

II. United States

Biden Faces Lawsuit for Complicity in Genocide

by Daniel Platt

Jan. 18—The International Court of Justice in The Hague heard a landmark case Jan. 11–12, in which the government of South Africa accused Israel of genocide in its assault on the civilian population of Gaza. (See *EIR*, Jan. 19, 2024, “South Africa’s Charge of Genocide in Gaza Is Heard at the World Court.”)

U.S. President Joe Biden is now facing a related legal case, charged with “failure to prevent—and complicity in—the genocide” of Palestinians in Gaza; the case is to be heard in the U.S. District Court for the Northern District of California on Jan. 26. Also charged are his collaborators, Secretary of State Antony Blinken and Secretary of Defense Lloyd Austin. The [suit](#) has been brought by the Center for Constitutional Rights (CCR).

The Center for Constitutional Rights

The New York-based CCR was founded in 1966 by Arthur Kinoy, William Kunstler and others to facilitate legal action in support of civil rights legislation and progressive causes. The Center is known in particular for *Habib v. Bush*, its successful suit in 2004 to establish the right of detainees in the U.S. military prison at Guantanamo Bay, Cuba to challenge their status in U.S. courts and gain legal representation. It has in turn provided representation to people imprisoned there, gaining release for many detainees.

The CCR [stated](#) on Jan. 9:

We expect the International Court of Justice to find that South Africa’s comprehensive application, detailing Israel’s genocidal actions, meets the standards to issue provisional measures for Israel to end the military assault on Gaza and desist from killing, forcibly displacing, and denying basic necessities



White House/Cameron Smith



DoS/Chuck Kennedy



DoD/Chad McNeeley

The Center for Constitutional Rights has brought suit against President Joe Biden (above), Secretary of State Antony Blinken (left), and Secretary of Defense Lloyd Austin for “failure to prevent—and complicity in—the genocide” of Palestinians in Gaza.

of life to Palestinians in Gaza—in effect, ordering measures to stop an unfolding genocide....

Any findings by the ICJ against Israel will have implications for other State parties—including the U.S.—who have failed to prevent or have been complicit in the genocide, which the Genocide Convention prohibits. We expect the U.S. District Court will take very seriously any findings from the ICJ—the World Court—in determining the U.S.’s obligations under international and U.S. law....

Earlier, CCR staff attorney Astha Sharma Pokharel had explained:

While the District Court is obviously not bound by the ICJ, it will have to, and the government will have to, contend with the fact that the highest authority, the World Court, has issued an order in which it has found that the case of genocide—there’s a plausible case. It will have implications for the United States around both its failure to prevent this genocide and for its complicity.

Seventy-seven legal and human rights NGOs, from locations as far-flung as Ireland, Bahrain, and Indonesia, have submitted a 42-page [brief](#) as *amici curiae*, friends of the court, supporting the CCR’s suit. Their brief concludes:

This case is of exceptional importance, for the gravity of the harms involved, the compelling need to prevent and protect against genocide, and for what is at stake in terms of maintaining well-established norms of international law....

Another *amicus* brief has been submitted by medical professionals, in response to Israel’s systematic destruction of Gaza’s health sector.

Response from the Biden Administration

Biden’s legal team contends that the District Court has no jurisdiction over U.S. foreign policy decisions. But genocide is scarcely within the bounds of foreign policy. And a decision by the ICJ against the state of Israel will, itself, have very significant political repercussions, putting the United States very much at odds with world opinion at a time when American neocons are frantically trying to stem the rising tide of the influence of the BRICS nations.

On Nov. 3, the U.S. National Lawyers Guild, Palestine Legal, and the CCR delivered a [Notice and Demand Letter](#) to all U.S. Senators and Congressmen, as they were considering President Biden’s request for financial aid and weaponry for Israel, warning them of their possible complicity in genocide. It read, in part:

Please take notice that should you vote in favor of that package, you risk facing criminal and civil liability for aiding and abetting genocide, war crimes, and crimes against humanity under international law, and may face investigation and prosecution....

At a Nov. 6, 2023 State Department [press briefing](#),

a reporter read the warning issued to the Representatives and then asked Principal Deputy Spokesperson Vedant Patel: “Do members of the State Department face similar possibilities?” Patel answered:

The U.S. Government has a rigorous process in place for evaluating whether something constitutes genocide, and we have not made that assessment in this case.

Translation: Maybe we are part of a genocide operation, but we get to judge what is to be called genocide.

Of note, Patel was actually just repeating his answer to a previous question. The matter of Brazilian President Lula da Silva’s condemnation of Israel for genocide had been raised, along with Professor of International Law Francis Boyle’s argument that the Palestinians should “immediately instigate an emergency legal process invoking the International Court of Justice (ICJ).” The question to Patel was:

Has the U.S. Government pressured or bribed or threatened in any way, shape, or form [PLA President Mahmoud] Abbas, the people around him, institutions around him, from invoking this or any other legal mechanisms against Israel to stop its attack?

Patel replied:

No, the U.S. has not been involved in pressuring or anything like that to any officials within the Palestinian Authority.

And then repeated:

We have been incredibly clear that as Israel defends itself and defends its security ... we, within the U.S. Government, have a rigorous process for evaluating whether something constitutes genocide, and we have not made that assessment in this case....

Repercussions Elsewhere in the Anglosphere

British officials could also be held to account. In an article titled, “Sunak, Cleverly, and Shapps Could Be in the Old Bailey Dock for Genocide,” former British Ambassador to Uzbekistan Craig Murray wrote in his [blogsite](#),

There has been a great sense of impunity among



White House/Adam Schulz

Should the International Court of Justice rule against Israel for committing genocide in Gaza, UK Prime Minister Rishi Sunak (right) could face investigation for aiding and abetting it. He is seen here with U.S. President Joe Biden.

the Zionist-controlled political classes: They have believed that they were in no danger of any personal retribution for their part in the brutal destruction of thousands and thousands of young children. In fact they felt able to turn the power of the state against anybody protesting that destruction.

There has been no legal jeopardy to anybody supplying, inciting, or cheering on Israel's monstrous atrocities. The jeopardy has all been felt by those opposing the atrocities.

That all changed with South Africa's reference to the International Court of Justice. A determination of genocide by the International Court of Justice must be respected by the International Criminal Court, and it will be impossible even for the odious [Prosecutor] Karim Khan to avoid bringing prosecutions against the perpetrators. Similarly in the UK, the fact of genocide being legally established—a police investigation will be obliged simply to focus on whether the UK aided and abetted it.

Quite simply, if you ask the police to investigate [Prime Minister Rishi] Sunak for aiding and abetting genocide today, they will laugh at you and say there is no genocide. After an ICJ judgment they can no longer do that.

A Jan. 9 [article](#) in *Middle East Eye* with the title, "The West Will Stand in the Dock Alongside Israel at the Genocide Court," published by award-winning

British journalist Jonathan Cook, argues that it is not only Netanyahu's Israel that faces charges at the ICJ: the United States and the UK in particular, along with the entire West, are also exposed before the world for support of genocide. Cook wrote:

Israel's allies aren't just turning a blind eye to Gaza's killing fields. They have cheered on the bloodshed, provided diplomatic cover, and supplied the arms....

Israel expects support from western capitals because they have nearly as much to fear from a verdict against Israel as Israel itself. They have staunchly backed the killing spree, with the U.S. and UK, in particular, sending

weapons that are being used against the people of Gaza, making both potentially complicit....

Cook explained that the determination of the court may take a long time:

But more pressing is Israel's need to prevent the Hague Court from ordering an interim halt to the attack....

Israel will try to convince the judges that it has been seeking to increase humanitarian aid to Gaza and minimize the toll on civilians....

A genocide ruling from the Court will impose obligations on other states: Both to refuse to assist in Israel's genocide, such as by providing arms and diplomatic cover, and to sanction Israel should it fail to comply....

States would be expected to deny Israel weapons and impose economic sanctions on Israel—as well as on any states that collude in the genocide. Israeli officials would risk arrest for travelling to Western countries.

Cook, who is the author of three books on the Israeli-Palestinian conflict and a winner of the Martha Gellhorn Special Prize for Journalism, concluded:

The truth is that a genocide ruling by the Court will open up a can of worms for the West, and its readiness to accept that the provisions of international law apply to it too.