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## Genocide in Gaza

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I am writing to flag a truly important document that should be widely circulated and read carefully by anyone interested in the ongoing Gaza War.

Specifically, I am referring to the 84-page “application” that South Africa filed with the International Court of Justice (ICJ) on 29 December 2023, accusing Israel of committing genocide against the Palestinians in Gaza.<sup>1</sup> It maintains that Israel’s actions since the war began on 7 October 2023 “are intended to bring about the destruction of a substantial part of the Palestinian national, racial and ethnic ... group in the Gaza Strip.” (1) That charge fits clearly under the definition of genocide in the Geneva Convention, to which Israel is a signatory.<sup>2</sup>

The application is a superb description of what Israel is doing in Gaza. It is comprehensive, well-written, well-argued, and thoroughly documented. The application has three main components.

**First**, it describes in detail the horrors that the IDF has inflicted on the Palestinians since 7 October 2023 and explains why much more death and destruction is in store for them.

**Second**, the application provides a substantial body of evidence showing that Israeli leaders have genocidal intent toward the Palestinians. (59-69) Indeed, the comments of Israeli leaders – all scrupulously documented – are shocking. One is reminded of how the Nazis talked about dealing with Jews when reading how Israelis in “positions of the highest responsibility” talk about dealing with the Palestinians. (59) In essence, the document argues that Israel’s actions in Gaza, combined with its leaders’ statements of intent, make it clear that Israeli policy is “calculated to bring about the physical destruction of Palestinians in Gaza.” (39)

**Third**, the document goes to considerable lengths to put the Gaza war in a broader historical context, making it clear that Israel has treated the Palestinians in Gaza like

caged animals for many years. It quotes from numerous UN reports detailing Israel's cruel treatment of the Palestinians. In short, the application makes clear that what the Israelis have done in Gaza since 7 October is a more extreme version of what they were doing well before 7 October.

There is no question that many of the facts described in the South African document have previously been reported in the media. What makes the application so important, however, is that it brings all those facts together in one place and provides an overarching and thoroughly supported description of the Israeli genocide. In other words, it provides the big picture while not neglecting the details.

Unsurprisingly, the Israeli government has labelled the charges a "blood libel" that "has no factual and judicial basis." Moreover, Israel claims that "South Africa is collaborating with a terror group that calls for the destruction of the state of Israel."<sup>3</sup> A close reading of the document, however, makes it clear that there is no basis for these assertions. In fact, it is hard to see how Israel will be able to defend itself in a rational-legal way when the proceedings begin. After all, brute facts are hard to dispute.

Let me offer a few additional observations regarding the South African charges.

**First**, the document emphasizes that genocide is distinct from other war crimes and crimes against humanity, although "there is often a close connection between all such acts." (1) For example, targeting a civilian population to help win a war – as occurred when Britain and the United States bombed German and Japanese cities in World War II – is a war crime, but not genocide. Britain and the United States were not trying to destroy "a substantial part" of, or all the people in those targeted states. Ethnic cleansing underpinned by selective violence is also a war crime, although it is also not genocide, an action that Omer Bartov, the Israeli-born Holocaust expert, calls "the crime of all crimes."<sup>4</sup>

For the record, I believed Israel was guilty of serious war crimes--but not genocide—during the first two months of the war, even though there was growing evidence of what Bartov has called "genocidal intent" on the part of Israeli leaders.<sup>5</sup> But it became clear to me after the 24-30 November 2023 truce ended and Israel went back on the

offensive, that Israeli leaders were in fact seeking to physically destroy a substantial portion of Gaza's Palestinian population.

**Second**, even though the South African application focuses on Israel, it has huge implications for the United States, especially President Biden and his principal lieutenants. Why? Because there is little doubt that the Biden administration is complicitous in Israel's genocide, which is also a punishable act according to the Genocide Convention. Despite his admission that Israel is engaged in "indiscriminate bombing," President Biden has also stated that "we're not going to do a damn thing other than protect Israel. Not a single thing."<sup>6</sup> He has been true to his word, going so far as to bypass Congress twice to quickly get additional armaments to Israel. Leaving aside the legal implications of his behavior, Biden's name – and America's name – will be forever associated with what is likely to become one of the textbook cases of attempted genocide.

**Third**, I never imagined I would see the day when Israel, a country filled with Holocaust survivors and their descendants, would face a serious charge of genocide. Regardless of how this case plays out in the ICJ – and here I am fully aware of the maneuvers that the United States and Israel will employ to avoid a fair trial – in the future Israel will be widely regarded as principally responsible for one of the canonical cases of genocide.

**Fourth**, the South African document emphasizes that there is no reason to think this genocide is going to end soon, unless the ICJ successfully intervenes. It twice quotes the words of Israeli Prime Minister Benjamin Netanyahu on 25 December 2023 to drive that point home: "We are not stopping, we are continuing to fight, and we are deepening the fighting in the coming days, and this will be a long battle and it is not close to being over." (8, 82) Let us hope South Africa and the IJC bring a halt to the fighting, but in the final analysis the power of international courts to coerce countries like Israel and the United States is extremely limited.

**Finally**, the United States is a liberal democracy that is filled with intellectuals, newspaper editors, policymakers, pundits, and scholars who routinely proclaim their deep commitment to protecting human rights around the world. They tend to be highly vocal when countries commit war crimes, especially if the United States or any of its allies are involved. In the case of Israel's genocide, however, most of the human

rights mavens in the liberal mainstream have said little about Israel's savage actions in Gaza or the genocidal rhetoric of its leaders. Hopefully, they will explain their disturbing silence at some point. Regardless, history will not be kind to them, as they said hardly a word while their country was complicit in a horrible crime, perpetrated right out in the open for all to see.

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<https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf>

2

[https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1\\_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf)

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<https://www.timesofisrael.com/blood-libel-israel-slams-south-africa-for-filing-icj-genocide-motion-over-gaza-war/>

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<https://www.nytimes.com/2023/11/10/opinion/israel-gaza-genocide-war.html>

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