







The Legal War on Israel at the ICJ



2023 Israel-Hamas war

-  Gaza Strip
-  Israeli territory with Palestinian militants' presence
-  Evacuated areas
-  Maximum extent of Palestinian advance

0 2.5 5 7.5 10 12.5 15 km



October 7, 2023


- At least 1,200 Israelis slaughtered (equal to 42,000 Americans)
- At least 7,300 wounded (equal to 255,000 Americans)
- 243 hostages (equal to 8,500 Americans)
- 5,000 rockets fired from Gaza (4,500 more since; equal to 4.9 million rockets fired against the U.S.)
- More than 200,000 Israelis forced to flee their homes (equal to 7 million Americans)

International Court of Justice – Genocide

South Africa filed request with the ICJ on December 28 accusing Israel of genocide in Gaza and requesting “provisional measures” (akin to an injunction), including halting Israeli military activity in Gaza.






Term ends: Feb 2024 

President Donoghue
United States



Term ends: Feb 2024 

Vice-President Gevorgian
Russia



Judge Xue
China



Judge Abraham
France



Judge Charlesworth
Australia



Judge Brant
Brazil




Judge Nolte
Germany



Judge Bhandari
India



Term ends: Feb 2024 

Judge Robinson
Jamaica



Judge Iwasawa
Japan



Judge Salam
Lebanon



Term ends: Feb 2024 

Judge Bennouna
Morocco



Judge Tomka
Slovakia



Judge Yusuf
Somalia



Judge Sebutinde
Uganda

Genocide Allegations against Israel

- Killing Palestinians in Gaza, “including a large proportion of women and children, some of whom appear to have been summarily executed”
- Causing serious mental and bodily harm to Palestinians in Gaza
- Causing forced evacuations and displacement of 85% of Palestinians in Gaza
- Causing widespread hunger, dehydration and starvation by impeding humanitarian assistance and cutting off sufficient water, food, fuel and electricity
- Restricting adequate shelter, clothes, hygiene and sanitation
- Impeding medical needs of Palestinians in Gaza and destroying Gaza’s medical system
- Destroying Palestinian civilian life and society in Gaza, “alongside the killing of entire family groups — erasing entire oral histories in Gaza — and the killing of prominent and distinguished members of society.”
- Imposing measures intended to prevent Palestinian births in Gaza, through the reproductive violence inflicted on Palestinian women, newborn babies, infants, and children.

Provisional Measures Requested

- Israel must immediately suspend military operations in Gaza.
- Israel must not kill or injure any Palestinians or prevent Palestinians births.
- Israel must not expel or displace Palestinians from their homes or deprive them of access to adequate food and water, humanitarian assistance, fuel, shelter, clothes, hygiene, sanitation and medical supplies.
- Israel shall not deny or restrict access by fact-finding missions to Gaza.
- Israel shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.
- Israel shall submit a report to the Court on all measures taken to give effect to this Order within one week.

Hearings at the ICJ

- The court heard arguments on 11 January from South Africa's lawyers, and on 12 January from Israel's lawyers.
- Proof of genocide requires evidence of “acts committed with *intent* to destroy, in whole or in part, a national, ethnic, racial or religious group.”
- South Africa submitted quotes from various Israeli officials.
- But the legal test at this early stage is merely whether there is a “**plausible**” basis to believe Israel is committing genocide in Gaza
- The test under US law is different – a party seeking an injunction must prove their case is “likely to succeed” on the merits.

Ukraine v. Russia – ICJ (March 2022)

- “At the present stage of these proceedings, the Court is not required to ascertain whether any violations of obligations under the Genocide Convention have occurred . . . At the stage of making an order on a request for the indication of provisional measures, the Court’s task is to establish whether the acts complained of by Ukraine *appear to be capable of falling within the provisions of the Genocide Convention.*”
- “At this stage of the proceedings, however, the Court is not called upon to determine definitively whether the rights which Ukraine wishes to see protected exist; *it need only decide whether the rights claimed by Ukraine on the merits, and for which it is seeking protection, are plausible.*”



**The
Guardian**



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Israel presents its case at the ICJ

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UN Advisory Opinion Request (30 Dec. 2022)

“(a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?”

“(b) How do the policies and practices of Israel referred to above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?”

History Matters

- July 1922: League of Nations proclaims the Jewish People have the right to “reconstitute” their National Home in Palestine.
- August 1929: Palestinian Arabs massacre Hebron Jews
- 1937-1947: Palestinian Arabs reject multiple offers of statehood
 - Peel Commission two-state solution (1937)
 - White Paper one-state solution (1939)
 - UN two-state solution (1947)

More History

- **Jericho Conference (Dec. 1948)**: the Palestinian Arabs pledged loyalty to Jordan's King Abdullah, **explicitly** waiving West Bank sovereignty.
- **Original PLO Charter, Article 24 (May 1964)**: the Palestinian Arabs again **explicitly** waived sovereignty, saying the PLO "*does not exercise **any** regional sovereignty over the West Bank in the Hashemite Kingdom of Jordan, or the Gaza Strip.*"

Resolution 242 (November 22, 1967)

“Affirms that the fulfilment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

“(i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;

“(ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force”

Oslo Accords (1993-1995)

- The PLO agreed to divide the West Bank into three areas (A, B and C).
- The PLO agreed Israel would retain exclusive control over Area C (approx. 60% of West Bank).
- The PLO agreed Israeli settlements could remain, pending final status negotiations.
- The PLO/PA obtained no rights to statehood or self-determination.

Oslo Dispute Resolution Process

- Disputes must be resolved by negotiations within a Joint Israeli-Palestinian Liaison Committee.
- If the dispute cannot be resolved, the next step requires the parties to resolve the dispute “by a mechanism of conciliation to be agreed upon by the parties.”
- Should that not produce a resolution, then the final avenue would be for the parties to mutually agree to submit the dispute to an Arbitration Committee to be established by the parties themselves.
- In no event do the Oslo Accords permit either party to commence (or to ask others to commence) legal proceedings before the International Court of Justice, the International Criminal Court, or any other external body.

Jerusalem magically transformed

- UN Security Council Resolution 446 (22 March 1979) referred solely to “the **Arab** territories occupied since 1967, including Jerusalem.”
- UN Security Council Resolution 478 (22 August 1980) added the word “Palestinian,” modifying the formulation to read, “the **Palestinian and other Arab** territories occupied since June 1967, including Jerusalem.”
- UN Security Council Resolution 2334 (23 December 2016) dropped the word “Arab” and modified the formulation yet again to refer to “the **Palestinian** territory occupied since 1967, including East Jerusalem.”

Legal Conclusions

- The occupation is *not* illegal
- The mere duration of the occupation does *not* render it illegal
- Jerusalem has never been “Palestinian” territory
 - Israel’s claim to West Jerusalem is solid
 - Israel’s claim to East Jerusalem is superior to the Palestinian claim
- The only “legal consequences for states and for the UN” should be insisting the Arabs comply with Resolution 242, by ceasing belligerency toward Israel and recognizing Israel’s right to live in peace within secure borders free from threats or acts of force.