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How the ICJ Ordinance Made History Against Israel for Genocide

As Palestinian activist and politician Mustafa Barghouti described the sentence, "for the first time in 75 years, Israel is stripped of its impunity under international law." It is a victory for accountability, long overdue.



The initial ordinance issued on Friday, January 26, 2024, by the International Court of Justice on the genocide allegations against Israel made history, and it is not hyperbole.



Emad Hajjaj

The United Nations' highest court in The Hague found it "plausible" that Israel had committed acts against Palestinians in Gaza that violated the Genocide Convention. Although its ruling is not yet a verdict on whether Israel has committed genocide, something the court could take years to decide, the ICJ ruled that it has jurisdiction to move forward with the case that was brought by South Africa, dismissing Israel's main argument.

The court issued interim measures to protect Gaza's devastated population from the risk of genocide, including that Israel must ensure "with immediate effect" that its military forces do not commit any of the acts prohibited by the Genocide Convention, and that Israel must "take all measures" to prevent and punish direct and public incitement to genocide against Palestinians in Gaza. Each of the six interim measures was approved with the overwhelming support of the court's 17 justices, in votes of 16-1 and 15-2.

At this stage of the proceedings in The Hague, the case boiled down to a single issue: whether the ICJ determined that South Africa had made a plausible allegation that Israel is committing genocide and, on this basis, allowed the case to move forward to a full hearing. Everything else is secondary. On this crucial point, the court's verdict was unequivocal: South Africa's arguments before the ICJ earlier this month were sufficiently convincing, and Israel's rebuttals and denials unconvincing. The ICJ will now hold a full and proper hearing to determine whether Israel is not only plausibly accused, but substantially responsible for the crime of genocide in Gaza.

History was made here. As of January 26, 2024, Israel and its Western backers will no longer be able to use the Holocaust to shield themselves from accountability for their

crimes against the Palestinian people. Raz Segal, a leading professor of Holocaust and genocide studies, recently pointed out that the State of Israel was born in impunity. "The idea that the Jewish state could commit war crimes, let alone genocide, becomes from the beginning an unthinkable idea," he said. "Impunity for Israel is baked into the system." No more.

The late Edward Said described the Palestinian people as "the victims of the victims, the refugees of the refugees," while [writing](#) about the difficulties many in the West had in conceiving of Israel as a state capable of committing war crimes and crimes against humanity, given its creation in the aftermath of the Holocaust. That is no longer the case. Today, Israel is associated with the crime of genocide as a plausible perpetrator, not a victim. From now on, Israel's policies towards the Palestinian people will be judged on their own merits and not in the long shadow of European history.

The ICJ has today redefined "never again". It is no longer a slogan that Israel can use to commit and justify crimes against others. It now applies equally to Israel's actions and to Palestinian victims.

ICJ judges are not diplomats following instructions from their governments. However, it was especially gratifying to see the court's ruling by the U.S. president of the court, Joan E. Donoghue, who voted in favor of each of the court's interim measures. In handing down the sentence, Donoghue read several statements by Israeli officials since the Oct. 7 Hamas attack that South Africa had presented as evidence of Israel's genocidal intent. It was a fitting rejoinder to US Secretary of State Antony Blinken's haste that the South African case lacked "merit". Did Blinken even bother to read South Africa's submission to the ICJ? *[To ask him to read its 80 pages would have been to ask too much, Editor's note]* He probably considers that any accusation against Israel, any questioning of its impunity, any effort to hold it accountable for its crimes, is by definition without merit. Is it surprising that the State Department, in a [statement](#) on the ruling, continued to call the genocide allegations "baseless"?

Court-ordered interim measures may be legally binding, but the ICJ should not be confused with the UN Security Council. The court itself has no way of enforcing its sentences; it is up to the Security Council to adopt a resolution to enforce them. However, the six interim measures issued against Israel are still important, as Israel must report to the court within 30 days on how it is complying with them. In other words, Israel is in the dock and being closely watched. The fact that the court did not order a ceasefire, as South

Africa had called for – which Israel, with the support of its Western backers, would simply ignore – was to be expected and was not the real subject of this case.

Finally, the ICJ ruling also imposes legal obligations on all other signatories to the Genocide Convention, including the United States and countries in Europe. The sun does not rise in the West, and Western hypocrisy – a fundamental principle of its "rules-based international order" – will not end anytime soon. But the ICJ ruling lays the groundwork for ultimately holding Israel's bosses and bodyguards accountable as well.

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