



ICJ Proceedings: South Africa vs. Israel

This editorial is based on [“The issue of genocide and the world court”](#) which was published in The Hindu on 25/01/2024. The article delves into the legal action taken by South Africa against Israel at the ICJ concerning the Gaza war. The case involves accusations of war crimes, human rights abuses, and genocidal actions attributed to the State of Israel.

For Prelims: [International Court of Justice](#), [Genocide Convention](#), India's Engagement With ICJ, Permanent Court of International Justice, [Second World War](#), [Rome Statute of the International Criminal Court](#), [Gaza War](#), [Israel](#), [Palestine](#), [Universal Declaration of Human Rights \(UDHR\)](#)

For Mains: Genocide and its repercussions, International measures, Measures adopted by India to combat genocides.

[Human rights, genocide, and war crimes](#) are interconnected concepts within the broader framework of international law, specifically focusing on protecting individuals and groups during times of conflict or crisis. Human rights serve as the foundation for the prevention of genocide and war crimes. These rights are enshrined in various international treaties and declarations, such as the [Universal Declaration of Human Rights \(UDHR\)](#).

South Africa instituted proceedings against Israel in the [International Court of Justice \(ICJ\)](#). In its application, the former argued that the manner in which Israel was conducting its military operations in [Gaza](#) violated the [International Convention on the Prevention and Punishment of the Crime of Genocide i.e., Genocide Convention](#).

What is Genocide?

▪ About:

- As per [UN](#), genocide is the intentional and systematic destruction of a particular ethnic, racial, religious, or national group.
- This destruction can occur through a variety of means, including mass killing, forced relocation, and the imposition of harsh living conditions that result in widespread death.

▪ Conditions:

- UN says a crime of genocide includes two main elements:
 - **Mental Element:** The intent to destroy, in whole or in part, a national, ethnic, racial or religious group.
 - **Physical Element:** It includes the following acts, enumerated exhaustively:
 - Killing members of the group.
 - Causing serious bodily or mental harm to members of the group
 - Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

What is Genocide Convention?

▪ About:

- The Convention on the Prevention and Punishment of the Crime of Genocide is an instrument of international law that codified for the first time the crime of genocide.
 - It was the first human rights treaty adopted by the UN General Assembly on 9 December **1948**.
- It signified the international community's commitment to 'never again' after the atrocities committed during the [Second World War](#).
- Its adoption marked a crucial step towards the development of international human rights and international criminal law as we know it today.

▪ Features:

- According to the Genocide Convention, genocide is a crime that can take place **both in time of war as well as in time of peace**.
 - This definition of the crime of genocide has been widely adopted at both national and international levels, including in the [1998 Rome Statute of the International Criminal Court \(ICC\)](#).
- Importantly, the Convention establishes on **State Parties the obligation to take measures** to prevent and to punish the crime of genocide, including by enacting relevant legislation and punishing perpetrators, "whether they are constitutionally responsible rulers, public officials or private individuals" (Article IV).
 - This obligation, in addition to the prohibition of committing genocide, have been considered as norms of international customary law and therefore, binding on all States, **whether or not they have ratified the Genocide Convention**.
- **India has ratified this convention.**

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THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

1 Equality

Everyone is born free and equal in dignity and with rights.



2 Freedom from Discrimination

You should never be discriminated against for any reason.



3 Life, Liberty and Security

Everyone has the right to life, liberty and personal security.



4 Freedom from Slavery

No-one shall be held in slavery or servitude.



5 Freedom from Torture

No-one shall be subjected to torture or to cruel or degrading treatment.



6 Recognition as Person Before Law

You have the right to be treated as a person in the eyes of the law.



7 Equality Before the Law

You have the right to be treated by the law in the same way as everyone else.



8 Remedy by Tribunal

You have the right to remedy by competent tribunal.



9 Freedom from arbitrary arrest

No-one shall be subject to arbitrary arrest, detention or exile.



10 Fair Public Hearing

You have the right to a fair public hearing.



11 Innocent until Proven Guilty

You have the right to be considered innocent until proven guilty.



12 Privacy

No-one has the right to interfere with your privacy, family, or home.



13 Freedom of Movement

You have the right to freedom of movement in and out of the country.



14 Asylum

You have the right to seek asylum in other countries from persecution.



15 Nationality

You have the right to a nationality.



16 Marriage and Family

You have the right to marriage and to raise a family.



17 Property

You have the right to own property.



18 Freedom of Belief

You have the right to freedom of belief and religion.



19 Freedom of Opinion

You have the right to freedom of opinion and expression.



20 Freedom of Assembly

You have the right to freedom of peaceful assembly and association.



21 Take Part in Government

You have the right to take part in the government of your country.



22 Social Security

You have the right to social security.



23 Work

You have the right to desirable work and to join trade unions.



24 Rest and Leisure

You have the right to rest and leisure.



25 Adequate Living Standard

You have the right to a decent life, including food, clothing, housing, and medical care.



26 Education

You have the right to education.



27 Participate in Cultural Life

You have the right to Participate in the Cultural Life of Community.



28 Social Order

You have the Right to a Social Order that Articulates this Document.



29 Mutual Responsibility

We all have a responsibility to the people around us and should protect their rights and freedoms.



30 Freedom from State or Personal Interference

There is nothing in this declaration that justifies any person or country taking away the rights to which we are all entitled.



HRE USA

Human Rights Educators USA

A national network dedicated to building a culture of human rights.

HUMAN RIGHTS EDUCATION is a lifelong process of teaching and learning that helps individuals develop the knowledge, skills, and values to fully exercise and protect the human rights of themselves and others; to fulfill their responsibilities in the context of internationally agreed upon human rights principles; and to achieve justice and peace in the world. **HRE USA** strives to promote human dignity, justice, and peace by cultivating an expansive, vibrant base of support for Human Rights Education (HRE) in the United States.

What is the 'South Africa vs Israel Case' at ICJ?

▪ S Africa's Allegations:

- The killing of Palestinians in Gaza in large numbers, especially children; destruction of their homes; their expulsion and displacement by Israeli forces.
- It also includes blockade on food, water and medical assistance to the strip; the imposition of measures preventing Palestinian births by destroying essential health services crucial for the survival of pregnant women and babies.

▪ S Africa's Immediate Demands:

- South Africa is requesting that the ICJ move urgently to prevent Israel from committing further crimes in the strip using "provisional measures" – essentially an emergency order that can be applied even before the main case begins.
- It argues that provisional measures are necessary "to protect against further, severe and irreparable harm to the rights of the Palestinian people under the Genocide Convention,

which continue to be violated with impunity”.

▪ **Israel’s Stand:**

- Israel, which has lambasted S Africa for bringing the case, has promised to defend itself at the court. Israeli officials have called the case “preposterous” and say it constitutes a “blood libel”.
- Israel argues that the killing of more than 23,000 people in Gaza is in self-defence and will present proudly our case of using self-defence under our most inherent right under international humanitarian law.

▪ **Stand of International Community:**

- Several countries and organisations have backed South Africa’s suit. Malaysia, Turkey, Jordan, Bolivia, the Maldives, Namibia, Pakistan, Columbia, and members of the [Organisation of Islamic Countries \(OIC\)](#) are among them.
- The [European Union](#) has been silent, but Israel has seen support from its number one backer and weapons supplier, the US which states - “allegations that Israel is committing genocide are unfounded, but Israel must prevent civilian harm and investigate allegations of humanitarian crimes.”
 - The UK, and France oppose the case, with France even hinting at non-compliance if genocide findings are issued against Israel.

What are the Different Concerns in the ‘S Africa vs Israel Case’?

▪ **ICJ as One Forum:**

- Questions arise about the one-sided focus on Israel, but non-state actors like Hamas can't be brought to the ICJ.
- ICC deals with individuals, and the situation has been referred for investigation.

▪ **Global Split:**



- The divide among nations, tracking colonial and non-colonial histories, adds complexity where Bangladesh and Jordan support South Africa, while Germany backs Israel.
 - Germany's stance, previously supporting a broad reading of the Genocide Convention, raises questions about its current position in the South Africa vs. Israel case.
- The split reflects historical power dynamics in the formation of international law.
 - The proceedings are seen as challenging the legitimacy of international law itself. France's belligerent statements contribute to this perception.

Note

- ICJ is separate from the [International Criminal Court \(ICC\)](#), which tries individuals in criminal cases, where Israel too can invoke legal actions against [Hamas](#) and its members.

Differences between the ICJ and the ICC

The International Court of Justice (ICJ) and the International Criminal Court (ICC) are two courts with different functions within the international legal system.

	 ICJ International Court of Justice	 ICC International Criminal Court
Established	1945	2002
UN-relationship	Highest court of the UN	Not part of the UN
Location	The Hague, the Netherlands	The Hague, the Netherlands
Jurisdiction	UN member-states	Individuals
Types of cases	Legal disputes between states and requests for advisory opinions on legal questions	Prosecutes individuals for the most serious crimes as per the Rome Statute
Appeals	No	Yes
Enforcement power	None - relies on the UN Security Council to uphold judgements, with permanent members having veto power	None - relies on cooperation from member states to enforce its decisions

What are the Laws and Regulations in India for Genocide?

- **International Conventions:**
 - India does not have any domestic law on genocide, even though it has **ratified the UN Convention on Genocide**.
 - India is a signatory to the UDHR and has ratified the International Covenant on Civil and Political Rights (**ICCPR**) and the International Covenant on Economic, Social and Cultural Rights (**ICESCR**).
- **Indian Penal Code (IPC):**
 - The [Indian Penal Code \(IPC\)](#) provides for the punishment of genocide and related crimes, and sets out the procedures for investigation, prosecution, and punishment.
 - Genocide has been defined as a crime under IPC Section 153B, which criminalizes acts that promote enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. with the intent to cause riots or commit acts of violence.
- **Constitutional Provisions:**
 - The Indian Constitution via [Article 15](#) provides protection against discrimination on the basis of religion, race, caste, sex, or place of birth;
 - [Article 21](#) guarantees the right to life and personal liberty etc.
- **Statutory Provisions:**
 - The [National Human Rights Commission \(NHRC\)](#) of India was established in 1993 under the [Protection of Human Rights Act \(PHRA\), 1993](#).
 - The act also provides for the establishment of State Human Rights Commissions.

What are the Ways to Prevent Genocides and War Crimes?

Genocide is not something that happens overnight or without warning. Genocide requires organisation and constitutes in fact a deliberate strategy and one that has been mostly carried out by governments or groups controlling the state apparatus. In 2004, on the tenth anniversary of the [Rwandan genocide](#), erstwhile UN Secretary-General **Kofi Annan** outlined a **five-point action plan for preventing genocide**:

▪ **Prevent Armed Conflict:**

- As genocide is most likely to occur during war, one of the best ways to reduce the chances of genocide is to address the root causes of violence and conflict: hatred, intolerance, racism, discrimination, tyranny, and the dehumanizing public discourse that denies whole groups of people their dignity and their rights.
- Addressing inequalities in access to resources constitutes a critical prevention strategy.

▪ **Protect Civilians:**

- When efforts to prevent conflict fail, one of the highest priorities must be to protect civilians. Wherever civilians are deliberately targeted because they belong to a particular community, there is a risk of genocide.
- Over the last decade, the [UN Security Council](#) has frequently expanded the mandate of [UN peacekeepers](#) so that they can physically protect civilians who are threatened with violence.

▪ **End Impunity through Judicial Action:**

- To deter people from committing crimes of genocide, those responsible for such crimes need to be brought to justice.
- Fighting impunity and establishing a credible expectation that the perpetrators of genocide and related crimes will be held accountable can effectively contribute to a culture of prevention.

▪ **Appointing Special Advisers:**

- The tragedies of Rwanda and the Balkans in the 1990s demonstrated, in the worst possible way, that the UN had to do more to prevent genocide.
- With this in mind, the Secretary General, in 2004, appointed Special Adviser on the Prevention of Genocide.
 - The Special Advisers collect information on situations where there may be a risk of genocide, war crimes, ethnic cleansing and crimes against humanity.

▪ **Swift Actions, including via Military Force:**

- When, where, and how to intervene militarily in domestic situations to prevent or respond to genocide or other mass atrocity crimes is to be decided by the Security Council, in accordance with the United Nations Charter.
- In 2005, at the United Nations World Summit, all countries formally agreed that, if peaceful methods are inadequate and if national authorities are “manifestly failing” to protect their populations from the mass atrocity crimes, then:
 - States should act collectively in a “timely and decisive manner,” through the UNSC and in accordance with the Charter of the UN.

Conclusion

- The legal proceedings initiated by South Africa against Israel in the ICJ have sparked intense global debate. The case revolves around allegations of genocide in Israel's military operations in Gaza, presenting a complex legal context. The outcome holds significance not only for mitigating the crisis in Gaza but also as a crucial test for the "rules-based international order." **The ICJ's decisions in the coming months will play a pivotal role in shaping perceptions of the international legal framework.**

Drishti Mains Question:

Discuss the interplay between genocide, war crimes, and human rights in international law, highlighting their relationships, legal frameworks, and the role of institutions like the International Court of Justice (ICJ).

UPSC Civil Services Examination, Previous Year Questions (PYQs)

Prelims

Q. Other than the Fundamental Rights, which of the following parts of the Constitution of India reflect/ reflects the principles and provisions of the Universal Declaration of Human Rights (1948)? (2020)

1. Preamble
2. Directive Principles of State Policy
3. Fundamental Duties

Select the correct answer using the code given below:

- (a) 1 and 2 only
(b) 2 only
(c) 1 and 3 only
(d) 1, 2 and 3

Ans: (d)

Mains

Q. Though the Human Rights Commissions have contributed immensely to the protection of human rights in India, yet they have failed to assert themselves against the mighty and powerful. Analysing their structural and practical limitations, suggest remedial measures. (2021)

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