

South Africa's Charge of Genocide in Gaza Is Heard at the World Court

by Daniel Platt

Jan. 13—On the 11th and 12th of this month, the International Court of Justice (ICJ) at The Hague, Netherlands, heard arguments from both parties in the case filed by South Africa, accusing Israel of violating the 1948 Genocide Convention by attacking the civilian population in the Gaza Strip. (See “World Court To Hear South Africa’s Charge of Genocide Against Israel,” *EIR*, Jan. 12, 2024.)

Nations of the Global South, including Colombia, Brazil, Pakistan, Bolivia, Jordan, Turkey, Malaysia, The Maldives, Namibia, the Arab League, and the Or-

people in the same system.

The proceedings have been categorically opposed by the United States, the UK, and Germany and its Foreign Minister Annalena Baerbock. Most of the European Union nations have not commented on the case.

South Africa Presents Its Case

South African human rights lawyer and former acting judge on the South African High Court, Adila Hasim, presented her country’s case on Jan. 11 before the ICJ: That Israel’s war on Gaza has featured “acts which



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On Day 1 of hearings before the International Court of Justice, South Africa presented its charge that Israel is violating the 1948 Convention on Genocide in its war in Gaza. South Africa’s legal team was led by Minister of Justice Ronald Lamola (see cover, this issue). Its senior legal figure was the venerable Prof. John Dugard, a South African professor of international law who fought apartheid and then took up the torch for the Palestinian people (seen here seated, in an orange robe).

ganization of Islamic Cooperation (OIC), have supported South Africa in this action. South Africa has felt the mandate to do so from the words and actions of its founding father, Nelson Mandela. That great man finally and peacefully ended a vicious *apartheid* system that violated the Geneva Conventions, but gave constant attention to the imprisonment of the Palestinian

are capable of falling within the Geneva Convention against Genocide.” That is the standard involved—not, for obvious reasons, that Israel has committed genocide (in which case, such appeal to the World Court would be too late); but that its ongoing acts *can cause* a genocide unless they are stopped in time.

Other members of South Africa’s team presented



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South Africa is requesting that provisional measures be taken to protect Palestinians while the case is being determined, the most important of which is an end to military action in Gaza. Prof. Vaughan Lowe, KC, an English barrister practising in international law, presented the proposed measures.

other facets of the case, including the ongoing genocidal effects to be expected (from the spread of disease, interdiction of food, water, medicine) and the declared statements of intent by Israel's leadership to wipe out civilians and destroy the land.

After explaining Israel's control over Gaza, "its territorial waters, land crossings, water, electricity, electromagnetic sphere, and civilian infrastructure in Gaza, as well as over key governmental functions," and that it controls all access in and out, Hassim outlined "the heaviest conventional bombing campaigns in the history of modern warfare," killing more than 22,000 Palestinians in 13 weeks, and—

[the] 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.

Hassim described four levels of genocide.

- *Mass killings of Palestinians in Gaza.* Mass kill-

ings are now at 23,210, "at least 70% of whom are believed to be women and children," plus another 7,000

... still missing, presumed dead under the rubble.... They have been killed if they failed to evacuate, [killed] in the places to which they have fled, and even while they attempted to flee along Israeli-declared safe routes.... In the first three weeks alone following 7 October, Israel deployed 6,000 bombs per week. At least 200 times, it has deployed 2,000-pound bombs in southern areas of Palestine designated as safe. [Such] bombs are some of the biggest and most destructive bombs

available.... Israel has killed an unparalleled and unprecedented number of civilians, with the full knowledge of how many civilian lives each bomb will take.... The scale of Palestinian child killings in Gaza is such that UN chiefs have described it as a graveyard for children.



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Dr. Adila Hassim, SC, former acting judge on South Africa's High Court, presented the case that Israel's war on Gaza has featured "acts which are capable of falling within the Geneva Convention against Genocide," to show that provisional measures by the Court are warranted.

- *Infliction of serious bodily or mental harm to Palestinians in Gaza.* The "infliction of serious bodily or mental harm" now includes around 60,000 "wounded and maimed. Again, the majority of them are women and children."

- *The imposition of conditions in Gaza that cannot sustain life:*

Israel has deliberately imposed conditions in Gaza that cannot sustain life, and are calculated to bring about its physical destruction.

Israel achieves this, Hassim argued, in at least four ways.

First, by the forced displacement of about 85% of Gaza's population, beginning with an order on Oct. 13 for more than 1 million to evacuate within 24 hours.

It required immediate movement, taking only what could be carried, while no humanitarian assistance was permitted, and fuel, water and food, and other necessities of life had been deliberately cut off. It was clearly calculated to bring about the destruction of the population. [Their homes were destroyed,] leaving at least half a million Palestinians with no home to return to.... There is no indication at all that Israel accepts responsibility for rebuilding what it has destroyed. Instead, the destruction is celebrated by the Israeli army.



Tembeka Ngcukaitobi, SC, addressed the question of genocidal intent, quoting from the many explicit statements of intent by Israeli officials.

births, including violence against women and girls: Hassim pointed out that the provision of medical kits for delivering babies had been blocked. As a result, 25 of the 180 women giving birth on any given day have birth-related complications and have no medical aid.

Statements of Intent by Israeli Leaders

Perhaps the most shocking part of South Africa’s 84-page [Application](#) to the ICJ is its documentation of statements made by Israeli leaders calling for the destruction of Gaza and considering Palestinians as less than human. The second speaker of the South African legal team,

Hassim showed a video clip of soldiers “joyfully detonating entire apartment blocks and town squares....”

Second, the deliberate creation of “widespread hunger, dehydration, and starvation”:

Israel’s campaign has pushed Gazans to the brink of famine. An unprecedented 93% of the population in Gaza is facing crisis levels of hunger. Of all the people in the world currently suffering catastrophic hunger, more than 80% are in Gaza.

Experts predict more deaths “from starvation and disease than airstrikes. And yet Israel continues to impede the effective delivery of humanitarian assistance,” both limiting the aid and, through constant bombing, crippling the delivery.

Third, “Israel has deliberately inflicted conditions in which Palestinians in Gaza are denied adequate shelter, clothes, or sanitation.” The population is deprived of adequate clothing, clean water, etc., making for “soaring rates of infectious disease outbreaks” and the explosion of diarrhea in children under five—a 20-fold increase.

The health infrastructure “has been completely obliterated.”

Fourth, imposing measures intended to prevent

Tembeka Ngcukaitobi, SC, was tasked with summarizing the open statements of genocidal intent by Israeli officials, as he put it, from the Prime Minister and the President, to the Ministers of Defense, National Security, and Energy, to various Knesset members, and all the way down to soldiers on the front.

“The intent to destroy Gaza has been nurtured at the highest level of state,” Ngcukaitobi asserted. Prime Minister Netanyahu said the fight against Hamas after Oct. 7 represented “a struggle between the children of light and the children of darkness, between humanity and the law of the jungle,” and a “war between sons of light and sons of darkness.”

In late October and in a Nov. 3 letter to Israeli soldiers, Netanyahu had referred to the biblical story of the destruction of Amalek by the Israelites. The Prime Minister said:

You must remember what Amalek has done to you, says our holy Bible. And we do remember.

The reference to Amalek is from *1 Samuel* 15:3:

Now go and smite Amalek, and utterly destroy all that they have, and spare them not; but slay both man and woman, infant and suckling, ox and sheep, camel and ass.

On Oct. 12, President Isaac Herzog said:

It's an entire nation out there that is responsible. It's not true this rhetoric about civilians not aware, not involved. It's absolutely not true ... and we will fight until we break their backbone.

On Nov. 10, National Security Minister Itamar Ben-Gvir said:

When we say that Hamas should be destroyed, it also means those who celebrate, those who support, and those who hand out candy—they're all terrorists, and they should also be destroyed.

The South African filing notes that on Nov. 1, Israel's Minister of Heritage Amichai Eliyahu posted on Facebook:

The north of the Gaza Strip, more beautiful than ever. Everything is blown up and flattened, simply a pleasure for the eyes.

(These are only some of the direct quotations to be



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Irish barrister Blinne Ní Ghrálaigh, KC, presented the longer-term genocidal consequences that have been set in motion by Israel's actions.

found in South Africa's application. A large database of similar quotes can be found on the [website israelquotes.com](http://www.israelquotes.com).)

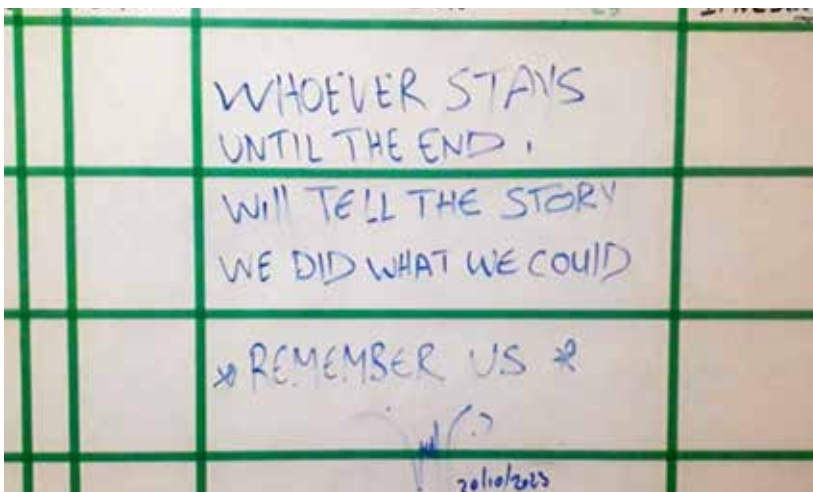
Long-Term Effects

It fell to an Irish member of the South African legal team, Ms. Blinne Ní Ghrálaigh, KC, to address the longer-term genocidal consequences that have been set in motion. She clearly made the point that it was expected that there would be more deaths from disease and starvation than from the shooting and bombing. But of special note was her moral challenge to the Court.

She displayed a photo of a whiteboard in a Gaza hospital, one used for scheduling surgeries. She explained:

The whiteboard is wiped clean of no-longer-possible surgical cases, leaving only a hand-written message by a *Médecins sans frontières* doctor. [It read] Whoever stays until the end will tell the story. We did what we could. Remember us.

Ní Ghrálaigh explained that the author, Dr. Mahmoud Abu Nujaila, died when Israel bombed the hospital on Nov. 21. She then quoted from the Christmas



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*A white board from Gaza's Al-Awda Hospital—before and after the hospital was bombed by the Israel Defense Forces—shown by Blinne Ní Ghrálaigh at the ICJ hearing: "Whoever stays until the end will tell the story. We did what we could. *Remember us* Oct. 20, 2023." The author, Dr. Mahmoud Abu Nujaila, was one of the doctors killed when Israel bombed the hospital Nov. 21.*

sermon of Rev. Dr. Munther Isaac, pastor of the Evangelical Lutheran Christmas Church in Bethlehem:

Gaza as we know it no longer exists. This is an annihilation. This is a genocide.... No apologies will be accepted after the genocide. What has been done has been done. [To Christians and the world:] I want you to look in the mirror and ask, “Where was I when Gaza was going through a genocide?”

She concluded:

South Africa is here before this Court.... It has done what it could. It is doing what it can, by initiating these proceedings. [We] call upon this honorable court to do what is in its power to do. [Gaza’s] hopes—including for their very survival—are now vested in this Court.

Israeli Response at the ICJ

Lawyer Dr. Tal Becker, the legal adviser of the Israeli Ministry of Foreign Affairs, sought to portray Israel’s massive assault on Gaza as purely defensive in nature. He insisted that it was Hamas, not Israel, which should be charged with genocide, saying that if there were acts of genocide, “they have been perpetrated against Israel.” He said that Hamas was “systematically and unlawfully” embedding its military operations in Gaza “within and beneath civilian areas.”

Much of the Israeli argument consisted of a detailed description, with photo and video presentations, of the atrocities allegedly committed by Hamas during the Oct. 7 attacks, with the implication being that the savagery of that day’s attacks justifies the savagery of the months of response by the infinitely more militarily powerful Israel Defense Forces (IDF), and that the mass killings were a sadly necessary deterrent to future attacks of this sort. However, under international law, there is no legal justification for genocide, including pre-emptive self-defense ([unsuccessful attempts](#) were made to use this argument at the Nuremburg tribunals.)

Becker went on to assert that South Africa’s case constitutes a misuse of the Genocide Convention:

The Genocide Convention was not designed to address the brutal impact of intensive hostilities on the civilian population, even when the use of force raises “very serious issues of international law and involves enormous suffering and continuing loss of life.”



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On Jan. 12, Israel responded to South Africa’s charge of genocide. Dr. Tal Becker, legal advisor of the Israeli Ministry of Foreign Affairs, sought to portray Israel’s massive assault on Gaza as purely defensive in nature.

The convention was set apart to address a malevolent crime of the most exceptional severity. The attempt to weaponize the term “genocide” against Israel does more than tell the court a grossly distorted story. It subverts the object and purpose of the Convention itself with ramifications for all states seeking to defend themselves against those who demonstrate total disdain for life and for the law.

Becker asserted that rather than apply the term “genocide” to the IDF’s killing spree in Gaza, it were more appropriate to apply it to Hamas’ “annihilationist language.”

Malcolm Shaw, KC, a British professor of international law, attempted to dismiss the evidence of genocidal intent presented by South Africa:

As far as the acts are concerned in this case, there is little beyond random assertions to demonstrate that Israel has or has had the specific intent to destroy, in whole or in part, the Palestinian people, as such.

He further argued that Netanyahu’s reference to Amalek had been taken out of context, and that Netanyahu had only called for the destruction of Hamas, not Palestinians generally.

Gilad Noam, Israel’s Deputy Attorney General for International Law, insisted that the IDF was taking extraordinary measures to mitigate harm to civilians in

Gaza, and that:

Were it the case, which we deny, that Israeli forces have transgressed some of the rules of conflict, then the matter would be tackled at the appropriate time by Israel's robust and independent legal system.

An important part of the Israeli legal defense strategy was to attack South Africa, and impugn its motives for filing the case. Becker alleged that the South African government had “long celebrated ties with Hamas figures.” Lior Haiat, spokesman for the Israeli Ministry of Foreign Affairs, characterized South Africa as the “legal arm” of Hamas.

It has not escaped the attention of observers around the world that South Africa enjoys a certain moral authority as a nation which ended *apartheid*, and Israel has been widely accused, as was recently emphasized by South Africa's President Cyril Ramaphosa, of practicing *apartheid* today. Although not an issue in the present court proceeding, *apartheid* is considered a crime against humanity punishable under the Rome Statute of the International Criminal Court. The Associated Press [observed](#), in an article about the current ICJ case:

Nelson Mandela regularly raised the plight of the Palestinians. Three years after *apartheid* and white minority rule was dismantled in South Africa and Mandela was elected President in historic all-race elections in 1994, he thanked the international community for its help. He added:

Watch These Historic Arguments in Their Entirety

Video of the proceedings

Arguments from the [South African legal team](#), Jan. 11

Arguments from [Israeli legal team](#), Jan. 12

Full uncorrected transcripts

Arguments from [South African legal team](#), Jan. 11

Arguments from [Israeli legal team](#), Jan. 12



X/PalMissionUK

Palestinians gathered in Ramallah's Mandela Square Jan. 11 to express their thanks to South Africa for defending Palestine at the International Court of Justice. An ad hoc orchestra played the South African national anthem and the mayor spoke. South Africans under Nelson Mandela's leadership had ended apartheid, but recognized—and fought—the same form of oppression in Palestine.

“But we know too well that our freedom is incomplete without the freedom of the Palestinians.”

What Are the Possible Outcomes?

A first step would be for the Court to grant South Africa's request for an international injunction for Israel to “immediately suspend its military operations in and against Gaza.” A decision on that request would probably take weeks, and the full case, which will decide whether Israel is in violation of the Genocide Convention—Israel could be required to make reparations and provide for the reconstruction of all it has destroyed in Gaza—could last years.

The ICJ has no enforcement powers, so the effect of a ruling will largely be political. The UN Security Council could be asked to take measures to enforce it, but that would be subject to veto by the U.S. and the UK.

Israel has a long history of ignoring findings by international bodies. Clearly, however, this situation is different. If the United States were to threaten a cessation of aid, even Israel would hesitate to persist in its criminal activities. Can the United States afford to defy world opinion in this matter, when it is losing ground on so many other fronts? The United States is treading on very thin ice, and the weeks ahead will be momentous.

David Shavin, Carl Osgood, Dennis Small, and Jason Ross contributed to this article.