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by Thierry Meyssan

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## *The provisional measures of the International Court of Justice*

The International Court of Justice has just taken provisional measures to protect the Gazan population from possible genocide. This decision is nothing new, but provides legal support for the political position of the United States. This decision in no way prejudices the judgment on the merits, which would condemn Israel if it were made, but probably never will be. International justice is still in its infancy, and is still struggling to apply the law.



The International Court of Justice, presided over by former U.S. State Department official Joan Donoghue, has issued a protective order in the case between South Africa and Israel. Unsurprisingly, the Court took exactly the same decision as the United States: Israel must do everything in its power to prevent genocide, while continuing its war against Hamas.

### *INTERNATIONAL JUSTICE IS STILL IN ITS INFANCY*

The Court is an embryo of international justice within the United Nations. It replaces the Permanent Court of International Justice, which was created in 1922 within the League of Nations. The system is only a century old. Its aim is to ensure that each State applies the commitments it has entered into. However, since 1942, the Anglo-Saxons, who accepted this court in 1945, have been seeking not to apply international law, but to establish their governance over the world. When they signed the Atlantic Charter, British Prime Minister Winston Churchill and US President Franklin D. Roosevelt asserted, in the name of their states, that they alone should decide disputes between states in the post-war world. This was the original cause of the Cold War and today's conflicts. Consequently, contrary to the image we have of it, the International Court of Justice is not a finished court, but a battlefield where the Anglo-Saxon unipolar project of the world confronts the multipolar project of most other states. This is how we should interpret the Gaza massacre order. The only means of pressure on governments available to the Court is not an army, but public opinion in each country. No government accepts the idea of being presented to its people as a criminal. It is therefore particularly important to understand the Court's decisions.

### *MAGISTRATES HAVE TO SAY WHAT'S RIGHT, BUT THEY'RE NOT ALL THAT INDEPENDENT*

The Court's fifteen permanent magistrates are nominated by their own governments and elected by all. They must use legal reasoning to justify their decisions. However, their decisions generally reflect their national prejudices. It is very rare for judges chosen by their own government to rule against it. Two additional magistrates are appointed by the two parties to the conflict. They come to defend their country and look for legal arguments to back up their case. I also remember that, when I was advising Muamar Gaddafi, the corruption of international judges was notorious. In the context of a judgment on the legality of NATO's war against his people, the Libyan leader ordered that the "gifts" received by the international judges be compensated by offering them equivalent ones.

In this case, only two judges voted against all or some of the Court's decisions.

Of course, the ad hoc judge representing Israel, Aharon Barak. He took part in the Camp David Accords alongside the revisionist Zionist Menachem Begin. When he was President of the Supreme Court, he interpreted the fundamental laws in such a way as to give

himself the power to censure the Knesset; an implausible system on which Israeli democracy was built and which Benjamin Netanyahu is trying to overturn. In his rulings, he systematically defended the interests of Israel against the Palestinians, thus forbidding the latter to lodge complaints about the damage caused to them by the IDF. According to him, you can't make an omelette without breaking eggs, and examining these situations would force the IDF to reveal the confidential details of its operations. Or, in Israeli law, it was he who authorized the construction of the "Separation Barrier", which the ICJ declared illegal.

He opposed four of the six provisional measures. He opposed the general injunction to take all measures to prevent the commission of genocide, the injunction to preserve evidence of potential acts of genocide, and the injunction requiring Israel to report on its methods. He also opposed any limitation on IDF action. On the other hand, he agreed that Israel should prevent its politicians from calling for genocide, and that it should provide humanitarian aid to the Palestinians.

The other judge to oppose the Court is Julia Sebutinde from Uganda. For her, the Israeli-Palestinian conflict is political and cannot be judged by a court of law. Above all, as the acts allegedly committed by Israel were not, in her view, accompanied by genocidal intent, South Africa had not demonstrated that the provisional measures requested were necessary. Finally, as Hamas is not a party to these proceedings, it would be unrealistic to impose limits on one of the belligerent parties but not on the other.

First of all, no one has asked the Court to judge the Israeli-Palestinian conflict, and international law has nothing to do with politics. Secondly, South Africa was careful not to accuse Israel of genocidal intent, but it did cite enough genocidal statements by Israeli leaders to call for provisional measures, an argument which the Israeli judge considered valid. Finally, let's come to the last point: the absence of Hamas from the proceedings cannot authorize Israel to allow genocide to be perpetrated.

Julia Sebutinde's position casts doubt on her previous positions at the Special Court for Sierra Leone. Adonia Ayebare, Uganda's Permanent Representative to the United Nations, said: "Judge Sebutinde's decision before the International Court of Justice does not represent the Ugandan government's position on the situation in Palestine (...) She has already voted against Uganda's case on the Democratic Republic of Congo (DRC)". The fact that Judge Sebutinde's reasoning is abstruse and that she is disowned by her own government suggests that she may have been corrupted.

The Court did not rule on South Africa's other demands, which could not be dealt with as a matter of urgency, but exclusively on the merits: reparation measures for Palestinian victims and the condemnation by Israel of individuals guilty of genocide. Above all, it did not say that "the Israeli State must immediately suspend its military operations in and against Gaza".

This order is in line with that in *Gambia v. Myanmar*. It enacts the same provisional measures as those used to halt the genocide of the Rohingas. However, it cannot be compared with the case of *Ukraine v. Russian Federation*, insofar as the latter does not concern the genocide of Ukrainians by Russians, but the use by Russia of the argument of genocide committed by Ukraine against its own Russian-speaking population.

### ***PROVISIONAL ORDER DOES NOT PREJUDGE JUDGMENT ON THE MERITS***

The Court's order is binding not only on Israel and South Africa, but also on the 151 other States that have signed the Convention on the Prevention and Punishment of the Crime of Genocide. Depending on their situation, each of them is obliged to associate itself with the provisional measures. Some could interpret this as justifying an embargo on all armaments, or prohibiting their dual nationals from taking part in this potentially genocidal war.

Algeria has already requested a meeting of the Security Council on January 31, so that it can clarify the binding effects of the Court's ruling. Obviously, it is unlikely to threaten Israel with military intervention, but it could decide on an arms embargo, for example.

In any case, this order will be cited before other courts in accordance with Anglo-Saxon law. For example, there is already a case in the Northern California District Court between Defense for Children International and Joe Biden, Antony Blinken and Lloyd Austin, and another in London between Global Legal Action Network and the British government. Both are based on the premise that supplying arms to Israel at this time is participation in the massacre in Gaza. They now have a chance to succeed.

It could also be brought before the International Criminal Court, which could be called upon to judge certain Israeli leaders. Several countries have already referred the case to the Court.

Moreover, this order is only precautionary until the Court has ruled on the merits of the case. However, we must not dream: the Court may shy away and declare itself incompetent. In that case, there will never be a ruling on the merits of the case, and the protective measures will lapse.

This is the most likely outcome. Yet the Court itself has already dismissed the argument that South Africa's previous approaches to Israel would not have given it time to respond. It could still nitpick over "genocidal intent". In the event of the complaint being deemed inadmissible. The massacre could resume.

We must not delude ourselves about the International Court of Justice. It represents a major step towards international law, but is still a long way off.

Translation

Roger Lagassé

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