

Top UN court rejects South Africa's request to halt war against Hamas

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Israel & Middle East

Friday's International Court of Justice ruling is provisional, and a final decision could take years

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ICJ President Joan Donoghue (C) speaks at the International Court of Justice (ICJ) prior to the verdict announcement in the genocide case against Israel, brought by South Africa, in The Hague on January 26, 2024. Photo by REMKO DE WAAL /ANP/AFP via Getty Images

The International Court of Justice on Friday rejected a request by South Africa to order Israel to halt its defensive war against Hamas in the Gaza Strip while demanding that the Jewish state take “all necessary measures” to prevent acts that could possibly lead to genocide.

Friday’s ruling is provisional, and a final decision could take years. Once a ruling is issued, the decision of the court is binding by international law. However, there is no enforcement mechanism.

The ICJ is an international legal body that operates under the auspices of the United Nations. It has the right to adjudicate cases between states either with the explicit permission of the defendant state or by prior agreement in the form of an international agreement or by formal notification to the court.

In this case, the basis for the trial is the Convention on the Prevention and Punishment of the Crime of Genocide, which was established in 1948 in response to the crimes of the Holocaust and was signed both by Israel and South Africa. According to the convention, the crime of genocide requires the intentional destruction “in whole or in part, a national, ethnical, racial or religious group.”

Israel is the fifth country to face the charge of genocide in the ICJ.

Israel has been at war with Hamas since the terrorist group invaded the northwestern Negev on Oct. 7, murdering 1,200 people, wounding thousands more and kidnapping more than 240. Israel’s stated military goals are to destroy Hamas as a political and military entity in Gaza, free the hostages and ensure that Gaza can never again threaten Israel.

Israeli Prime Minister Benjamin Netanyahu reportedly met on Thursday with senior legal officials and government ministers to prepare for the ruling. Among those attending was legal adviser to the government Gali Baharav-Miara, Justice Minister Yariv Levin, Strategic Affairs Minister Ron Dermer and National Security Council head Tzachi Hanegbi.

U.S. National Security Council spokesperson John Kirby said on Jan. 3 that the submission by Pretoria was “meritless, counterproductive, completely without any basis whatsoever.”

Two hundred and ten members of the U.S. Congress sent an open letter to U.S. Secretary of State Antony Blinken on Tuesday condemning South Africa for filing “a grossly unfounded case against Israel at the International Court of Justice (ICJ).”

“South Africa’s accusation of genocide against Israel exposes how far Israel’s enemies will go in their attempts to demonize the Jewish state,” the signatories wrote.

The letter notes that while South Africa barely acknowledged the Hamas terrorists “who gleefully massacred, mutilated, raped, and kidnapped innocent civilians” on Oct. 7, it made “grossly unfounded and defamatory charges against Israel on the world stage.”

In late December, Pretoria submitted the 84-page charge to the ICJ in which it formally accused Israel of genocide. The South African legal team is headed by Professor John Dugard, who chaired a U.N. Commission of Human Rights inquiry committee and who has called Israel an apartheid state and for an arms embargo on Israel.

“Israel has transgressed article two of the [Genocide] Convention, committing acts that fall within the definition of genocide,” attorney Adila Hassim claimed during arguments on Jan. 11.

The South African delegation also claimed that the very establishment of the State of Israel was tantamount to genocide.

“The violence and the destruction in Palestine and Israel did not begin on October 7, 2023. The Palestinians have experienced systematic oppression and violence for the last 76 years,” South African Justice Minister Ronald Lamola told the court.

In an attempt to establish intent, the South African delegation brought a series of quotes from various Israeli personalities spanning from the prime minister and the defense minister to random soldiers fighting in Gaza and even including an Israeli singer.

In one piece of evidence, the South Africans showed Netanyahu talking about “wiping out the seed of Amalek.” In another, Israeli soldiers were seen celebrating as they blew up a part of the Shejaia neighborhood in Gaza City.

Avraham Shalev, an adviser and specialist in public law at the Kohelet Policy Forum told JNS that “the quotes of anyone who isn’t directly involved with the decision-making process of the war are not relevant for establishing intent.”

Regarding statements made by members of the War Cabinet, Shalev explained that “many of these quotes were taken out of context. They tried to say that [Defense Minister Yoav] Gallant’s statement saying, ‘We are fighting human animals’ was genocidal but it is clear he was talking about Hamas fighters.”

The South Africans continued to demonstrate what they called “acts of genocide.” The delegation mostly referenced statistics about the scale of the destruction wrought throughout the Gaza Strip. They claimed that the scale of the destruction of property and the level of civilian lives lost amounted to a purposeful attempt by the Israeli Defense Forces to destroy the Palestinians living in the Strip.

The six-man Israeli delegation headed by British law professor Malcolm Shaw, a world-leading expert on international law, unfolded its argument before the court on Jan. 12. To begin, the defense team argued that the entire conflict in Gaza cannot be discussed outside the context of the Oct. 7 attacks.

Israeli attorney Tal Becker described some of the atrocities committed on Black Saturday “not because these acts, however sadistic and systematic, release Israel of its obligations to uphold the law as it defends its citizens and territory, but because it is impossible to understand the armed conflict in Gaza without

appreciating the nature of the threat that Israel is facing and the brutality and lawlessness of the armed force confronting it.”

Becker accused the South African delegation of purposefully misrepresenting the conflict, saying, “The events of that day [Oct. 7] are all but ignored in the applicant’s submissions.” Becker argued that the events of Oct. 7 established a legal basis for Israel to declare war and pursue legitimate enemy targets.

On the issue of intent, the Israel delegation strongly opposed Pretoria’s description of Israeli policy on the targeting of civilians. The delegation said that “Israel’s lawful aims in Gaza have been clearly and repeatedly articulated by its prime minister, its defense minister, and all members of the War Cabinet.” The legal team also referenced the official IDF directive to all soldiers to “distinguish between combatants and civilians.”

Finally, the team argued that Israel’s persistent efforts to protect civilians, by dropping leaflets with orders to evacuate and securing humanitarian corridors in Gaza, as well as by providing humanitarian aid, shows a clear lack of intent to commit genocide. “To produce random quotes which are not in conformity with government policy is misleading at best,” said Shaw.

The Israeli delegation further argued that the alleged “acts of genocide” as described by the South African delegation were legitimate acts of war. In his statement, Becker accused it of ignoring the ongoing military conflict going on in Gaza and exclusively painting the situation as a series of Israeli actions against an unarmed population.

“In the applicant’s telling, it is almost as if there is no intensive armed conflict taking place between two parties at all, no grave threat to Israel and its citizens, only an Israeli assault on Gaza,” he said.

Shaw also argued that the reality of the ongoing conflict in Gaza and Hamas’s consistent use of civilian installations to launch its attacks renders the term genocide simply inapplicable to the situation.

Shaw explained that civilians suffer in all armed conflicts, “especially when a side attacks civilians and is unconcerned” by the welfare of civilians on its side.

“Not every conflict is genocidal. The crime of genocide in international law and under the Genocide Convention is a uniquely malicious manifestation and stands alone among violations of international law as the zenith of evil, the crime of crimes, ultimate in wickedness,” he said.

The Israeli team argued that the ICJ interceding in the ongoing war would effectively remove Israel’s right and ability to defend itself.