragedy as genocide, in which more than eight thousand Bosnian Muslim men and boys were deliberately killed. This decision was later reinforced by the ICJ, which also recognized Srebrenica as genocide in its ruling.³¹

²⁹ United Nations Office on Genocide Prevention and the Responsibility to Protect, "Ratification of the Genocide Convention," United Nations, accessed February 2, 2024, <https://www.un.org/en/genocide-prevention/legal/ratification>.

³⁰ United Nations Office on Genocide Prevention and the Responsibility to Protect.

³¹ United Nations, "When to Refer to a Situation as 'Genocide': A Brief Guidance Note," United Nations, n.d.

In a case known as *Bosnia v. Serbia*, Bosnia accused Serbia of violating the Genocide Convention for its alleged involvement in acts aimed at destroying the Bosnian Muslim population.³² The ICJ affirmed that states not only have an obligation to punish perpetrators of genocide after the fact, or to prevent it before it occurs, but that states are also strictly prohibited from committing genocide themselves.³³

The International Court of Justice (ICJ) brought up the *erga omnes* character of the ban on genocide in the *Barcelona Traction* case. Every nation has a right to enforce the *erga omnes* norm. The International Court of Justice has added the prohibition of genocide to its list of *erga omnes* norms. Furthermore, in the case of nuclear weapons, a number of nations contend that the Genocide Convention's ban on genocide is a pertinent customary law that can be used in nuclear weapons matters.³⁴ The claim is that an intention to destroy the group can be shown because a nuclear attack would result in a large number of victims, some of whom would be members of a protected group.³⁵

According to the ICTR Trial Chamber decision in *Prosecutor v. Akayesu*, the purpose of the crime of genocide is to protect particular groups from extermination.³⁶ In the *Akayesu* case, the court derived genocidal intent from evidence of statements, conscious planning, systematic targeting, and the extent of the atrocities. Notably, the Chamber defined “group” for the purpose of genocide as “stable groups” based on permanent membership determined by birth, excluding flexible groups that are joined voluntarily, such as political and economic groups.³⁷ Concurrently, the ICTY Trial Chamber in *Prosecutor v. Radislav Krstic* concluded that the 1995 Srebrenica massacres in which Bosnian Serb forces executed 7,000–8,000 Bosnian Muslims constituted genocide.³⁸

The legal obligation for state parties is to take suitable measures to prevent and suppress genocide. The International Court of Justice, in the *Bosnia v. Serbia* case,

³² Cryer et al., *An Introduction to International Criminal Law and Procedure* 204.

³³ International Court of Justice 170.

³⁴ William Schabas, *Genocide in International Law: The Crimes of Crimes* (Cambridge University Press, 2000) 475.

³⁵ Schabas.

³⁶ Claus Kreß, “The Crime of Genocide under International Law,” *International Criminal Law Review* 6, no. 4 (2006): 461–502.

³⁷ Cassese, *International Criminal Law* 101.

³⁸ Katherine G Southwick, “Srebrenica as Genocide—The Krstic Decision and the Language of the Unspeakable,” *Yale Hum. Rts. & Dev. LJ* 8 (2005): 188.

determined that states with strong political links to the state in question bear a greater legal duty to exert influence, since the prevention obligation differs among states, depending on their capacity to effectively sway the actions of those who might commit genocide.³⁹ While success in prevention is not required at all costs, a state must utilize every reasonably available means to fulfill this duty.⁴⁰

The extent of duties for states regarding genocide prevention was decided by the International Court of Justice in its ruling on the *Bosnia v. Serbia* case, stated here:

*State responsibility is incurred not when prevention fails, but when a State clearly neglects to take all possible measures within its power that might have helped stop the genocide. The key standard for judging this is “due diligence” requiring concrete, situational assessment. Several parameters are used to evaluate a State's fulfillment of its obligation, starting with its varying capacity to effectively influence the potential or actual perpetrators of genocide. This capacity, in turn, depends on factors like geographical proximity and the strength of political or other ties to the main actors. Legal criteria also limit a State's influence, as it must act within international law, meaning its ability to affect the situation changes based on its legal position toward those facing genocide.*⁴¹

The International Court of Justice's decision in *Bosnia v. Serbia and Montenegro* clarified that a state's positive obligation to prevent genocide is neither limited by territory nor dependent on any single threshold, distinguishing it from other due diligence duties.⁴² States must always overcome passivity; inaction would violate the purpose of the UN Genocide Convention, meaning they must undertake at least some preventative action.⁴³ Such action typically begins with words rather than stronger measures, like diplomatic negotiations or participation in collective military interventions.

The difficulty in fulfilling the genocide prevention mandate of the Genocide Convention (Articles II and VIII) stems from the Convention's silence on the actual means

³⁹ International Commission of Jurist, “Gaza/Palestine: States Have a Duty to Prevent Genocide,” November 17, 2023, <https://www.icj.org/gaza-occupied-palestinian-territory-states-have-a-duty-to-prevent-genocide/>.

⁴⁰ Marko Milanovic, “State Responsibility for Genocide: A Follow-Up,” *The European Journal of International Law* 18, no. 4 (2007).

⁴¹ *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia v. Serbia and Montenegro)*, Judgment of 27 Feb. 2007.

⁴² Milanovic, “State Responsibility for Genocide: A Follow-Up.”

⁴³ Björn Schiffbauer, “The Duty to Prevent Genocide under International Law: Naming and Shaming as a Measure of Prevention,” *Genocide Studies and Prevention: An International Journal* 12, no. 3 (2018).

of prevention.⁴⁴ This lack of guidance fuels a debate over how far states must go: specifically, “are states required, as a legal obligation, to take action up to and including military intervention in order to prevent the crime from occurring?”⁴⁵ Additionally, for non-ratifying states that are nevertheless bound by customary international law to prevent and punish genocide, a further question is whether their preventative and punitive measures must also be extra-territorial.

Following five months of military operations, Israel destroyed Gaza, killing more than 30,000 Palestinians, including over 13,000 children. A report by Francesca Albanese, the Special Rapporteur for human rights in the Palestinian territories occupied since 1967, determined that substantial evidence exists to classify Israel's actions in Gaza as meeting the requirements for the crime of genocide.⁴⁶ The Francesca Albanese Report states in paragraph 93:

*“The overwhelming nature and scale of Israel’s assault on Gaza and the destructive conditions of life it has inflicted reveal an intent to physically destroy Palestinians as a group. This report finds that there are reasonable grounds to believe that the threshold indicating the commission of the following acts of genocide against Palestinians in Gaza has been met: killing members of the group; causing serious bodily or mental harm to groups’ members; and deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part. Genocidal acts were approved and given effect following statements of genocidal intent issued by senior military and government officials.”*⁴⁷

The UN's failure to prevent genocide occurred before the atrocities in Bosnia, Rwanda in the 1990s, and Darfur in 2003. The early 1990s saw ethnic tensions in Yugoslavia escalate into genocide in Bosnia and Herzegovina, and in 1994, extremist Hutus committed genocide against the Tutsi minority in Rwanda, killing hundreds of thousands of people, mostly Tutsis. In both Bosnia and Rwanda, the slaughter took place even though UN peacekeeping forces were present with a mission to prevent human rights

⁴⁴ Shaw, *International Law* 317.

⁴⁵ Schabas, “The Genocide Convention at Fifty.”

⁴⁶ Francesca Albanese, “Anatomy of a Genocide,” UN Office of the High Commissioner of Human Rights, March 25, 2024, <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session55/advance-versions/a-hrc-55-73-auv.pdf>.

⁴⁷ Albanese.

violations, demonstrating their ineffectiveness in stopping the massive killings.⁴⁸ Instruments for prevention, such as UN peacekeeping troops potentially empowered with reinforcements (like NATO air support), were available but never considered by decision-makers.⁴⁹ Consequently, the genocides in Bosnia and Rwanda were not prevented due to the failure to take effective measures when needed.

Thus, the concept and crime of genocide in international law reflect a long and complex development, beginning with Rafael Lemkin's original formulation and evolving into a binding legal framework through the 1948 Genocide Convention and its interpretation by international courts. Genocide is recognized as an exceptional crime characterized by the existence of protected groups, prohibited acts aimed at their destruction, and the presence of specific intent (*dolus specialis*) to destroy the group in whole or in part. States are not only prohibited from committing genocide but are also bound by erga omnes obligations to prevent and punish it, subject to a due diligence standard that varies according to each state's capacity and influence. The jurisprudence of the ICTY, ICTR, and the ICJ confirms that failure to act may give rise to international responsibility, as demonstrated in cases such as Bosnia and Rwanda. Nevertheless, international practice reveals persistent shortcomings in genocide prevention, stemming from the lack of clarity regarding preventive measures and the repeated failure of the international community, including the United Nations, to respond effectively and in a timely manner. This underscores that while the prohibition of genocide stands as one of the most fundamental norms of international law, its greatest challenge remains the effective implementation of preventive obligations and the protection of threatened groups.

3.2 South Africa v. Israel at the ICJ

South Africa initiated a lawsuit against Israel at the International Court of Justice (ICJ) on December 29, 2023, accusing Israel of violating the Genocide Convention by

⁴⁸ Cooper Scherr, "Why the United Nations Cannot Stop Genocide, Historical Perspectives," *Santa Clara University Undergraduate Journal of History Series II* 23 (2019).

⁴⁹ Fred Grünfeld and Wessel Vermeulen, "Failures to Prevent Genocide in Rwanda (1994), Srebrenica (1995), and Darfur (since 2003)," *Genocide Studies and Prevention* 4, no. 2 (2009), <https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=1141&context=gsp>.

committing genocide against Palestinians in Gaza and by failing to prevent and punish incitement to genocide by Israeli officials. The application requested the ICJ to indicate Provisional Measures, including an order to halt Israel's military operations or impose a ceasefire to prevent further irreparable harm. The ICJ has prima facie jurisdiction over the case because both South Africa and Israel are parties to the Genocide Convention, and oral hearings on the request for Provisional Measures were held on January 11–12, 2024.

Geographically, South Africa has no direct connection to Gaza and has not suffered physical damage as a result of the conflict. However, under international law, South Africa relies on the doctrine of *erga omnes partes*, which recognizes that certain treaty obligations such as those under the Genocide Convention are owed not only to specific states but to all state parties collectively. From a human rights and international legal perspective, genocide is considered a crime against humanity as a whole, meaning that every state party has a legal interest in ensuring compliance, regardless of direct injury.⁵⁰ Scholars supporting this view argue that allowing any state party to bring such claims strengthens collective enforcement mechanisms and addresses structural weaknesses in international accountability systems.⁵¹

Furthermore, South Africa emphasized that the Genocide Convention constitutes a universal legal and moral commitment to prevent genocide wherever it occurs. The Convention explicitly allows state parties to submit disputes concerning its interpretation or application to the ICJ, even in the absence of direct victimhood. South Africa also sought to establish its moral standing by condemning the Hamas attacks of October 7, 2023, while maintaining that such attacks cannot justify conduct that allegedly violates peremptory norms of international law.⁵² From a normative human rights perspective, this argument reflects the principle that grave violations by non-state actors do not absolve

⁵⁰ Alaa and Hathway, Oona A Hachhem, "The Promise and Risk of South Africa's Case Against Israel," *Just Security*, January 24, 2024, <https://www.justsecurity.org>.

⁵¹ Syed, Rashed Faruque, "Compliance with and Enforcement Mechanism of Labor Law: Cost-Benefits Analysis from Employers' Perspective in Bangladesh," *Asian Journal of Business Ethics* 12 (2023): 395–418, <https://doi.org/10.1007/s13520-023-00179-0>.

⁵² International Court of Justice, Application Instituting Proceedings of South Africa to the Registrar of the International Court of Justice (December 29, 2023) 1.

states of their obligations to protect civilian populations and uphold non-derogable norms.⁵³

South Africa further argued that Israel's conduct in Gaza went beyond the bounds of lawful armed conflict. It pointed to patterns of widespread destruction, attacks on civilian infrastructure, restrictions on humanitarian assistance, starvation, mass displacement, and psychological harm as evidence of acts prohibited under the Genocide Convention. According to South Africa, these conditions may indicate an intent to destroy, at least in part, the Palestinian group in Gaza, and Israel's failure to prevent such outcomes constitutes a breach of its treaty obligations.⁵⁴ Human rights scholars largely support this approach, emphasizing that intent may be inferred from patterns of conduct and foreseeable consequences, particularly where civilian suffering is extensive and prolonged.⁵⁵

At the same time, contrasting scholarly perspectives from international humanitarian law and political realism challenge this interpretation.⁵⁶ Critics argue that the threshold for establishing genocidal intent is exceptionally high and caution against conflating large-scale civilian harm with genocide absent clear evidence of specific intent (*dolus specialis*). From a realist and security-oriented perspective, Israel's actions are framed as part of an asymmetrical armed conflict in which civilian harm, while tragic, is not necessarily indicative of genocidal policy but rather of urban warfare against a non-state armed group embedded within civilian populations. These scholars warn that expanding the concept of genocide too broadly risks diluting its legal meaning and politicizing judicial forums.

During the hearings, South Africa cited figures indicating that approximately 23,000 Palestinians had been killed at the time, with extensive destruction of housing and infrastructure and severe restrictions on humanitarian aid. It requested the Court to declare

⁵³ Leontiev, Lev, "The Place of International Human Rights Law in the Territorial Non-State Entities: The Case of Taiwan and Territorial Non-State Entities from the Post-Soviet Space," *Liverpool Law Review* 43 (2022): 551–570, <https://doi.org/10.1007/s10991-022-09311-9>.

⁵⁴ International Court of Justice.

⁵⁵ Moses, A. Dirk, "An Earlier Genocide Debate: Vietnam, International Law, and the Question of Gaza," *Law and Critique* 36 (2025): 295–315, <https://doi.org/10.1007/s10978-025-09424-w>.

⁵⁶ Cerioli, Luíza, "Neoclassical Realism, Global International Relations, and the Unheard Echoes of Realist Practices from the South," *International Relations* 27, no. 1 (2024), <https://doi.org/10.1177/136914812412308>.

that Israel had breached its obligations under the Genocide Convention and to order Israel to cease alleged genocidal acts, punish perpetrators and inciters, preserve evidence, and consider restorative measures, including reconstruction and the protection of Palestinian human rights. From a transitional justice perspective, such requests are seen as an attempt to integrate accountability, prevention, and reparative justice within the framework of international adjudication.⁵⁷

Israel further argued that its operations target Hamas rather than Palestinians as a protected group and cited official statements emphasizing efforts to minimize civilian harm. It opposed the indication of Provisional Measures that would halt military operations, contending that such measures would undermine its ability to protect its population. Scholars critical of South Africa's approach argue that judicial intervention at this stage risks overstepping into political decision-making and may inadvertently affect ongoing peace and security dynamics.⁵⁸ Ultimately, Israel requested the Court to reject South Africa's request for Provisional Measures and dismiss the case in its entirety.

The ICJ issued its interim decisions (Provisional Measures) on January 26, 2024, based on Article 41 of the Court's Statute, which permits the ICJ to indicate any provisional measures deemed necessary to safeguard the rights of either party⁵⁹ with this decision, the Court mandated that Israel comply with specific orders⁶⁰

1. Implement all necessary steps within its capacity to stop the commission of any acts defined by Article II(a)-(d) of the Convention;
2. Guarantee with immediate effect that its military personnel refrain from committing the actions outlined in the first directive;

⁵⁷ Lenta, Patrick, "Can Transitional Amnesties Promote Restorative Justice?" *Critical Review of International Social and Political Philosophy* 27, no. 5 (2024): 808–834, <https://doi.org/10.1080/13698230.2021.2013705>.

⁵⁸ Okoli, Al Chukwuma, dan K. Ndubisi Emegha, "AI and Military Precision in Drones Attack on the Israeli–Hamas Conflict," *Security Science Journal* 6, no. 1 (2025), <https://doi.org/10.37458/ssj.6.1.12>.

⁵⁹ Jesse Lempel, "Why the ICJ Cannot Order Israel to Stop the War in Gaza as a Provisional Measure," *Ejiltalk*, January 8, 2024, <https://www.ejiltalk.org/why-the-icj-cannot-order-israel-to-stop-the-war-in-gaza-as-a-provisional-measure/>.

⁶⁰ International Commission of Jurists, "Gaza: Israel Must Implement Provisional Measures Ordered by the International Court of Justice," *International Commission of Jurists*, January 26, 2024, <https://www.icj.org/gaza-israel-must-implement-provisional-measures-ordered-by-the-international-court-of-justice/>.

3. Take efficacious steps to stop the elimination and guarantee the safekeeping of evidence relating to alleged acts that fall under the scope of Article II of the Convention; and
4. Submit a report to the Court detailing all steps taken to implement the Order within one month of the Order's issuance date.

Apart from the matters mentioned above, the Court also ordered Israel to:

*“Take all measures within its power to prevent and punish the direct and public incitement to commit genocide against people in Gaza, and enable the provision of urgently needed basic services and humanitarian assistance. The Court also reminded all parties of their obligations under international humanitarian law, and called for the release of hostages.”*⁶¹

Despite the legally binding nature of the Interim Decision, the Court itself cannot execute the ruling; its implementation is highly dependent on political factors and the UN Security Council. The responsibility for enforcing the ICJ's decision lies with the Security Council. Given that the United States is a Council member and backs Israel in the conflict, it could use its veto right to prevent the enforcement of the International Court of Justice's Interim Decision regarding the genocide lawsuit brought by South Africa against Israel.

After the ICJ issued Provisional Measures, which are essentially orders to prevent genocide and protect Palestinians in Gaza, the main hope was that Israel would take concrete steps to reduce violence and prevent further escalation. However, according to South Africa, the reality on the ground shows the opposite. They assess that Israel's military operations continue without significant change, even exhibiting patterns of violence that they consider to constitute genocide, which is prohibited by international law. This assessment does not come only from South Africa. Francesca Albanese, the UN Special Rapporteur on the situation of human rights in the Palestinian territories, released a comprehensive report entitled “The Anatomy of Genocide”. In the report, she details how Israel's actions can be categorized as acts leading to genocide, including patterns of attacks, the number of victims, and the deteriorating living conditions for Gaza's civilians. The report reinforces the argument that Israel's non-compliance with the ICJ's order is not

⁶¹ International Commission of Jurists.

only a legal issue but also an ongoing humanitarian crisis. In addition, Amnesty International also said that:

*“As the occupying power, under international law, Israel has a clear obligation to ensure the basic needs of Gaza’s population are met. Israel has not only woefully failed to provide for Gazans’ basic needs, but it has also been blocking and impeding the passage of sufficient aid into the Gaza strip, in particular to the north which is virtually inaccessible, in a clear show of contempt for the ICJ ruling and in flagrant violation of its obligation to prevent genocide.”*⁶²

Beyond the initial Interim Decision, the International Court of Justice delivered a second Interim Ruling against Israel on March 28, 2024, prompted by South Africa's request and due to the deteriorating humanitarian situation in the Gaza area, which Israel was bombarding and surrounding. This second ruling from the ICJ states the conditions Israel must meet:

*“In view of the worsening conditions of life faced by Palestinians in Gaza, in particular the spread of famine and starvation,” Israel shall take “all necessary and effective measures to ensure, without delay, in full cooperation with the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance to Palestinians throughout Gaza.”*⁶³

The International Court of Justice again issued Provisional Measures on May 24, 2024, in response to the escalation of Israeli ground attacks in Rafah, an area that was then a refuge for many Palestinians who had fled from other parts of Gaza. The order was an attempt by the Court to prevent further deterioration of humanitarian conditions and ensure the protection of civilians. However, as with previous Provisional Measures, Israel was again deemed to be in non-compliance. The judges expressed their concerns and criticism openly, highlighting that Israel continued to carry out military actions that were contrary to the ICJ's instructions.

⁶² Amnesty International, “Israel Defying ICJ Ruling to Prevent Genocide by Failing to Allow Adequate Humanitarian Relief to Reach Gaza,” Amnesty International, February 26, 2024, <https://www.amnesty.org/en/latest/news/2024/02/israel-defying-icj-ruling-to-prevent-genocide-by-failing-to-allow-adequate-humanitarian-aid-to-reach-gaza>.

⁶³ UN News, “Gaza: World Court Issues Fresh Measures for Israel as Crises Deepens,” UN News, March 28, 2024, <https://news.un.org/en/story/2024/03/1148096>.

Seeing this pattern of non-compliance, the Court took additional steps to increase pressure. They ordered Israel to submit an official report within one month. The aim was for the Court to be able to directly monitor whether any real efforts were being made to implement the additional Provisional Measures.⁶⁴

The UN Security Council then issued Resolution 2728 (2024) in an effort to defuse the emergency situation in Gaza, where Israeli military operations have caused extensive damage and an increasingly severe humanitarian crisis. The resolution calls for a temporary ceasefire during Ramadan as an important step intended to allow for the evacuation of victims, temporary recovery, and the delivery of aid to suffering civilians. In addition, the resolution also emphasizes the importance of the swift and unconditional release of hostages, as well as the need to expand access to humanitarian aid, which has been hampered by the security situation. The near-unanimous support from Security Council members demonstrates a high level of international concern. The abstention of the United States is also significant because the US usually uses its veto power to protect Israel. In this context, abstention means that the resolution can pass without obstruction.

Because UN Security Council resolutions are binding under the UN Charter, Israel is legally obliged to comply with the order to cease military operations for 15 days. However, the resolution is not legally binding on Hamas, as Hamas is not a sovereign state and is not a subject of international law within the framework of the Security Council. Thus, the primary obligation to implement the resolution lies with Israel.

Thus, the case of *South Africa v. Israel* before the International Court of Justice represents a significant development in the enforcement of the Genocide Convention and the principle of *erga omnes partes*, affirming that the obligation to prevent genocide is a collective responsibility of all state parties, irrespective of geographical proximity or direct injury. Through a series of Provisional Measures issued in January, March, and May 2024, the ICJ recognized the plausibility of rights claimed by Palestinians under the Genocide Convention and imposed legally binding obligations on Israel to prevent genocidal acts, ensure humanitarian access, preserve evidence, and report on compliance. However, the repeated findings of non-compliance underscore the structural limitations

⁶⁴ Mischa Gureghian Hall, “Assessing the Contents of the ICJ’s Latest Provisional Measures Order in *South Africa v. Israel*,” Ejlitalk, June 6, 2024.

of international adjudication, particularly the Court's dependence on political will and Security Council enforcement. While UN Security Council Resolution 2728 (2024) reflects growing international concern and imposes binding obligations on Israel, continued hostilities and humanitarian deterioration reveal the persistent gap between legal norms and their implementation. The case therefore highlights both the potential and the fragility of international law in addressing mass atrocity crimes, demonstrating that legal accountability mechanisms, though essential, remain deeply constrained by geopolitical realities.

3.3 Legal and political significance

The provisional measures issued by the International Court of Justice (ICJ) are not merely symbolic statements but carry substantial legal and political significance. From the perspective of international law, this genocide lawsuit represents a demand for legal accountability and an effort to enforce the rule of law over Israel's military operations in Gaza, which are alleged to violate the Genocide Convention and constitute *jus cogens* norms peremptory principles of international law from which no derogation is permitted and which bind all states without exception.⁶⁵ However, some scholars caution that provisional measures should be approached carefully, as they do not amount to a final determination of legal responsibility and their impact remains limited in the absence of effective enforcement mechanisms.⁶⁶

Through this case, the Court is tasked with examining whether, and to what extent, Israel's response has violated the Genocide Convention. South Africa bears the burden of proving the existence of genocidal intent (*dolus specialis*), which must be inferred from a combination of official statements by Israeli authorities, patterns of military conduct, and the scale of destruction. The reported death toll exceeding 33,000 within six months of the October 7, 2023 attacks alongside the widespread destruction of civilian

⁶⁵ Volker Turk, "75 Years of the Genocide Convention," Office of the High Commissioner For Human Rights, December 8, 2023, <https://www.ohchr.org/en/statements-and-speeches/2023/12/75-years-genocide-convention>.

⁶⁶ Le Floch, Guillaume. "Requirements for the Issuance of Provisional Measures." In *Provisional Measures Issued by International Courts and Tribunals*, edited by Federica M. Palombino, Raffaele Virzo, and Gianluca Zarra, 63–88. The Hague: T.M.C. Asser Press, 2021. https://doi.org/10.1007/978-94-6265-411-2_3.

infrastructure, including hospitals, schools, government buildings, and residential areas, as well as famine and mass displacement, forms the factual basis for this assessment.⁶⁷ By contrast, from the perspective of security studies and international humanitarian law, Israel maintains that its actions constitute lawful self-defense against Hamas and should primarily be assessed under the law of armed conflict rather than the Genocide Convention. This divergence reflects an ongoing scholarly debate over the appropriate legal framework for evaluating the use of force in asymmetric warfare.⁶⁸

Historically, Israel's alleged violations of international law in its prolonged conflict with Palestine have triggered various political responses from the international community, including resolutions adopted by the UN General Assembly and the UN Security Council. Political science scholarship frequently critiques these resolutions as expressions of normative condemnation lacking coercive force, which helps explain their limited effectiveness.⁶⁹ UN Security Council Resolution No. 2728 (March 25, 2024), which called for an immediate ceasefire during Ramadan, the release of hostages, and the expansion of humanitarian assistance, illustrates this dilemma. Despite its binding character, the continuation of military operations in Gaza underscores the structural constraints of collective security mechanisms, particularly in cases involving powerful states and their allies..

Beyond Israel, the ICJ's provisional measures carry significant implications for third states, especially those providing military, financial, or political support.⁷⁰ From a human rights law perspective, continued arms transfers may constitute complicity or a failure to fulfill the obligation to prevent genocide, particularly where there is a foreseeable risk of serious violations.⁷¹ By contrast, realist approaches in international relations emphasize that states often prioritize strategic alliances, security interests, and

⁶⁷ Ivana Kottasova, "Six Months into the War in Gaza, Israel Has No Exit Strategy and No Real Plan for the Future," CNN, April 6, 2024, <https://edition.cnn.com/2024/04/05/middleeast/gaza-war-no-plan-israel-intl-cmd>.

⁶⁸ Heinze, Eric A. "International Law, Self-Defense, and the Israel–Hamas Conflict." *Parameters* 54, no. 1 (2024): 15–27. <https://doi.org/10.55540/0031-1723.3273>.

⁶⁹ Ullah, Aman, and Li Xinlei. "Great Power Divergence: Military Primacy Versus Economic Engagement in the Israeli–Palestinian Conflict: A Theoretical Reexamination of Realist Paradigms." *Chinese Political Science Review* (2025). <https://doi.org/10.1007/s41111-025-00287-1>.

⁷⁰ Albanese, "Anatomy of a Genocide."

⁷¹ Amanda Taub, "The Meaning of the First ICJ Ruling in the Genocide Case against Israel," *The New York Times*, January 26, 2024, <https://www.nytimes.com/2024/01/26/world/middleeast/the-meaning-of-the-first-icj-ruling-in-the-genocide-case-against-israel.html>.

geopolitical stability over legal and moral considerations. This tension explains the legal and political dilemmas faced by Israel's allies, which must balance domestic restrictions on arms exports and international human rights obligations against strategic and diplomatic interests.⁷²

The global reactions to the ICJ's provisional measures further highlight their multidimensional impact. In the United States, the existence of the Leahy Law imposes legal constraints on military assistance to foreign forces implicated in human rights violations, although its application remains subject to political discretion.⁷³ In Europe, several states including Belgium, Canada, Italy, the Netherlands, and Spain have suspended or halted arms exports due to concerns over compliance with international humanitarian law, reflecting a norm-based, human rights-oriented policy approach.⁷⁴ Meanwhile, private sector actors, such as Japanese corporations, have adjusted their practices to mitigate legal and reputational risks.⁷⁵ In Latin America, responses have been more overtly political and symbolic, including the severance of diplomatic relations and the initiation of proceedings before the ICJ,^{76 77} while Türkiye's export restrictions demonstrate the use of economic instruments as tools of coercive diplomacy.^{78 79}

Overall, the provisional measures ordered by the International Court of Justice in the South Africa v. Israel case carry profound legal and political significance, reaffirming that the prohibition of genocide is a *jus cogens* norm and that compliance with the Genocide Convention constitutes a binding obligation for all states. The case not only

⁷² Salman, Yaron. "Security Cooperations and Human Rights Violations: The African-Israeli Case." *African Security* (June 2025): 1–27. <https://doi.org/10.1080/19392206.2025.2502708>.

⁷³ The Genocide Case Israel Faces Is More about Politics than Law," *The Economist*, January 17, 2024, "<https://www.economist.com/international/2024/01/17/the-genocide-case-israel-faces-is-more-about-politics-than-the-law>."

⁷⁴ Adam Taylor, "Global Pressure Grows on US and Germany to Stop Arming Israel," *Washington Post*, April 5, 2024, <https://www.washingtonpost.com/world/2024/04/05/israel-arms-embargo-us-germany/>.

⁷⁵ Adam Taylor, *Ibid.*

⁷⁶ Tom Phillips, "South American Countries Recall Ambassadors and Cut Ties with Israel over War with Hamas," *Guardian*, November 1, 2023, <https://www.theguardian.com/world/2023/oct/31/bolivia-israel-hamas-gaza-war-crime>.

⁷⁷ The Times of Israel, "Nicaragua Files Case at World Court Accusing Germany of Aiding Israel's 'Genocide,'" *The Times of Israel*, March 1, 2024, <https://www.timesofisrael.com/nicaragua-files-case-at-world-court-accusing-germany-of-aiding-israels-genocide>.

⁷⁸ Reuters, "Columbia Seeks to Join Gaza Genocide Case against Israel at World Court," *Reuters*, April 6, 2024, <https://www.reuters.com/world/colombia-seeks-join-gaza-genocide-case-against-israel-world-court-2024-04-05>.

⁷⁹ Tuvan Gumrukcu, "Turkey Imposes Export Restrictions on Israel until Gaza Ceasefire," *Reuters*, April 9, 2024.

places Israel's conduct under judicial scrutiny, particularly with regard to alleged genocidal intent, but also exposes the long-standing limitations of political mechanisms in preventing serious violations of international law. Moreover, the ICJ's orders have generated far-reaching consequences for third states, especially those providing military, economic, or political support to Israel, by heightening the risk of complicity or failure to prevent genocide under international and domestic legal frameworks.

4 CONCLUSION

The genocide lawsuit filed by South Africa against Israel at the ICJ is legally important because it is a means of demanding legal accountability for internationally wrongful acts that have been carried out by Israel in military operations in Gaza to respond to the Hamas attack on October 7, 2023. Israel's actions in this military operation have met the requirements to be classified as genocide in violation of the Genocide Convention which is also a *jus cogens* norm, although the final decision on the substance of this genocide lawsuit has not yet been handed down by the Court.

The genocide lawsuit filed by South Africa against Israel at the ICJ and the Interim Decision (Provisional Measures) imposed by it in response to South Africa's request are also politically important because they can isolate Israel internationally and be used as a means to pressure Israel to respect international humanitarian law when conducting military operations in Gaza. Various countries have used this Provisional Measures of the Court as a basis for imposing political sanctions against Israel such as severing diplomatic relations, withdrawing ambassadors from Israel and stopping exports of military weapons to Israel. The self-defense argument put forward by Israel cannot be used as a justification for committing genocide because it breaches the Genocide Convention and *jus cogens* norms of international law.

5 RECOMMENDATIONS

The international community through the United Nations and various international and regional as well as national forums must support politically and legally, the lawsuit that is brought by South Africa against Israel related to the acts of genocide

perpetrated by Israel military in its military operation in Gaza. This international community's support will make Israel accountable for its crime in Gaza.

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Authors’ Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study’s findings are fully available within the article.

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