

The Gaza War Has Finished Off Israeli Impunity

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The International Court of Justice (ICJ) is set to hold public hearings today and tomorrow on an urgent case submitted by South Africa charging Israel with the crime of genocide against the Palestinians of Gaza. South Africa has called on the ICJ, also known as the World Court, for an emergency order declaring that Israel is violating the terms of the 1948 Genocide Convention to which all members of the United Nations are obliged to subscribe. The court normally takes one or two weeks to decide on provisional measures but does not have the means to enforce its ruling.

South Africa has accused Israel of killing Gazans at a high rate without distinction, of cruel and inhuman treatment, bombing areas meant to be safe zones, deprivation of food and water and health-care, and destruction of homes, infrastructure, schools, and universities which provide Palestinians with life and a decent way of life. Senior Israeli figures have spoken of Palestinians as "human animals" and a nation which is responsible for Hamas' sudden attack which killed 1,139 on October 7th. Others have expressed the determination to drive Palestinians from Gaza.

South Africa has asked the Court to order an immediate suspension of Israeli military operations in the Gaza Strip until the ICJ rules on the substance of the South African case, presented in an 84-page document. A ruling can take years. ICJ final judgements are obligatory but, here also, the Court does not have the means to enforce its rulings unless UN members are prepared to assume this responsibility.

Israel has called the application "blood libel" and plans to be represented at the hearings by at least three lawyers.

South Africa argues Israel's three-month military operations in Gaza are "genocidal in character because they are intended to bring about the destruction of a substantial part of

the Palestinian national, racial and ethnical group”.

The South African document said Israel’s actions include “killing Palestinians in Gaza, causing them serious bodily and mental harm, and inflicting on them conditions of life calculated to bring about their physical destruction”.

The current membership of the Court is interesting: the president is from the US and the vice president from Russia, and there are three justices of Arab background, one each from Morocco, Somalia and Lebanon. The others are from France, Slovakia, China, Uganda, India, Jamaica, Japan, Germany, Australia, and Brazil. Several have served multiple five-year terms.

South Africa has appointed former deputy chief justice Dikgang Moseneke as its addition to the panel. Under the Court’s rules a state involved in the case can appoint a judge of its nationality. Former Israeli Supreme court president Sharon Barak has also been chosen by Israel as an ad hoc judge on the panel. While Barak is regarded as a liberal on internal Israeli politics, he has a reputation for ruling against Palestinians fighting expulsion from their homes and lands and supporting Israeli Jewish superiority.

John Dugard is one of the senior South African lawyers representing their country. He is a former UN Special Rapporteur on Human Rights in the Occupied Palestinian Territory and served as an ad hoc ICJ judge during the 2000s. Adlia Hassim and Tembeka Ngcukaitobi have led the anti-corruption drive in South Africa.

British human rights lawyer Malcom Shaw is one of the four lawyers who will defend Israel at the ICJ hearings. He has apparently been selected instead of controversial US Harvard professor and strong Israel supporter, Alan Dershowitz, as he defended the late Jeffrey Epstein, a convicted and imprisoned trafficker of teenage girls.

Jordan, Palestine, Malaysia and Turkey are among the countries backing the South African application. Human rights organisations began calling for action against Israel’s “genocidal policies” almost as long as Israel’s war has lasted. In mid-November, 36 UN experts called upon the international community to “prevent genocide against the Palestinian people”, as Israel’s actions constitute a “genocide in the making.”

Having backed Israel with bombs and shells to kill Gazans, the Biden administration could be charged with complicity in the genocide of which Israel stands accused. State Department spokesman Matthew Miller stated, weakly,

“Those are allegations that should not be made lightly ... we are not seeing any acts that constitute genocide. That is a determination by the State Department.”

It would be interesting to know if the accusation of genocide has been raised by regional leaders who met US Secretary of State Antony Blinken, who has contributed to the deadly and destructive policy on Gaza, during his whirlwind tour of the region this week.

Established in 1945 in association with the UN, the Court, which has a panel of 15 judges, has ruled on 91 cases, including five on genocide, between 1947 and 2023. In 2004, the Court issued a non-binding opinion saying that Israel’s West Bank wall violated international law as it was largely built in occupied territory, illegally annexing to Israel areas west of the wall. Israel ignored the opinion.

Israel cannot afford to ignore the Court when charged with genocide. The accusation alone deprives Israel of highly valued impunity for whatever it has done to the Palestinian people now and during the past 75 plus years. Israel has relied on being regarded as a special case, free of accountability and untouchable. The Gaza war has finished off Israeli impunity.

If and when the ICJ issues an emergency order for Israel to ceasefire, pressure should be stepped up on the International Criminal Court (ICC) to tackle Israeli individuals and their US collaborators over their participation in genocide. So far, the ICC prosecutor British judge Kerim Khan has done his utmost to avoid investigating Israel's current flagrant violations of international law in Gaza, but he could be compelled to stir his stumps.

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