

CONTESTING GENOCIDE: SOUTH AFRICA'S LEGAL STANDING AND INTERNATIONAL COURT OF JUSTICE'S REACH OVER ISRAEL

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ABSTRACT:

The lawsuit filed by South Africa against Israel regarding alleged acts of genocide against Palestinians, submitted to the International Court of Justice (ICJ) on December 29, 2023, raises a central legal issue concerning South Africa's legal standing under Article IX of the 1948 Genocide Convention and the Statute of the ICJ. This study adopts a normative juridical approach using a case study method with descriptive-analytical specifications, based on secondary data obtained through literature review. The analysis is grounded in international legal theory, particularly the jurisdiction of international courts and the principle of obligations erga omnes partes. The results show that South Africa holds legal standing to bring the case, as the Genocide Convention grants all State Parties the right to raise disputes regarding violations, regardless of direct involvement. However, the ICJ's jurisdiction remains contingent upon mutual consent, which Israel has denied. This rejection poses a barrier to judicial resolution. Therefore, South Africa may need to pursue diplomatic and multilateral efforts to secure jurisdictional recognition and strengthen evidentiary claims related to the alleged acts of genocide. This research contributes to the scholarly discourse by reinforcing the applicability of the erga omnes partes principle in genocide-related disputes and by offering a legal analysis of jurisdictional constraints at the ICJ, thus providing a valuable reference for understanding third-party state standing and the enforcement limits of international adjudication in politically sensitive cases.

Keywords: *Legal Standing, Israel, Genocide, Statute of the International Court of Justice.*

A. Introduction

In international law, the state is the primary subject that holds specific rights and obligations. These rights include the authority to establish and maintain diplomatic relations, to enter into international treaties, to send and receive diplomatic missions, to protect its nationals abroad, and to participate in international organizations and legal proceedings.

Additionally, states have the right to preserve their sovereignty, territorial integrity, and political independence.¹

This status grants states the authority to enter into international agreements, implement the principles of international law, and resolve disputes through recognized legal mechanisms such as negotiation, mediation, arbitration, and adjudication before international courts.² However, these rights are inherently balanced by the obligation to act responsibly and follow international legal norms, notably to uphold human rights, ensure the peaceful settlement of disputes, and contribute to maintaining global stability and peace.³ International courts have long provided states with peaceful means to resolve disputes. This began with the establishment of the Permanent Court of Arbitration (PCA) in 1899, followed by the Permanent Court of International Justice (PCIJ) from 1920 to 1945, and subsequently the International Court of Justice (ICJ), which has operated since 1945 as the principal judicial organ of the United Nations.⁴ Often referred to as the World Court, the ICJ plays a crucial role in adjudicating legal disputes between states and issuing advisory opinions on legal questions referred by authorized United Nations organs and specialized agencies.⁵

While the ICJ is central in the international legal system, it is not the only international court. Other judicial bodies such as the International Criminal Court (ICC), the International Tribunal for the Law of the Sea (ITLOS), and various regional human rights courts contribute to the global legal order by addressing specific areas of international law. Importantly, the ICJ may only exercise jurisdiction over a case if the disputing states have consented through a special agreement, a compromissory clause in a treaty, or a declaration

¹ Jorge E. Núñez, "State Sovereignty: Concept and Conceptions," *International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique*, Volume 37, 2024, pp. 2131-2150.

² Putu Adinda Aneira Adnyana. "Peranan Hukum Internasional dalam Menyelesaikan Sengketa", *Jurnal Pendidikan Kewarganegaraan Undiksha*, Volume 10, No. 3, 2022, pp. 1029-1036.

³ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Article 2(3)-(4).

⁴ Emilia Justyna Powell dan Sara McLaughlin Mitchell, "The International Court of Justice and the World's Three Legal Systems". *The Journal of Politics*, Volume 69, No. 2, Southern Political Science Association, Charleston SC. Mei 2007, p. 1.

⁵ Mills, Alex, "Rethinking Jurisdiction in International Law", *British Yearbook of International Law*, Volume 84, Issue 1, 1 January 2014.

under the optional clause.⁶ This consensual basis of the ICJ's jurisdiction highlights the delicate balance between state sovereignty and the authority of international adjudication.⁷

The decades-long Israel-Palestine conflict has led to accusations of serious human rights violations, including alleged breaches of the 1948 Genocide Convention.⁸ On December 29, 2023, South Africa filed a lawsuit against Israel at the ICJ, accusing it of committing Genocide against the Palestinian people.⁹ This lawsuit raises an important legal question concerning whether a State Party to the Genocide Convention, like South Africa, possesses legal standing to initiate proceedings before the ICJ for alleged violations of the Convention, even without being a directly affected party, by invoking the principle of obligations *erga omnes partes*.¹⁰

This study aims to analyze the legal standing of South Africa in its lawsuit against Israel based on the Statute of the International Court of Justice and Article IX of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, by examining factual background and previous ICJ jurisprudence on state standing in cases involving the Genocide Convention. It also seeks to evaluate the jurisdiction of the ICJ in adjudicating this case in the context of Israel's rejection of the Court's authority. This research is grounded in international legal theory, specifically the theory of international institutional jurisdiction and the principle of obligations *erga omnes partes*, which recognizes that certain obligations under international law, such as the prohibition of Genocide, are owed by every state party to all other parties, allowing any of them to bring a claim before the ICJ regardless of direct injury.¹¹

⁶ Statute of The International Court of Justice, Article 1, 38(1), The authority of the ICJ to settle legal disputes between states is based on International Treaties, International Custom, General Principles of Law, and relevant International Doctrines, as stipulated in "The Court", Article 1 and Article 38(1).

⁷ Statute of The International Court of Justice, Article 36 governs the jurisdiction of the ICJ. This means that if two states agree to refer their dispute to the ICJ, the Court has the authority to settle the dispute. "The Court", Article 36.

⁸ M. Fabian Akbar and Manuel Beltrán Genovés, "South Africa Sues International Court Over Israel's Palestinian Genocide under International Law," *Lampung Journal of International Law* 6, no. 2 (2024): 83–94, <https://doi.org/10.25041/lajil.v6i2.3427>.

⁹ International Court of Justice, Press Release No. 2023/77, "Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)", 29 December 2023, <https://www.icj-cij.org/public/files/case-related/192/192-20231229-PRE-01-00-EN.pdf>, accessed 25 March 2025.

¹⁰ Lu, Bingbin, "Reform of the International Court of Justice—A Jurisdictional Perspective", *Perspectives*, Volume 5, Issue 2, June 30 2004.

¹¹ Ogbodo, S. Gozie, "An Overview of the Challenges Facing the International Court of Justice in the 21st Century", *Annual Survey of International & Comparative Law*, Volume 18, Issue 1, 2012.

B. Research Method

This research is a normative legal study that examines applicable international legal norms and rules, particularly regarding the authority and jurisdiction of the ICJ and the legal standing of third-party states in bringing lawsuits based on conventions. Normative legal research examines and analyzes written legal provisions, including international treaties, conventions, statutes, and relevant decisions of international courts. The approaches used in this study are the case approach and the statute approach. The case approach is employed to examine and compare South Africa's lawsuit against Israel with similar cases adjudicated by the International Court of Justice, such as *The Gambia v. Myanmar* and *Bosnia and Herzegovina v. Serbia and Montenegro*, to obtain a more comprehensive legal perspective. These cases are relevant as part of the research method and as an essential background in the introduction to illustrate how the ICJ has previously addressed state standing and jurisdiction in Genocide-related disputes under the 1948 Genocide Convention. Meanwhile, the statute approach is applied to analyze legal provisions within the Statute of the International Court of Justice, Article IX of the 1948 Genocide Convention, and other related international instruments to clarify the legal framework governing South Africa's standing and the Court's jurisdiction.

C. Discussion

The Israel-Palestine conflict illustrates how clashes of political interests, colonial history, and territorial claims can escalate into severe violations of international law, even leading to accusations of Genocide.¹² International law enforcement's mechanisms for accountability for the most serious crimes become crucial. South Africa's lawsuit against Israel at the ICJ underscores the application of the *erga omnes partes* principle, as affirmed in the ICJ's ruling in *The Gambia v. Myanmar*, where the Court recognized that every state party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide has the right to institute proceedings, regardless of whether it has been directly affected.¹³

¹² Oğuzhan Öztürk, "A Decolonial Analysis of Israel's Actions in the Occupied Palestinian Territories," *Law and Justice Review*, No. 29, 15 January 2025, pp. 73-86.

¹³ International Court of Justice, "Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)", Provisional Measures, Order of 23 January 2020, <https://www.icj-cij.org/public/files/case-related/178/178-20200123-ORD-01-00-EN.pdf>, accessed 25 March 2025

The ICJ's jurisdiction in this case is based on Article IX of the Convention, which strengthens the court's role in upholding international obligations to prevent and punish Genocide.

The main significance of this development is strengthening international law's legitimacy as a mechanism for protecting human rights and preventing state impunity. The Provisional Measures issued by the ICJ against Israel mark the international community's boldness in asserting legal boundaries against actions that could lead to crimes against humanity. This also demonstrates that modern armed conflicts are no longer solely a domestic matter for states but are subject to global scrutiny when they involve severe human rights violations.¹⁴

However, Israel's resistance to the ICJ's jurisdiction highlights the limitations of international law enforcement, particularly when the principle of state sovereignty is used as a shield against accountability. This underscores the need for reforms to the international legal system to make it more binding, so that universal principles such as the protection against Genocide can be effectively implemented, without being obstructed by political objections or unilateral interpretations by a state. Overall, this case sets an important precedent, reaffirming that international justice must be able to overcome geopolitical boundaries and uphold both moral and legal responsibilities, even against politically and militarily powerful states.

1. The Legal Standing of South Africa before the International Court of Justice in the Genocide Case Against Israel

On October 7, 2023, the conflict between Israel and Hamas reached its peak with a large-scale attack launched by Hamas from the Gaza Strip. The assault began with thousands of rockets fired into Israeli territory, followed by militant infiltrations by land, air, and sea.¹⁵ Hamas attacked settlements, military bases, and other facilities in southern Israel, triggering one of the deadliest conflicts in the history of the Israel-Palestine conflict.¹⁶ Hamas launched

¹⁴ Goldstone, R. J. and Nicole Fritz, "In the Interests of Justice' and Independent Referral: The ICC Prosecutor's Unprecedented Powers", *Leiden Journal of International Law*, Vol. 13, No. 3, 2000.

¹⁵ Michael A Becker, "Crisis in Gaza: South Africa v Israel at the International Court of Justice (or the Unbearable Lightness of Provisional Measures)," *Forthcoming in the Melbourne Journal of International Law* 25, no. 2 (2025), <https://www.un.org/sg/en/content/sg/statement/2023-10-07/statement-attributable-the-spokesperson-for->.

¹⁶ Emilia Palupi Nurjannah, dan M. Fakhruddin, "Deklarasi Balfour: Awal Mula Konflik Israel-Palestina". *PERIODE: Jurnal Sejarah dan Pendidikan Sejarah*, Volume 1, No. 1, March 2019, pp. 17-18.

an unprecedented attack on southern Israel, resulting in over 1,400 fatalities, the majority of whom were civilians, and the kidnapping of 251 people, who were then taken to Gaza.¹⁷

In response, Israel declared a state of war and launched a large-scale military operation. Intensive airstrikes destroyed the infrastructure in Gaza, while a total blockade halted the supply of electricity, water, food, and fuel. In the first few days, the situation in Gaza deteriorated dramatically, with thousands killed and injured because of Israeli airstrikes. By November 2023, the death toll in Gaza had surpassed 13,000, including more than 5,500 children, while thousands of buildings were destroyed, and millions faced a severe humanitarian crisis.¹⁸ South Africa then filed a lawsuit against Israel at the ICJ on December 29, 2023, based on violations of international law, including alleged Genocide against the Palestinian people, as outlined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereafter referred to as the 1948 Genocide Convention). The lawsuit also includes allegations that Israel violated international obligations concerning the protection of human rights, the respect for civilians, and international humanitarian law.

In the context of international law, genocide is related to the term *erga omnes*, which refers to a state's legal obligations towards the international community as a whole.¹⁹ However, in the realm of the 1948 Genocide Convention, the principle of *erga omnes partes* applies, granting every state party the right to seek redress for violations without having to be a direct victim.²⁰ Genocide, as an act of destruction against a specific ethnic, racial, religious, or national group, is considered a crime against humanity (*hostis humani generis*) and a matter of common concern for the entire international community.²¹ The 1948 Genocide Convention defines Genocide as a series of actions undertaken with the intent to destroy, either in whole or in part, a national, ethnic, racial, or religious group. These actions include the killing of members of the group, causing serious bodily or mental harm to members of the group, creating living conditions that lead to the physical destruction of the

¹⁷ Eka Yunia Lestari dan Anindita Prasasti Ayu, "Eskalasi Konflik Palestina-Israel di Tahun 2023", *Jurnal Hubungan Internasional*, Volume 14, No. 1, 2023, pp. 92-104.

¹⁸ *Ibid.*

¹⁹ Yana Shy Kraytman, "Universal Jurisdiction-Historical Root and Modern Implication", *Brussels Journal of International Studies*, Volume 2, 2005, p. 112.

²⁰ Amnesty International, "The Duty of States to Enact and Enforce Legislation", Chapter Seven: Genocide, Amnesty International", *Universal Jurisdiction*, Volume 57, No. 10, 2001.

²¹ Mochammad Tanzil Multazam, "Prinsip 'Jus Cogens' dalam Hukum Internasional". <http://eprints.umsida.ac.id/711/1/Jus%20Cogens.pdf>, accessed 20 March 2025.

group, imposing measures to prevent births within the group, and forcibly transferring children from the group to another group.²²

The lawsuit filed by South Africa against Israel at the ICJ for alleged violations of the 1948 Genocide Convention, the legal basis references the principle of *erga omnes partes*, which grants every state party to the convention the right to bring a claim, even without being directly affected by the violation. This lawsuit also reflects South Africa's awareness of the *jus cogens* nature of the prohibition of Genocide, which constitutes a peremptory norm of international law that no state may derogate from.²³ Furthermore, the Genocide Convention imposes obligations *erga omnes*, meaning obligations owed to the global community,²⁴ and obligations *erga omnes partes*, specifically owed among the state parties to the Convention.²⁵ These principles inherently require all state parties to prevent and punish Genocide and ensure compliance by other parties, granting them the legal standing to bring a case before the ICJ regardless of direct injury, as stipulated in Article IX of the Convention.²⁶ The ICJ itself has recognized the collective interest of state parties in preventing and punishing Genocide, particularly through the application of Article IX of the Genocide Convention, which grants standing to any party to submit disputes relating to its interpretation, application, or fulfillment.²⁷

This underscores that imperative international norms and the collective obligation to prevent and punish Genocide provide a strong legal legitimacy for states parties to demand accountability for serious violations of international law, while also promoting immediate and comprehensive protection for threatened groups, such as Palestinian civilians in Gaza.

²² United Nations, "Convention on the Prevention and Punishment of the Crime of Genocide", Article II, <https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf>, accessed 27 November 2024.

²³ Hakkı Hakan Erkiner, "The Legal Foundations of South Africa's Genocide Case Against Israel at the International Court of Justice," The Platform, 22 March 2024, noting that "genocide prohibition is a *jus cogens* norm that no state may derogate"; see also Report of Special Rapporteur Dire Tladi on Draft Conclusions on *Jus Cogens*, ILC, 2019, Annex listing the prohibition of genocide among *jus cogens* norms; ICJ Order, Application of the Genocide Convention (South Africa v. Israel), referencing *The Gambia v. Myanmar* as precedent affirming *erga omnes partes* nature of genocide prohibition.

²⁴ International Court of Justice, "Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)", Second Phase, Judgment, ICJ Reports, 1970, para 33-34, p 3.

²⁵ International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, ICJ Reports, para 41-42, p 3.

²⁶ Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations Treaty Series 277, article IX.

²⁷ See the document of the International Court of Justice, "Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)", No. 5, p. 12, on <https://www.icj-cij.org/node/203447>, accessed 27 November 2024.

The primary basis used by South Africa to file the lawsuit is found in Article IX of the 1948 Genocide Convention, which states:²⁸

“Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for Genocide or any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute”.

Article IX of the Genocide Convention states that disputes between states parties concerning the interpretation, application, or alleged violations of the Convention may be submitted to the ICJ at the request of any party. This provision reflects the international recognition that the prevention and punishment of Genocide is a collective obligation, not limited to the state directly affected. As a state party to the 1948 Genocide Convention, South Africa has a valid legal basis to file a lawsuit against Israel based on this provision. This step aligns with the principle of *erga omnes partes*, which grants every state party the right to demand compliance with universal obligations under the convention, including the prevention and punishment of Genocide.²⁹

International law provides peaceful mechanisms for settling disputes between states, as mandated by the Charter of the United Nations, particularly in Article 33(1).³⁰ which obliges parties to any dispute likely to endanger international peace and security to seek a solution through negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, or other peaceful means of their own choice. Among these mechanisms, the jurisdiction of the ICJ, as outlined in the Statute of the ICJ,³¹ Serves as the principal judicial pathway for the peaceful resolution of interstate disputes and the interpretation and application of international law.

The jurisdiction of the ICJ reflects international legal principles that emphasize the obligation of states to resolve disputes peacefully and comply with the Court's decisions.

²⁸ International Court of Justice, “Application of the Convention...”, *Op. Cit.*, No. 10, p. 14.

²⁹ Greenwalt, Alexander K. A., “International Criminal Law for Retributivists”, *U. Pa. Journal of International Law*, Vol. 35, No. 4, 2014.

³⁰ Charter of the United Nations, adopted on 26 June 1945, Article 33(1) provides that in the event of a dispute, the parties shall first seek a solution by peaceful means, including negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and other peaceful arrangements of their own choice. UN Charter, Article 33(1), <https://www.un.org/en/about-us/un-charter/full-text>, accessed 25 March 2025.

³¹ Statute of the International Court of Justice, Article 36, This article establishes the ICJ's jurisdiction to settle disputes by mutual consent or as provided in treaties.

The legal basis for the ICJ's jurisdiction is set out in various articles of the Statute of the International Court of Justice, which grants jurisdiction over cases brought by states and matters agreed upon in international treaties. These provisions establish that the ICJ has the authority to handle all types of disputes submitted by states and all issues referred to based on the Charter of the United Nations or applicable international treaties.

Examining the legal standing of South Africa's lawsuit against Israel at the ICJ through the perspective of the Statute of the International Court of Justice, particularly Article 35, it can be explained that this article provides the basic framework for state access to the ICJ. The article states, 'The Court shall be open to the States parties to the present Statute,' meaning that only states that are parties to the Statute can bring a case or be parties in a dispute at the ICJ.³² Based on Article 35(1), the ICJ is open to states parties to the Statute of the International Court of Justice. This includes all member states of the United Nations, as membership in the United Nations automatically makes a state a party to the Statute. This is further explicitly affirmed by Article 34(1) of the Statute of the International Court of Justice, which states: 'Only states may be parties in cases before the Court'.³³ Only states can be parties in cases brought before the International Court of Justice.

As the plaintiff, South Africa has legal standing to file a lawsuit. This is based on its membership in the United Nations since 1945, automatically making South Africa a party to the Statute. According to Article 35(1) of the Statute of the International Court of Justice, only states parties to the Statute can access the ICJ.³⁴ On the other hand, Israel, as the defendant, also meets the ICJ jurisdiction criteria. Israel has been a member of the United Nations since May 11, 1949, and is a party to the 1948 Genocide Convention, thus bound by its provisions. The fact that both countries are parties to the Statute of the International Court of Justice and the 1948 Genocide Convention should provide the legal basis for the ICJ to review this case.

³² International Court of Justice, "Application of the Convention...", *Op. Cit.*, No. 8, p. 14.

³³ Statute of the International Court of Justice, *Op. Cit.*, Article 34(1).

³⁴ Statute of the International Court of Justice, *Op. Cit.*, Article 35(1).

2. The Jurisdiction of the International Court of Justice in South Africa's Genocide Lawsuit Against Israel

In the framework of international law, a state is positioned as the primary subject with full legal capacity. This status acknowledges the state as an actor authorized to exercise rights and fulfill obligations by international law, including making treaties, adhering to international norms, and resolving disputes through recognized mechanisms. However, recognition as the primary subject also carries legal consequences: a state must act responsibly and under the law in every policy that could impact global stability and interstate relations.

The legal basis for the jurisdiction of the ICJ is outlined in Article 36 of the Statute of the International Court of Justice, which establishes the ICJ's jurisdiction over disputes brought by states and matters explicitly referred to through international agreements. This provision provides the foundation for the ICJ to address various forms of inter-state conflicts, as outlined in the Charter of the United Nations and applicable treaties and conventions.

Article 36 of the Statute of the International Court of Justice states:³⁵

1. *The jurisdiction of the Court comprises all cases to which the parties refer and all matters specially provided for in the Charter of the United Nations or treaties and conventions in force.*
2. *The States Parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, concerning any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes relating to:*
 - a. *the interpretation of a treaty;*
 - b. *any question of international law;*
 - c. *the existence of any fact which, if established, would constitute a breach of an international obligation;*
 - d. *the nature or extent of the reparation to be made for the breach of an international obligation.*

Article 36, paragraph 1, outlines the primary legal basis for the jurisdiction of the ICJ, stating that the ICJ has jurisdiction to handle 'all cases which the parties refer to it' and 'comprises... all matters specially provided for... in treaties and conventions in force.' The ICJ can review all cases specifically regulated in applicable treaties and conventions. In other words, the ICJ has the authority to resolve disputes arising between member states of the United Nations if they follow the relevant international law, including the interpretation or

³⁵ Statute of the International Court of Justice, *Op. Cit.*, Article 36.

application of clauses in international agreements that have been agreed upon (Compromissory Clause).

Article 36, paragraph 1, of the Statute of the International Court of Justice reflects a fundamental principle in international law that emphasizes the obligation of states to comply with ICJ rulings in resolving disputes. This provision provides the basis for states that have accepted the jurisdiction of the ICJ to bring cases before it to resolve international conflicts, provided that the states involved have accepted the jurisdiction of the ICJ. Article 36, paragraph 1, also highlights the importance of 'the consent of the concerned state' in resolving international disputes. The states involved may grant the Court jurisdiction over the disputes they submit, given that international law, including ICJ rulings, cannot be enforced without the states' consent.³⁶

Article 36, paragraph 2, of the Statute of the International Court of Justice emphasizes that a state may voluntarily accept the jurisdiction of the ICJ through an Optional Clause declaration. This mechanism allows a state to unilaterally declare its acceptance of ICJ jurisdiction over disputes that may arise between it and other states that have made similar declarations.³⁷ The Optional Clause allows states to accept ICJ jurisdiction with certain limitations, as a state may specify exceptions to the types of disputes that can be submitted. Thus, while generally accepting ICJ jurisdiction, a state may exclude specific categories, such as disputes related to sovereignty or national security, from the scope of that jurisdiction. Article 36, paragraph 2, essentially grants flexibility for states to accept ICJ jurisdiction voluntarily through the Optional Clause mechanism. By making such a declaration, a state is not obligated to bring every dispute before the ICJ but agrees that if a dispute arises and both parties have given similar consent, the ICJ has the authority to resolve it.

ICJ is the principal judicial body of the United Nations, which has the authority to resolve legal disputes between states based on international law. ICJ exercises two main types of jurisdiction: contentious jurisdiction and advisory jurisdiction. Contentious jurisdiction applies when the disputing states mutually agree to submit the case to the ICJ, as Article 36 of the Statute outlines. In the context of South Africa's lawsuit against Israel, the ICJ may assess whether Israel's actions, including its occupation of Palestinian territories,

³⁶ *Ibid.*

³⁷ *Ibid.*

violate international legal obligations. Alternatively, South Africa could urge the United Nations General Assembly or the Security Council to request a non-binding advisory opinion from the ICJ. While advisory opinions do not have binding legal force, they carry significant legal and moral weight, as seen in the ICJ's 2004 advisory opinion on the legality of Israel's construction of the separation wall in the West Bank, which declared that the action was contrary to international law.³⁸

South Africa's lawsuit against Israel before the ICJ represents a significant step in utilizing international legal instruments to address alleged serious human rights violations. Although the ICJ has formal jurisdiction under Article IX of the 1948 Genocide Convention, its application in this case is not without challenges. One of the main obstacles is Israel's claim regarding the principle of state sovereignty. Israel asserts that actions taken against Palestine, such as military operations, settlement construction, and security policies, are domestic matters and part of national defense strategy, thus arguing that these issues fall outside the scope of international law jurisdiction, including the jurisdiction of the ICJ.³⁹

In this case, Israel has not expressed consent, either explicitly or implicitly, to the ICJ's jurisdiction over the lawsuit filed by South Africa. Israel argues that its actions against Palestine are a response to security threats posed by armed groups, and therefore fall within the realm of domestic policy, which it claims should not be subject to international court intervention. Furthermore, Israel often views lawsuits filed with the ICJ, particularly by countries supporting Palestine, as politically motivated steps aimed at delegitimizing Israel's position on the international stage.⁴⁰ This strengthens Israel's reluctance to acknowledge the ICJ's jurisdiction in this case.

Israel may view South Africa's lawsuit as a diplomatic maneuver aimed at strengthening Palestine's position rather than a genuine effort to enforce international law. This perception is rooted in past experiences, where ICJ proceedings were often seen as an

³⁸ See the document of the International Court of Justice, "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory", Advisory Opinion, I.C.J. Reports 2004, p. 136, <https://www.icj-cij.org/case/131>, accessed 20 March 2025.

³⁹ Leila Sadat, "Explainer Part II: The Israel-Hamas War and the International Court of Justice", JURIST, March 19, 2024, Washington University School of Law, <https://www.jurist.org/features/2024/03/19/explainer-part-ii-the-israel-hamas-war-and-the-international-court-of-justice/>, accessed 23 March 2025.

⁴⁰ Lázár Berman, "Israel has claimed some wins in UN vote — but the ICJ process is a serious threat", *The Times of Israel*, 2 January 2023, <https://www.timesofisrael.com/israel-has-claimed-some-wins-in-un-vote-but-the-icj-process-is-a-serious-threat/>, accessed 23 March 2025.

extension of international political dynamics.⁴¹ In this context, Israel is concerned that acknowledging the ICJ's jurisdiction could set a precedent that opens the door for similar lawsuits in the future, potentially undermining Israel's position and legitimacy on the global stage. Although both Israel and South Africa are parties to the 1948 Genocide Convention, the application of Article IX, which grants jurisdiction to the ICJ, requires that the dispute falls within the scope of the interpretation or implementation of the Convention, as well as the agreement of the disputing parties to the Court's jurisdiction. In practice, Israel has consistently rejected the ICJ's jurisdiction in matters related to the Palestinian conflict and countries supporting Palestine, arguing that the issues at stake are political and too complex to be resolved solely through international legal instruments.⁴²

Regarding the limitations of jurisdiction, the ICJ lacks effective enforcement mechanisms to compel the losing party in a case to comply with its ruling. Unlike domestic courts, which have institutional mechanisms to execute decisions through state apparatus, the ICJ relies entirely on voluntary compliance, international consensus, and diplomatic channels. In cases where a state refuses to implement a ruling, the ICJ does not have direct authority to enforce compliance. However, ICJ rulings carry significant moral and symbolic authority. Member states of the United Nations, as subjects of international law, generally comply with ICJ decisions to maintain their international reputation and uphold the stability of the global legal order. Additionally, the United Nations Security Council theoretically has a mandate to follow up on non-compliance with ICJ rulings. However, the use of this authority in practice tends to be limited.

The ICJ's effectiveness in resolving interstate disputes is not always flawless. In some cases, the ICJ has successfully reached fair and peaceful settlements, while in others, implementing its decisions encounters challenges due to low compliance from the losing parties.⁴³ The Court's jurisdiction to adjudicate disputes between states is established through the consent of the parties, which can be granted in several ways: by special

⁴¹ Lisandra Novo, "Five questions and answers about South Africa's genocide case against Israel", *New Atlanticist*, Atlantic Council, January 12, 2024, <https://www.atlanticcouncil.org/blogs/new-atlanticist/five-questions-and-answers-about-south-africas-genocide-case-against-israel/>, accessed 23 March 2025.

⁴² BareLaw India, "The ICC and ICJ's Role in the Israel-Palestine Conflict: An In-Depth Analysis", 26 January 2024, <https://www.barelaw.in/icc-role-in-the-israel-palestine-conflict/>, accessed 23 March 2025.

⁴³ Karen J. Alter, "The International Court of Justice in Comparison: Understanding the Court's Limited Influence", *Melbourne Journal of International Law* 21, No. 3, 2021, pp. 678-79. Alter observes that while the ICJ can sometimes secure compliance, its real influence often lies in providing authoritative legal interpretations and norms. However, enforcement remains weak-noncompliance or partial compliance by losing states is not uncommon.

agreement (compromis), through compromissory clauses in treaties such as Article IX of the 1948 Genocide Convention, or by unilateral declarations under Article 36(2) of the ICJ Statute.

One notable example of the ICJ's application of jurisdiction is the case of *Bosnia and Herzegovina v. Serbia and Montenegro* (2007), which concerns allegations of Genocide. The ICJ accepted jurisdiction based on Article IX of the Genocide Convention and proceeded to examine Serbia's responsibility. In its judgment, the Court held that while Serbia was not directly responsible for committing Genocide in Srebrenica, it had breached its obligation to prevent the Genocide and failed to transfer the perpetrators for prosecution.⁴⁴ This case illustrates how the ICJ assesses state responsibility within the limits of its jurisdiction and highlights the preventive duty states bear under international law.

Additionally, in *The Gambia v. Myanmar* (2020), the ICJ reaffirmed its jurisdiction over a case brought by a third-party state under the Genocide Convention, strengthening the application of the *erga omnes partes* principle.⁴⁵ Through these precedents, the ICJ has demonstrated its willingness to assert jurisdiction in cases involving serious violations of peremptory norms. It provided a clear legal basis within a treaty provision or mutual consent.⁴⁶ These decisions reflect the Court's careful consideration of procedural and substantive factors when determining its jurisdiction over interstate disputes.⁴⁷

D. Conclusion

South Africa has legitimate legal standing to file a lawsuit against Israel in the ICJ for the alleged Genocide against the Palestinian people. This legal standing is grounded in Article 35(1) of the Statute of the International Court of Justice, which grants United Nations member states access to resolve disputes through international legal mechanisms. Article 34(1) stipulates that only states with a legitimate legal interest may bring a case before the

⁴⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, I.C.J. Reports 2007, p. 43, para. 430-434.

⁴⁵ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*), Order on Provisional Measures, I.C.J. Reports 2020.

⁴⁶ Abdul Ghafur Hamid, "The Rohingya Genocide Case (the Gambia V Myanmar): Breach of Obligations *Erga Omnes Partes* and the Issue of Standing," *IIUM Law Journal* 29, no. 1 (2021): 29-54, <https://doi.org/10.31436/iiumlj.v29i1.630>.

⁴⁷ Hilary Charlesworth, "The International Court of Justice in Context: Armed Activities as a Test Case," *Human Rights Quarterly*, Volume 44, No. 1, pp. 56-57, 2022. Charlesworth observes that the ICJ affirms its willingness to assert jurisdiction in cases involving peremptory norms, but only with a clear treaty-based or consensual legal basis, carefully balancing procedural consent and substantive obligations in cases like *Armed Activities*, *Nicaragua v. United States*, and *Oil Platforms*.

ICJ, a requirement South Africa meets. This right is further reinforced by Article IX of the 1948 Genocide Convention, which authorizes state parties to bring allegations of convention violations before the ICJ. However, the ICJ's jurisdiction in this case depends on the agreement of both disputing parties. While South Africa has met the formal requirements as a party to the Genocide Convention and a member of the United Nations, the legal process cannot proceed fully due to Israel's refusal to accept the ICJ's jurisdiction and its denial of the Genocide allegations. Thus, despite the strong legal basis South Africa holds, the implementation of this lawsuit faces obstacles due to the lack of agreement from Israel. This highlights the fundamental challenges in enforcing international law, particularly when confronted with the principle of state sovereignty.

E. Suggestion

Considering the preceding points, the author strongly recommends that the ICJ demonstrate the courage to make legal breakthroughs by explicitly considering and applying the principle of *erga omnes partes* obligations in adjudicating the case of Israel's alleged Genocide against the Palestinian people. This principle emphasizes that the obligations arising from the 1948 Genocide Convention are not merely reciprocal between the parties but are binding on all state parties to each other. Therefore, the ICJ is encouraged to interpret the law progressively in a manner that strengthens the position that every state party to the 1948 Genocide Convention, including South Africa, possesses not only the right but also the duty to challenge violations of the Convention, even if they are not directly affected by the acts in question. Such a judicial stance would reaffirm the Convention's universal and preventive character and the ICJ's role in upholding international justice beyond geopolitical interests.

Furthermore, given that Israel does not automatically recognize the ICJ's jurisdiction, South Africa could pursue a diplomatic strategy through bilateral negotiations based on the compromissory clause in international treaties and seek multilateral support through the United Nations to call for Israel's compliance with the ICJ's jurisdiction. This approach is expected to strengthen the legitimacy of international law and promote accountability for serious violations of international norms.

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