

Israel: Historic Ruling by the International Court of Justice

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The [ruling](#) against Israel at the International Court of Justice today is historic, notwithstanding that it fudged South Africa's request for a provisional order for a ceasefire. It supports the analysis of those international legal scholars who [said](#) that Israel was in trouble. I realise the spin machine is working at full spate and force to downplay the consequences of the judgment (cf the *New York Times* and *Washington Post*), but that is an ineffectual thumb in the dike. This is bad news for Israel.

Let me briefly count the ways. The court accepted that South Africa did have a basis for bringing this case to the court. It threw out Israel's contention that no real dispute existed between South Africa and Israel. It ruled that South Africa's claims that Israel was in breach of the Genocide Convention are plausible in that many of the acts "committed by Israel" appear "to be capable of falling" within the provisions of the Genocide Convention. Israel now, according to the most senior court in the world, stands plausibly accused of genocide and will be prosecuted.

In its judgment, the court enumerated statements by Israeli officials expressing genocidal intent, thus giving no credence to the arguments of Israel's lawyers that these were not intended as such, and that Israel's expressions of humane motives must be taken as its *real* intention. It identified specific acts of incitement, within a general culture of incitement against Palestinians. It listed the various dangers to which Palestinians as a group have been exposed, thus illustrating the plausibility of the genocide charge.

Crucially, it identified an "urgency", a "real, imminent risk" of irreparable damage being done to the Palestinians as a group before the trial reached its conclusion. That was the basis for its orders, which fell short of what South Africa asked for, but still aren't negligible. The court orders that Israel must take measures to prevent acts of genocide and report back within a month. It orders that Israel must allow humanitarian aid into the Gaza strip. It also orders that Israel must punish incitement to genocide. It's hard to see how Israel could substantially comply while continuing the bombardment and siege, and it will have to demonstrate *some* sort of compliance.

You may ask: can Israel not just fudge the judgment, exploiting the indeterminacy of its orders? Up to a point, yes. If Israel reports back in a month's time and the court is not satisfied, there is nothing to stop it ordering tougher provisional measures. If Israel demonstrates consistent bad faith, it's quite likely to ultimately lose its case. And Israel takes its legal standing seriously, statehood being the *raison d'être* of the Zionist movement.

Netanyahu's contemptuous 'we don't care' trolling to one side, Israel has historically been skilled and ingenious in its legal defence. Its ineptitude in this case is uncharacteristic, and partly due to the fact that Israel's prosecution of the war didn't give the lawyers much to work with so that Israel's defence was primarily crafted for a news audience. You'll recall that while anglophone news stations chose not to broadcast South Africa's prosecution statements (which made a very "powerful" case according to genocide scholar Omer Bartov), many of them livestreamed the Israeli defence.

The fact that this went so poorly for Israel, while turbo-charging the potent sense of victimhood among Netanyahu's supporters, will widen existing fissures in the military establishment over the handling of the war and the absence of serious, determinate goals. If there was an intent to blitz Rafah, the last "safe" space into which Gazans have been herded, to force their flight across the border into Egypt, that would now be harder. If there was an intent to allow mass starvation and disease to decimate the population for months, that will now be harder.

The Biden administration is also in real difficulty. The divisions within the US State Department and the White House are already well-documented. The internal protests by staffers and the specific controversy over arms transfers to Israel is now charged with fresh legal force. The Biden administration threw staffers a morale-booster party on the night before this judgment, and staffers responded by issuing a new statement demanding a ceasefire. Electorally, this is also difficult terrain for Biden. According to a YouGov/Economist [poll](#), half of his 2020 voters are convinced that Israel is committing genocide in Gaza. That is an achievement of the antiwar movement and the extraordinary network of communicators it has produced, since one would never get to that conclusion if one depended on the news. Many of those voters will find reasons to excuse or deny Biden's complicity, but those who don't may be concentrated in swing counties and states.

In short, however they spin this judgment, it acts on and catalyses existing schisms and crises among the warmaking parties. That presents an opportunity for the antiwar movement to bring this war to an end much faster than the Netanyahu administration or its supporters would wish. And the sooner the war ends, the bigger the defeat it is.

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P.S.

• New Politics. January 26, 2024:
<https://newpol.org/historic-ruling-by-the-international-court-of-justice/>

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