

# RESEARCH PAPER

# MESSAGE FROM THE COMMITTEE PRESIDENT

Dear Delegate,

Welcome to the research paper we have prepared for you.  
This is a great starting point for your research.

If you have any questions about this research, please write  
to us at *obsmun@obs.edu.pt*

Happy debating and see you soon.

# PURPOSE OF THIS GUIDE

This research guide was compiled by the Secretariat of the OBSMUN 2025. OBSMUN aims to provide delegates with the opportunity to further develop their research skills that will help them in their academics. Thus, these research guides do not cover the whole breadth of the issues at hand. Instead, they are designed to provide a basis from which delegates can undertake their own research into the topics, with the aim of developing clauses from their independent research.

This guide is not sufficient as background information to prepare yourself for the country, since it does not look at the information from your countries point of view, but instead a generalised one.

## **WHEN RESEARCHING FOR INFORMATION REGARDING YOUR COUNTRY YOU MAY WANT TO ASK YOURSELF THE FOLLOWING QUESTIONS;**

- **Where does your country stand on the issue being addressed?**
- **Does it affect the country you are representing?**
- **Would your country be in favour / against taking action on the issue?**
- **What policies are currently in place in your country to address this issue?**
- **Given your country's stance & policies, what type of solution would you support?**
- **What measures would benefit your country?**
- **What measures would be detrimental to your country? Which ones would your country be especially be opposed to?**

# TOPIC 1: ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO (DEMOCRATIC REPUBLIC OF THE CONGO V. UGANDA)

The Democratic Republic of the Congo ( DRC ) filed an application invoking proceedings against Burundi, Uganda, and Rwanda “for acts of armed aggression committed... in flagrant breach of the United Nations Charter and of the Charter of the Organization of African Unity”, including occupation and violations of international humanitarian law and human rights in the territory of the DRC. The DRC claimed that Uganda’s military presence in eastern Congo included looting, killing civilians, and supporting rebel groups, and asks the court for reparations from Uganda for the harm, economic, human, and environmental damage it has caused. Uganda denied the allegations and argues that its military actions were part of self-defense against cross-border attacks, thereby protecting its security.

**Timeline and context:** The Democratic Republic of the Congo case arises from the First Congo War of 1996. Key events leading to the dispute include:

- **1996 - 1997:** The First Congo War began when Mobutu's regime was overthrown. The conflict arose from a long-standing political dissatisfaction of President Joseph Mobutu, whose rule of three decades was marked

by corruption and authoritarianism. Ethnic tensions between Hutus and Tutsis further heightened the conflict. Rwanda and Uganda intervened militarily, backing the Congolese rebel groups led by Laurent-Désiré Kabila.

- **May 1997:** Kabila declared himself president, marking the end of the First Congo War.
- **1998:** The Second Congo War began as a result of the ongoing power struggle following the overthrow of the Mobutu regime. The conflict drew multiple foreign armies from Rwanda, Uganda, Zimbabwe, Angola, Namibia, and Chad. Marked by intense guerrilla warfare. The war resulted in an estimated 3.8 million deaths, the vast majority due to starvation and diseases.
- **1999:** Uganda People's Defence Forces (UPDF) established their military presence in northeastern DRC, supporting various Congolese armed groups and engaging in fighting, particularly in the Kisangani area, amidst ongoing political conflicts and local tension between different ethnic groups.
- **July 1999:** The Lusaka Ceasefire Agreement was part of a diplomatic response to the mounting international pressure and a devastating humanitarian crisis, signed by the DRC government, rebel groups (i.e. Rally for Congo (RCD) and Movement for the Liberation of Congo (MLC) ) and foreign state ( i.e. Angola, Namibia, Rwanda, Uganda, and Zimbabwe ). All parties agreed to halt hostilities and end military

operations; disarmament and demobilization. The ceasefire was an immediate failure to stop the fighting as the tensions between Foreign Allies, delays in Peacekeeper Deployment, Continued Resource Exploitation, and local Ethnic Violence and Militias.

## **Relavant Actors**

- **Applicant:** On behalf of the Government of the Democratic Republic of the Congo undersigned by David M'Bwankiem, Deputy-Minister for Foreign Affairs of the DRD certify that Maître Michel Lion, has been appointed by the Congolese Government as "Agent" for the purposes of filing applications with the International Court of Justice at The Hague and conducting all proceedings in respect thereof on behalf of the Democratic Republic of the Congo against the following countries Uganda on accounts of armed agreession
- **Respondent:** In response to the Application dated 23 June 1999 and the Memorial submitted on 21 July 200 by DRC, the Republic of Uganda, represented by His Excellency Mr. Sam Kutesa, Minister of Foreign Affairs of the Republic of Uganda, hereby submits its Counter-Memorial to the International Court of Justice that it is not the aggressor, but rather the victim of hostile acts initiated by the DRC. The Government of Uganda will demonstrate that "The party in this case that is guilty of armed aggression is not Uganda, but the Democratic Republic of the Congo itself."

- **International Court of Justice:** The case was heard by the 15 permanent judges of the ICJ, along with ad hoc judges appointed by each party including Ad hoc Judge for Uganda James L. Katela and Ad hoc Judge for the DRC Joe Verhoeven
- **Civilians in Eastern DRC:** Especially in Ituri and Kisangani, the armed conflict resulted in Thousands of civilian deaths, Massive internal displacement, widespread sexual violence, and destruction of infrastructure.
- **Other States:** Rwanda and Burundi, although not formal respondents in this case, both states were involved in the Second Congo War, and the DRC attempted to bring cases against them. The ICJ dismissed the case against Rwanda in 2006 for lack of jurisdiction, and the case against Burundi was not formally filed. Zimbabwe, Angola, Namibia, and Chad militarily supported the DRC.
- **Other actors:** Regional organizations like the Organization of African Unity (OAU) and the African Union were present to mediate the conflict. Human Rights and Legal Observers, like the International human rights NGOs, documented: Extrajudicial killings, Looting of resources (e.g., gold, diamonds, timber), sexual violence, and war crimes. Other reports published by Amnesty International, Human Rights Watch, and UN Special Rapporteurs. Actors taking active part in the conflict include the M23, a campaign part of ongoing

military offensives launched by the March 23 Movement (M23), a Rwandan-backed rebel paramilitary group that later fought under the Alliance Fleuve Congo ( AFC ). Actors under the Uganda association include the Allied Democratic Forces ( ADF ), a Ugandan Islamist rebel group, and others

### **Political, historical, and humanitarian context:**

The political and humanitarian context of the conflict in the Democratic Republic of the Congo is shaped by decades of instability, authoritarian rule, and ethnic tensions. The overthrow of President Mobutu Sese Seko in 1997 by Laurent-Désiré Kabila marked the beginning of a period of intense conflict involving multiple armed groups and neighboring countries, including Uganda. The region has been subject to prolonged warfare, caused by competition over natural resources and deep-rooted ethnic divisions.

Humanitarian conditions have been dire from political destabilization. Millions of civilians have been displaced, and 6 million killed in the First and Second Congo wars. Reports of human rights abuses, including massacres, sexual violence, and forced recruitment of child soldiers. The fighting has led to a humanitarian crisis marked by starvation, disease, and the collapse of basic services.



Efforts to broker peace, such as the Lusaka Ceasefire Agreement of 1999, have been only partially successful, as fighting and instability persist. The ongoing conflict has destabilized the Great Lakes region, posing serious challenges to peace and security in Central Africa.

## **Legal Framework**

**Jurisdiction of the court:** The Democratic Republic of the Congo accepted the jurisdiction of the International Court of Justice (ICJ) through a declaration dated 8 February 1989. In accordance with Article 36(2) of the ICJ Statute, this declaration recognizes the Court's compulsory jurisdiction without a special agreement over legal disputes with other states that have accepted the same obligation. The scope includes disputes related to treaty interpretation, questions of international law, the existence of facts constituting breaches of international obligations, and the nature or extent of reparations for such breaches.

- **UN Charter**

- Article 2(4): Prohibition on the use of force against the territorial integrity or political independence of another state. “ All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”
- Article 2(7): Principle of non-intervention in domestic affairs.

- Article 51: Right of self-defense, where states have the inherent right to individual or collective self-defense if attacked, until the UN Security Council takes action to maintain peace. Any self-defense measures must be reported to the Security Council and do not limit its authority to restore international peace and security.

- **Customary International Law**

- Sovereignty and territorial integrity of states: under international law, sovereign states have a right to defend their borders and all territory within them from another state.
- Prohibition of aggression and occupation: crime of aggression means “the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations”, in which a perpetrator either political or military leader, involved in the planning, preparation, initiation or execution of such a State act of aggression instituting the illegal use of force between States can be subject to the Court’s jurisdiction.
- Duty of non-intervention: The UN Charter forbids states from employing force or interfering in the domestic or foreign matters of other sovereign nations.

- **International Humanitarian Law (IHL)**

- **Hague Regulations (1907):** Forbids the use of force or interference in domestic or foreign matters of other sovereign nations
- **The Geneva Convention is directed to the Protection of Civilians in times of war.**
  - **Article 3:** In non-international armed conflicts within a party's territory, all parties are required to apply certain minimum humanitarian protections. These include prohibitions on violence to life and person, taking hostages, and outrages upon personal dignity.. The wounded and sick shall be collected and cared for; an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.
  - **Article 4:** Protection of civilians who at any time and in any situation during a conflict or occupation, are under the control of a party to the conflict or occupying power of which they are not citizens.
- **International Human Rights Treaties**
  - **International Covenant on Civil and Political Rights (ICCPR, 1966):** Right to life, prohibition of torture, fair trial guarantees.
  - **Convention on the Rights of the Child (CRC, 1989):** Recruitment and use of child soldiers. In which parties to the conflict shall refrain from recruiting children under the age of 15 years into their armed forces
  - **African Charter on Human and Peoples' Rights (1981):** Regional obligations binding on

both Uganda and DRC, in which a human being shall be entitled to respect for their life and integrity.

### **Key Legal Principles:**

- **Use of Force & Sovereignty:** The prohibition on the use of force is a peremptory norm (jus cogens). Uganda's military intervention in the DRC was found to breach Congo's sovereignty and territorial integrity.
- **Non-Intervention (Customary International Law):** States are prohibited from intervening in the internal affairs of another sovereign state, including by supporting armed groups. The Court found Uganda in violation for backing rebel forces in eastern Congo.
- **Occupation & International Humanitarian Law:** Uganda to be the occupying power in parts of the DRC; therefore, there are obligations under the 1907 Hague Regulations and the Fourth Geneva Convention to ensure public order, protect civilians, and prevent violations. Failure to control Ugandan troops' conduct, including looting and abuses, made Uganda internationally responsible.
- **Human Rights Obligations:** Uganda, as an occupying power, has to respect human rights treaties extra-territorially. Violations of such include killings, torture, and the use of child soldiers, breaching both human rights law and IHL.
- **Erga Omnes Obligations:** Respect for sovereignty, the prohibition of the use of force, and core IHL rules

are obligations owed to the international community as a whole.

- **State Responsibility & Reparations :** A state committing internationally wrongful acts owes full reparations (restitution, compensation, satisfaction). The Court may quantify liability to cover loss of life, property damage, and natural resource exploitation.

## Key Issues for Consideration

### Key Issues for Consideration

- **Jurisdiction:** Does the International Court of Justice have jurisdiction to hear the dispute under Article 36(2) of its Statute?
- **Use of Force & Sovereignty:** Do the DRC's claims of armed aggression by Ugandan troops on Congolese territory violate the territorial integrity of the DRC, impose a threat to peace and security in central Africa in general and in the Great Lakes region in particular, admissible before the Court? Was Uganda's military presence in the DRC consistent with the right of self-defense under Article 51 of the UN Charter? Did Uganda violate the DRC's sovereignty and territorial integrity by its military actions?
- **Non-Intervention:** Did Uganda breach the principle of non-intervention by supporting armed groups operating in the DRC?

- **Human Rights Obligations:** Was Uganda bound to respect international human rights treaties extraterritorially in the areas under its control in the DRC?
- **International Humanitarian Law:** Did Uganda's armed forces commit violations of international humanitarian law during their operations in the DRC? Was Uganda responsible for looting, exploitation of natural resources, and abuses by its troops and affiliated groups?
- **State Responsibility:** Is Uganda internationally responsible for wrongful acts committed by its armed forces and by armed groups it supported? To what extent must Uganda provide reparations for the injury caused to the DRC?

## Possible Legal Arguments:

- **Applicant (Democratic Republic of the Congo ) – Likely Arguments:** Ugandan troops unlawfully crossed the eastern frontier of the DRC and occupied Goma and Bukavu. On 9 August 1998, two Ugandan army columns violated the territorial integrity of the DRC; a breach of Article 2(4) of the UN Charter and customary international law prohibiting aggression. Massacres and Killings of Civilians were on 24 August 1998, over 856 civilians were massacred in Kasika and Mwenga (Sud-Kivu Province). On 31 Dec 1998 – 1 Jan 1999, 633 civilians were massacred in Makobola, in which victims were primarily women and children, demonstrating attacks on defenseless persons. Sexual Violence and Rape; Numerous cases of rape of women

and children, including mass rapes in Kasika (29 August 1998) and Bukavu (22 September 1998). The Targeting of Human Rights Defenders and Arbitrary Detentions; Abductions, arrests, and killings of human rights activists in Bukavu and other areas. Looting and exploitation of natural resources: Systematic looting of public and private property, including sabotage of Kalemie port and dismantling of Filtisaf factories and removal of equipment, goods, and private assets. Forcing out Humanitarian Organizations: Ugandan troops expelled international humanitarian organizations (UNHCR, ICRC, UNICEF, WHO, MSF) from Orientale Province.

- **Respondent ( Uganda ) – Likely Arguments:**

Since 1994, Uganda has suffered continuous armed attacks from insurgent groups based in eastern Congo, including the following groups of the ADF, LRA, UNRF II, FUNA, WNBF, and NALU, all operating with the support or tolerance of successive Congolese governments (Mobutu, Laurent Kabila, Joseph Kabila). Having obtained the consent of the DRC Government, in May 1997, Ugandan troops entered eastern Congo at the invitation of the DRC government to combat insurgents. This was reaffirmed in a Protocol of 27 April 1998, signed by both governments, authorizing joint operations against anti-Uganda insurgents. Uganda's initial military presence was therefore lawful, consensual, and cooperative. Right of Self-Defense; once the DRC allied itself with insurgent groups and Sudan (hostile to Uganda), Uganda faced a combined force of 15,000 fighters, including 2,500 Sudanese soldiers.

Thereby, an exercise of its inherent right of self-defense under Article 51 of the UN Charter, necessary to protect its sovereignty and civilians. Compliance with the Lusaka Ceasefire Agreement (1999) that recognized Uganda's security concerns and Uganda's right to maintain troops in Congo pending disarmament of insurgents. Held no territorial ambition in the DRC; Uganda has never claimed Congolese territory, nor disputed the recognized border. Burden of Proof and reliability of evidence, in which Uganda challenges the DRC's allegations of massacres, rapes, and looting as unsupported and unsubstantiated.

## Guiding Questions

- **Consent:** Did the DRC validly consent to the presence of Ugandan troops in its territory in 1997–1998, and if so, did that consent remain in effect?
- **Occupation:** Did Uganda's military presence in eastern DRC constitute an occupation under international humanitarian law (Hague Regulations and Geneva Conventions)?
- **Attribution:** To what extent are acts committed by armed groups (e.g., Banyamulenge, ADF) attributable to Uganda for international responsibility?



- **Exploitation of Natural Resources:** Did Uganda unlawfully exploit or facilitate the exploitation of natural resources in the DRC, and does this give rise to reparations under international law?

## Further Readings

- Memorial of the Democratic Republic of the Congo and the Counter-Memorial of Uganda: [Armed Activities on the Territory of the Congo \(Democratic Republic of the Congo v. Uganda\)](#)

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## Issue 2: Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)

The Republic of South Africa applied on 29 December 2023, invoking the 1948 Genocide Convention to allege that Israel's military operations in the Gaza Strip have been "committed with the intent ... to destroy Palestinians in Gaza" as part of the Palestinian national group. South Africa asked the Court to order Israel to "immediately suspend its military operations in Gaza" as a provisional measure. Israel has quickly rejected the allegations as baseless, with Prime Minister Netanyahu calling the genocide claim "outrageous" and insisting that its actions are legitimate self-defense against Hamas. This case, officially styled *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, will likely involve years of proceedings after initial provisional-measures hearings early in 2024.

**Timeline and Context:** South Africa's case arises against the backdrop of the October 2023 Gaza war. Key events include:

- **7 Oct 2023:** Hamas-led fighters attacked Israel (killing roughly 1,200 people and taking hostages), prompting Israeli military operations in Gaza
- **29 Dec 2023:** South Africa filed its ICJ application (pursuant to Article IX of the Genocide Convention), accusing Israel of state-led genocide in Gaza
- **11–12 Jan 2024:** The Court held hearings on South Africa's request for provisional measures (interim orders).
- **26 Jan 2024:** The ICJ indicated provisional measures. By a vote of 13–2, it ordered Israel to take “all measures within its power” to prevent genocidal acts (e.g. killing and destroying conditions of life of Palestinians), to punish genocidal incitement, and to allow urgent humanitarian aid. The Court notably did not require a ceasefire, only mandated humanitarian relief (reflecting a compromise)
- **28 Mar 2024:** Upon South Africa's request, the ICJ unanimously ordered Israel to ensure unhindered delivery of basic food and aid throughout Gaza, observing that “famine is setting in” for civilians
- **24 May 2024:** The Court issued another order (13–2 vote) specifically concerning Rafah, reaffirming all prior measures and explicitly halting the Israeli military offensive in Rafah. It also ordered Israel to keep the Rafah border crossing open for vital assistance and

to allow UN fact-finding missions access. Israel later disputed whether this truly required it to stop the Rafah assault.

- **July 2025:** Brazil announced it will intervene in support of South Africa. Other states (Spain, Turkey, Colombia, etc.) have signaled intentions to join the case on South Africa's side.

### **Relevant Actors:**

- **Applicant:** Republic of South Africa – representing itself and alleging violations of the Genocide Convention by Israel. South African officials (President Ramaphosa, Foreign Minister Pandor) compare Israeli policy to apartheid and frame Gaza attacks as potential genocide.
- **Respondent:** State of Israel – denies genocide, contends it is acting in self-defense. The Israeli government (PM Netanyahu and Foreign Ministry) calls South Africa's charges a "blood libel" and an abuse of international justice. Israel emphasizes that its military actions target Hamas militants and that it takes measures to avoid civilian harm.
- **International Court of Justice:** 15 permanent judges (plus each party's ad hoc judge) who hear the case at the Peace Palace in The Hague. Judges have already voted on interim measures (with 13 in favor, 2 dissenting).

- **Palestinian people:** The civilian population of Gaza (over 2 million people, primarily Muslims of Arab ethnicity). They are the protected group at issue, defined by nationality or ethnicity under the Convention.
- **Other States:** Brazil (intervenor supporting South Africa), as well as other states seeking intervention on South Africa's side (Spain, Turkey, Colombia, etc.). The United States has publicly opposed South Africa's case and noted the ICJ's interim orders do not constitute a finding of genocide.
- **Other actors:** The International Criminal Court (ICC) is concurrently investigating crimes in Gaza at the individual level (a separate process). Human rights organizations (Amnesty, Human Rights Watch) are closely monitoring compliance. The United Nations Security Council and General Assembly are following developments (the UN Secretary-General had previously called for a ceasefire, which the ICJ has been asked not to impose).

**Political and Humanitarian Context:** The legal dispute is entangled in the broader Israeli–Palestinian conflict. Gaza has endured decades of blockade and periodic conflict. The October 2023 war caused massive destruction. Palestinians report over 26,000 killed and the vast majority displaced after months of bombing. Virtually all of Gaza's population is now displaced or in flight. After the ICJ's initial orders, Human Rights Watch and Amnesty warned Israel was ignoring its duties: "Israel created one of the worst humanitarian crises in the world" and has "disregarded its obligation as the occupying power to ensure

the basic needs of Gazans”. Reports documented severe shortages of food, water, medicine and fuel, with children facing acute malnutrition. South Africa and allied states argue these conditions amount to “life of conditions calculated to bring about [the group’s] physical destruction” – one of the genocidal acts listed in Article 2 of the Convention.

Israel strongly disputes any claim of intent to destroy Palestinians. It emphasizes that Hamas’s October attack on Israeli civilians (murder and hostage-taking) was a “real genocide” by the militants. Israel states that any harm to Gazan civilians has been collateral to a lawful defense campaign against a hostile military target, and it has purportedly made efforts to allow humanitarian aid (opening crossings on its terms, warning civilians to leave combat zones). The Israeli response to the ICJ order was to say it would continue the offensive, rejecting the genocide label as “outrageous” while insisting on its right to self-defense. In sum, the backdrop is an intense, asymmetric conflict with high civilian tolls; South Africa frames Israel’s conduct as state-perpetrated genocide, while Israel frames it as disproportionate war conduct that violates other international norms at worst, but not genocide.

## Legal Framework

**Genocide Convention:** The case is brought under the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide*. Both Israel and South Africa are parties (Israel acceded in 1950, South Africa in 1998), and neither has relevant reservations. Important provisions include:

- **Article II (Definition of Genocide):** Genocide means any of the following acts committed with intent



to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) causing serious bodily or mental harm; (c) deliberately inflicting conditions of life calculated to bring about physical destruction in whole or part; (d) imposing measures to prevent births; (e) forcibly transferring children. (Articles III–V criminalize attempt, conspiracy, and complicity.)

- **Article I (Prevention and Punishment):** States “confirm that genocide ... is a crime under international law which they undertake to prevent and to punish”. They are obligated to enact domestic laws to give effect to the Convention and to prosecute or extradite genocide suspects. The obligations to “prevent” genocide are considered obligations *erga omnes* (owed to the international community as a whole)
- **Article IX (Jurisdiction):** Confers jurisdiction on the ICJ “to hear and decide disputes between the Contracting Parties relating to the interpretation, application or fulfillment of this Convention.” By ratifying the Convention, states accept this compromissory clause. In practice, South Africa invoked Article IX. Israel contests jurisdiction, arguing that South Africa did not first submit the dispute through negotiations (see Issues below).

**Other Treaties and UN Charter:** While the case hinges on the Genocide Convention, other legal instruments are relevant in context:

- **UN Charter (1945):** Article 51 recognizes a state’s right of self-defense if an armed attack occurs. Israel

may invoke Article 51 in defense, but the Genocide Convention contains no self-defense exception – genocide is prohibited under any circumstances.

- **International Humanitarian Law (IHL):** The 1949 Geneva Conventions (especially GC IV on civilians) and their Additional Protocols govern the conduct of hostilities and occupation. Israel points to its compliance with IHL (distinction, proportionality, care for civilians). South Africa alleges Israel violated humanitarian law (blockade, forced displacement, targeting of civilians) as evidence of genocidal policy, though only the Genocide Convention claims are before the Court.
- **Other Genocide Cases:** Past ICJ jurisprudence offers precedents. In *Bosnia and Herzegovina v. Serbia and Montenegro* (2007), the Court found that Serbia had failed to prevent genocide at Srebrenica, emphasizing that genocide requires proof of “specific intent” (*dolus specialis*). The Srebrenica case affirmed that even extremely grave atrocities are not “genocide” absent intent. Similarly, the Court has stressed that genocide is a “narrow” crime defined by intent, unlike war crimes or crimes against humanity, which require no special intent. (Even if Israel’s actions included war crimes, the ICJ in this case cannot adjudicate war crimes directly, since jurisdiction is based only on the Genocide Convention.)
- **Recent ICJ Requests:** Earlier in 2022, *Ukraine v. Russia (Genocide Convention)* saw the Court grant provisional measures after Ukraine accused Russia of fabricating genocide claims. That case shows the ICJ

can order immediate relief (as here). The Court has also ordered measures in other humanitarian crises (e.g., *Costa Rica v. Nicaragua* on the environment). Notably, ICJ provisional orders are binding on parties (no appeal possible) but lack enforcement mechanisms.

### **Key Legal Principles:**

- **Specific Intent (Dolus Specialis):** Genocide requires proof that actions were taken with the deliberate intent *to destroy* the protected group, in whole or in part. This is a stringent standard. Intent may be inferred from a coherent pattern of acts and statements if no other plausible explanation exists.
- **Erga Omnes Obligations:** The ICJ has held that obligations to prevent genocide are owed to the international community (*erga omnes*, giving any State Party standing to invoke the Court's jurisdiction. South Africa relies on this principle to have "standing" even though it is not directly affected like a party whose people are allegedly targeted. The Court's Order noted that under the Genocide Convention, South Africa *prima facie* has the right to bring the claim as a party to the treaty.
- **No Exemptions:** International law does not permit genocide even in war or self-defense. There are no justified exceptions in the Genocide Convention. (By contrast, laws of war do allow use of force in self-defense, but such force must still comply with IHL.)

- **Provisional Measures (ICJ Statute Art. 41):** To justify emergency orders, a party must show plausible rights at stake, a link between those rights and the requested measures, urgency, and risk of irreparable harm. The Court found South Africa's claims sufficiently plausible to warrant provisional relief, but stressed that "plausible" is not the same as finally proved.

## Key Issues for Consideration

- **Jurisdiction and Standing:** Does the ICJ have jurisdiction under Article IX? Is there a "legal dispute" between South Africa and Israel over the Genocide Convention obligations? (Israel argues no dispute was presented before filing; South Africa argues the existence of ongoing genocidal conduct creates a dispute.) Can South Africa claim standing based on erga omnes obligations to prevent genocide?
- **Definition of Genocide:** Are the Palestinians a national, ethnic, racial, or religious group protected by the Convention? Have the alleged acts (killings, violence, blockade, displacement, etc.) occurred with the specific intent to "destroy" part of that group? In particular, do the facts demonstrate the requisite genocidal intent?
- **Acts and Omissions:** Which actions or omissions by Israel (military strikes on schools/hospitals/civilians, siege, displacement orders, destruction of infrastructure, restricting births or food) fall under the Convention's Article II list? For example, could the blockade

and aid denial constitute “conditions of life... calculated to bring about physical destruction”?

- **Violation of Genocide Convention Obligations:** Has Israel violated Article II (the prohibited acts) with intent? Has Israel breached Article I by failing to prevent genocide (e.g. by its own forces or by incitement)? Can Israel invoke any justification (e.g., necessity or self-defense) to excuse its compliance?
- **Evidence and Proof:** What evidence is needed to establish genocidal intent? Will the Court consider statements by Israeli officials, patterns of military operations, expert or fact-finding reports? How will the Court distinguish between civilian casualties from war and intentional targeting?
- **Provisional Measures:** Are interim orders justified? Does the risk of “irreparable prejudice” to Palestinian rights warrant immediate relief? If so, are the measures sought by South Africa (e.g., an immediate ceasefire or suspension of operations) too broad under ICJ practice, versus the more limited measures the Court has granted?
- **Standard of Review:** How will the Court assess the plausibility of South Africa’s claims at the provisional stage? (The Court clarified it was not deciding the merits, only that the claims were plausible enough to warrant measures.) What standard will ultimately apply at the merits stage?

- **Impact of Other Law:** How do the UN Charter and IHL obligations intersect with the Convention? Although the Court must focus on the Genocide Convention, could issues like Israel's right to self-defense or Gaza's occupation status inform the interpretation of obligations?
- **Enforcement:** What is the legal effect of ICJ orders, given the lack of enforcement power? What political or diplomatic weight might the rulings have?

## Possible Legal Arguments

- **Applicant (South Africa) – Likely Arguments:** South Africa will argue that Israel's campaign has included precisely the kinds of acts prohibited by the Convention with genocidal intent. For example, it will cite massive civilian casualties (including children), large-scale displacement, destruction of food, water, and health infrastructure, and heavy bombardment of densely populated areas. These, it contends, fit Article II's list (killings, serious harm, infliction of lethal conditions of life) directed at Palestinians as a national group. South Africa will emphasize statements from Israeli leaders (calling for annihilation, using terms like "Hanegev moment" etc.) as evidence of intent. It will argue that the blockade and denial of aid constitute "conditions of life ... calculated to bring about [the group's] physical destruction". South Africa will highlight that international actors (UN agencies, NGOs) have warned that Gazans face famine and near-total destruction, showing irreparable harm. It will stress Israel's obligations as an occupying power and Genocide

Convention signatory to prevent genocide (Article I) – a duty that cannot be waived. On jurisdiction, South Africa will assert that Article IX gives the Court authority and that obligations to prevent genocide are *erga omnes*, giving it standing to sue. South Africa’s counsel may cite past ICJ findings (e.g., Bosnia v. Serbia) on state responsibility to prevent genocide and emphasize that it needs only to show a plausible right to relief at this stage.

- **Respondent (Israel) – Likely Arguments:** Israel will counter that there is no legal basis for South Africa’s claims. On jurisdiction, Israel may argue that no “dispute” exists because South Africa never formally communicated grievances before court action. Substantively, Israel will insist its military operations are lawful exercises of self-defense against a terrorist threat. It will argue that all deliberate targeting was aimed at Hamas militants or infrastructure, not civilians as a group. Any civilian deaths or hardships are tragic collateral damage without genocidal intent. Israel’s representatives have already rejected the genocide charge as a “despicable exploitation” and “blood libel.” Legally, Israel will emphasize that genocide’s specific intent is extremely difficult to prove; mere intensity of violence or casualties does not establish the unique intent to destroy a group.

Israel will also stress its efforts to allow aid (opening crossings), warning civilians to leave combat zones, and adherence to the laws of war, to rebut claims it deliberately sought to destroy Gazans. It will point to Hamas’s own war crimes (holding hostages, using human shields) to argue that any pattern of

destruction was driven by military necessity against an armed enemy entrenched among civilians. Regarding provisional measures, Israel will argue that halting military operations would hinder its defense obligations and could provoke more attacks. Its legal team has characterized South Africa's case as an abuse of the Genocide Convention, noting that Israeli law (military necessity) and security concerns do not absolve it of international legal obligations, but do contextualize its conduct.

## Guiding Questions

- What specific actions and intent must be proven to satisfy the Genocide Convention's definition of genocide? How do these differ from war crimes or crimes against humanity?
- Do Israel's reported attacks on Gaza (including killing of civilians, destruction of property, siege, and blockade) fall within the Article II acts, and is there evidence of the required intent to destroy Palestinians as a group?
- Under Article I, what steps is a state required to take to prevent genocide? Has Israel's conduct (and omissions) satisfied or violated that duty?
- Is there a legal "dispute" between South Africa and Israel for ICJ purposes, given Israel's contention that no grievance was formally presented? How does the concept of erga omnes obligations affect South Africa's



standing?

- How do the ICJ's criteria for provisional measures (plausibility, urgency, irreparable harm) apply in this case? What threshold must South Africa meet to justify interim orders?
- Can Israel invoke self-defense under Article 51 of the UN Charter or necessity to justify measures that South Africa calls genocidal? Does the Genocide Convention allow such defenses?
- What kind of evidence (e.g., UN and NGO reports, intercepted communications, military directives, eyewitness testimony) is needed to establish the required genocidal intent, and who bears the burden of proof?
- How have other international courts dealt with genocidal intent (e.g., *Bosnia v. Serbia* 2007, ICTY rulings)? What lessons or analogies might apply?

## Bibliography and Further Reading

- **Genocide Convention (1948):** *Convention on the Prevention and Punishment of the Crime of Genocide*, UNTS vol. 78, p. 277 (1948), Articles I–III, II–III, IX. (Entry in UN Treaty Collection.)
- **United Nations Charter (1945):** Especially Article 51 on self-defense. (Available in UN Charter.)
- **ICJ Case Materials (South Africa v. Israel):** *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza*

*Strip (South Africa v. Israel)* – ICJ (2023–2025). See ICJ press releases and orders (29 Dec 2023 application, Order of 26 Jan 2024, Order of 28 Mar 2024, Order of 24 May 2024). The ICJ case file (No. 192) on the ICJ website includes texts of filings and orders.

- *ICJ – Bosnia and Herzegovina v. Serbia and Montenegro (Genocide) (Judgment of 26 Feb. 2007)\** – The Court’s decision on jurisdiction and merits, holding Serbia responsible for failing to prevent genocide at Srebrenica (but not directly responsible for committing genocide). See especially paragraphs on the legal definition of genocide and state obligations.
- **ICJ – *Allegations of Genocide in Ukraine v. Russian Federation* (2022)** – Order of 16 Mar. 2022 (Ukraine’s provisional measures request under the Genocide Convention).
- **International Criminal Tribunal – *Prosecutor v. Krstić* (2001)** – ICTY Trial Judgment (Srebrenica Genocide). Defines genocide and intent, since used by the ICJ as precedent.
- **International Criminal Tribunal – *Prosecutor v. Akayesu* (1998)** – ICTR Trial Judgment (Rwandan Genocide). Founding case on interpreting “genocide,” including sexual violence as genocide.
- **United Nations General Assembly Resolutions:** Res. 96(1) (1946) – Genocide as a crime under international law.

- **ICRC, *International Review of the Red Cross* (Vol. 90, No. 871, 2008)** – Commentary on the Genocide Convention (Arnold W. Siumanho, “Article I–VI”, etc.).
- **Human Rights Watch / Amnesty International Reports:** 2024 reports on Gaza (e.g., HRW “Israel Defying ICJ Order”, Amnesty “Callous Indifference” – see citations [21]). These provide documentation of humanitarian conditions.
- **Lawfare (2024):** Chimène Keitner, “Understanding South Africa v. Israel at the ICJ,” *Lawfare* (16 Jan. 2024). Explains the parties’ positions and key legal issues
- **Chatham House (2024):** Jack McDonald and Samir Puri, “South Africa’s genocide case against Israel: The ICJ explained,” *Chatham House Insight* (Jan. 2024). Provides detailed background and analysis (including ICJ orders and legal commentary)
- **BIICL (2024):** Jack Kenny, “Reflections on the South Africa v. Israel Case at the ICJ,” *BIICL* (Mar. 2024).
- **Reuters / AP News:** Associated Press, “South Africa accuses Israel of genocide at ICJ” (Dec. 29, 2023); Reuters, “World Court stops short of Gaza ceasefire” (27 Jan 2024; “World court orders Israel to take action to address Gaza famine” (28 Mar 2024); “ICJ orders halt to Rafah assault” (24 May 2024; “Brazil to join South Africa’s genocide case” (23 Jul 2025). These news articles summarize key events and orders.

- **International Committee of the Red Cross (ICRC) Commentary on the Geneva Conventions:** For context on occupation law (not Genocide Convention but relevant to Gaza).
- **Scholarly Articles:** Eg, LSE Rule of Law blog, law journals, and official commentaries on genocide law. (See works by William Schabas, Shahrbanou Tadjbakhsh, etc., on the legal meaning of genocide.)