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International Judicial Intervention and Humanitarian Protection: An Analysis of South Africa's Case Against Israel at the ICJ

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Abstract

The Israeli–Palestinian conflict continues to raise serious humanitarian concerns, particularly regarding civilian protection and alleged violations of international law in Gaza. On December 29, 2023, South Africa instituted proceedings against Israel before the International Court of Justice (ICJ), alleging violations of the Convention on the Prevention and Punishment of the Crime of Genocide. However, continued hostilities raised questions about the effectiveness of international legal intervention. This study examines the limitations of South Africa's initiative through the concept of humanitarian intervention. It employs a qualitative explanatory design using a case study approach. The study collected data through documentary research, including ICJ orders, international legal instruments, academic publications, official statements, United Nations reports, and credible media sources. The data were analyzed thematically using five dimensions: humanitarian rationale and objectives, licensing, the use of military force, intervention agent, and intervention and outcomes. The findings indicate that South Africa successfully initiated proceedings, obtained provisional measures, and attracted international attention. Nevertheless, continued hostilities, Israel's rejection of the allegations, and limited enforcement mechanisms constrained immediate humanitarian outcomes. The study concludes that international adjudication offers an important avenue for accountability but cannot, on its own, guarantee civilian protection or end armed conflict.

Keywords

Genocide, International Court of Justice, Intervention, Israel-Palestine War.

1. Introduction

The conflict between Israel and Palestine has persisted since the twentieth century, primarily involving competing territorial claims. Palestinians regard the land as their homeland because of their longstanding historical presence, while Israeli Jews emphasize their ancestral ties and historical expulsion from the territory. Beyond territorial disputes, the conflict also involves security and national identity, which escalating hostilities have increasingly threatened (Waxman, 2019). The situation is also shaped by the international legal and political implications of Israel's occupation of Palestinian territory (Imseis, 2020; Hossain, 2022).

On October 7, 2023, Hamas fighters launched an attack against Israel from the Gaza Strip, resulting in approximately 1,200 deaths, predominantly civilians. Israel subsequently launched a military offensive in Gaza, causing extensive destruction and substantial civilian casualties (Al Jazeera, 2024a; Gorin, 2024). The offensive raised serious humanitarian concerns, particularly regarding the use of white phosphorus, which can cause severe burns and potentially fatal injuries (Human Rights Watch, 2023). Attacks affecting healthcare facilities also threatened patients, medical personnel, and access to essential services. The World Health Organization, UNICEF, and UNFPA (2023) warned of the consequences of attacks on healthcare in Gaza. Although Israel has justified certain operations by alleging Hamas's military presence in healthcare facilities, medical facilities and personnel remain protected under applicable international humanitarian law (Lederman, 2026). On February 29, 2024, Reuters reported that Palestinian deaths in Gaza had exceeded 30,000, according to the Gaza Ministry of Health (Reuters, 2024a).

Despite international calls to protect civilians and halt the violence, Israeli Prime Minister Benjamin Netanyahu stated on March 7, 2024, that Israel would continue its offensive, including in Rafah (Reuters, 2024b). This position highlighted the challenges of influencing the conflict through diplomatic and legal measures. In response to the humanitarian crisis, South Africa instituted proceedings against Israel before the International Court of Justice (ICJ) on December 29, 2023, alleging violations of the Convention on the Prevention and Punishment of the Crime of Genocide (Alexander, 2024). South Africa argued that Israel's conduct in Gaza violated its obligations under the Convention and requested provisional measures to protect Palestinians from further harm (International Court of Justice, 2024). In his ICJ statement, South African Minister of Justice Ronald Lamola emphasized that the proceedings reflected South Africa's obligations under the Genocide Convention (Lamola, 2024). South Africa's position also reflected historical solidarity with Palestinians during its struggle against apartheid.

Although South Africa's application represented a significant attempt to pursue accountability through international law, initiating proceedings did not automatically end the violence or guarantee compliance with judicial measures. On January 26, 2024, the ICJ indicated provisional measures in the case (International Court of Justice, 2024). Nevertheless, questions remain concerning the practical effectiveness of international legal intervention, including the evidentiary requirements for establishing genocidal intent and the challenges of securing compliance with international judicial measures (Pisillo Mazzeschi & Carli, 2024).

This study aims to examine the shortcomings of South Africa's intervention in the Israeli–Palestinian war that may have hindered the progress of its case against Israel before the ICJ, using the concept of humanitarian intervention as its analytical framework. The study contributes to the literature by examining the limitations of humanitarian intervention through international judicial proceedings in addressing alleged genocide and protecting civilian populations. Based on the explanation above, the research question of this study is: “Why did South Africa's intervention in the Israeli–Palestinian war fail to sue Israel at the International Court of Justice?”

2. Literature Review

2.1. Genocide in International Relations

The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the United Nations (1948), defines genocide in Article II as acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group. These acts include killing members of the group, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about the group's physical destruction, imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group. This definition establishes that genocide encompasses various forms of destructive conduct and is not limited to mass killing.

Jones (2006), in *Genocide: A Comprehensive Introduction*, explains that an actor does not necessarily have to commit murder to perpetrate genocide. This understanding is consistent with the Genocide Convention, which recognizes several prohibited acts beyond killing. Although genocide without mass killing is relatively rare, the classification of an act as genocide depends on the nature of the conduct and the specific intent to destroy a protected group, in whole or in part. Anderson (2017) further emphasizes that genocide can be analyzed by examining the actors involved, the victims, the objectives, the scale, the strategies employed, and the intent underlying the crime. These dimensions provide a framework for examining genocide allegations in international relations, including states' legal and political responses to alleged atrocities.

2.2. South Africa–Israel Relations

Chazan (1983) examines the relationship between Israel and South Africa during the apartheid era and characterizes it as paradoxical. Although Israel expressed opposition to apartheid, it maintained relations with South Africa, prompting condemnation from the international community. This relationship also contributed to international criticism and the isolation of Israel by other countries, including European states. The relationship illustrates the tension between political positions and strategic interests in international relations. Greenstein (2014), in *South Africa and Israel: From Alliance to Estrangement*, further explains that Israel and South Africa maintained military cooperation during the apartheid era. Their cooperation included exchanging strategic resources and collaborating on weapons development. Israel also assisted with agriculture, construction, and military affairs in South Africa and other African countries. Following the end of apartheid in 1994, however, South Africa gradually distanced itself from Israel and strengthened relations with countries opposed to Israeli policies, including Iran, Iraq, Libya, and Syria (Walbrugh, 2019). Consequently, relations with Israel became a lower priority in South Africa's foreign policy.

Taken together, Chazan (1983) and Greenstein (2014) demonstrate how South Africa–Israel relations evolved from close military cooperation during the apartheid era to increasing political estrangement after 1994. This transformation provides important context for understanding South Africa's later stance toward Israel and its decision to pursue legal action before the ICJ. The historical relationship also illustrates how changes in political values, foreign policy priorities, and perceptions of injustice can influence states' approaches to international disputes.

2.3. Humanitarian Intervention

Hehir (2010) describes humanitarian intervention as international action aimed at protecting human rights, generally involving state actors undertaking coercive measures in response to serious human rights violations. Its key dimensions include the actors involved, authorization, the nature and objectives of the intervention, and its legality. Wilson-Roberts (2000) identifies thirteen criteria for evaluating

humanitarian intervention, including grave and large-scale human rights violations, clear supporting evidence, the unwillingness or inability of the government concerned to take remedial action, and urgency. Intervention should be a last resort, with clearly defined objectives limited to ending human rights abuses. Its legitimacy also depends on support from the intended intervention and regional states, a high probability of success, proportionality, a transition toward post-conflict peacebuilding, and compliance with international humanitarian law. These criteria provide a framework for assessing the justification, legitimacy, and potential effectiveness of humanitarian intervention.

Kardaş (2003) identifies five components of humanitarian intervention: humanitarianism and intervention, licensing, the use of military force, intervention agent, and intervention. These components encompass the humanitarian rationale and objectives, legal authorization, coercive measures, the actors involved, and the intended recipients of protection. Together, these perspectives provide five analytical dimensions for this study: humanitarian rationale and objectives, licensing, the use of military force, intervention agent, and intervention and outcomes. These dimensions guide the analysis of the justification, legal mechanisms, international support, intended intervention, and constraints affecting South Africa's initiative against Israel. However, South Africa's application to the ICJ is a legal proceeding under the Genocide Convention, not a conventional military intervention. Therefore, the dimensions are applied critically, particularly the use of military force, to examine the relevance and limitations of humanitarian intervention theory in explaining South Africa's pursuit of accountability and protection for Palestinians.

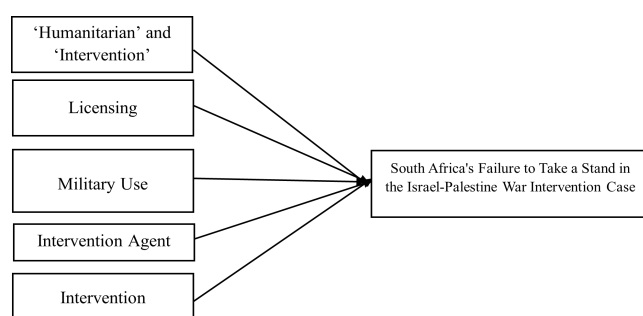


Figure 1. Analysis Model

Figure 1 aims to examine why South Africa's intervention in the Israeli-Palestinian conflict failed to bring Israel to justice at the ICJ. To understand this issue, the analysis focuses on five key dimensions of South-South cooperation: political solidarity, economic cooperation, technical cooperation, shared historical experiences, and strategic interests. These dimensions help explain the factors that shaped South Africa's efforts and the challenges it faced in pursuing accountability through the ICJ.

3. Methods

This study employs a qualitative explanatory research design using a case study approach to examine South Africa's intervention against Israel through proceedings before the ICJ. Qualitative research is appropriate because the study focuses on interpreting legal documents, historical accounts, political statements, and media reports rather than measuring numerical relationships (Neuman, 2014). The case study focuses on South Africa's application against Israel under the Convention on the Prevention and Punishment of the Crime of Genocide, with particular attention to the limitations affecting the effectiveness of its intervention. Humanitarian intervention serves as the analytical framework, operationalized through five

dimensions: the humanitarian rationale and nature of intervention, authorization, the use of military force, intervention agents, and intervention recipients.

The population of this study comprises documentary sources relevant to South Africa–Israel relations, the alleged genocide in Gaza, and the proceedings before the ICJ. Because the study is qualitative, it does not use statistical sampling or probability sampling. Instead, the study purposively selects documents based on their relevance, credibility, and contribution to answering the research question. The data consist of secondary sources, including ICJ orders and case documents, the Genocide Convention, United Nations reports, academic journal articles, books, official government statements, and reports from established news organizations. Sources are selected to represent the case's legal, political, humanitarian, and diplomatic dimensions, particularly developments surrounding South Africa's application and the subsequent proceedings.

Data are collected through documentary research and systematic review of documents. The study identifies, extracts, and organizes relevant information according to the study's five analytical dimensions. Official legal documents provide evidence of the proceedings, requested measures, and judicial decisions, while academic publications and credible news reports provide historical context and information about the positions of South Africa, Israel, and other international actors. The study compares information from different sources to assess consistency and reduce reliance on individual interpretations or unverified claims.

The study analyzes data using qualitative thematic analysis. First, the collected documents are reviewed to identify information relevant to the research question. Second, the information is coded and categorized according to the five dimensions of humanitarian intervention. Third, the findings within each dimension are interpreted by comparing the theoretical criteria with the documented actions, legal procedures, and political responses in the case. Finally, the findings are synthesized to identify the legal, procedural, institutional, and political constraints affecting South Africa's intervention. This process distinguishes limitations attributable to South Africa's approach from broader constraints arising from international legal mechanisms and the responses of other actors. The analysis systematically explains the challenges facing South Africa's efforts to pursue accountability and protect Palestinian civilians through the ICJ.

4. Results

The war between Israel and Palestine is a long-standing conflict rooted in competing national claims and historical developments, including the Balfour Declaration of 1917. During World War I, this declaration represented Britain's support for establishing a national home for the Jewish people in Palestine (Haddad & Chughtai, 2023). Jewish migration to Palestine increased between 1918 and 1947, and the Jewish population reached approximately 33% by the end of the British Mandate period. During this period, Zionism gained momentum, contributing to tensions and conflict that culminated in the establishment of Israel. In 1948, the first *Nakba* (catastrophe) occurred, during which more than 750,000 Palestinians were displaced from their homes. The conflict has continued, with the Gaza Strip, the West Bank, and East Jerusalem forming the principal Palestinian territories. These developments provide context for understanding the humanitarian concerns behind South Africa's legal action against Israel.



Figure 2. Land Area Comparison of Gaza, West Bank, and Israel.

Figure 2 illustrates the territorial area comparison between Gaza (365 km²), the West Bank and East Jerusalem (5,655 km²), and Israel (20,770 km²), based on the 1949 Green Line boundaries. The figure highlights the substantial differences in territorial size, providing geographical context for understanding the Israel–Palestine conflict. However, territorial size alone does not explain the complexities of sovereignty, occupation, and the conflict’s legal and political dimensions.

The situation in Palestine has raised serious concerns regarding the protection of civilians and the conditions in which they live. During the proceedings initiated by South Africa against Israel before the ICJ, South Africa alleged that Israel had committed acts prohibited under the Convention on the Prevention and Punishment of the Crime of Genocide, including killings, serious bodily or mental harm, and the deliberate infliction of conditions of life calculated to bring about the physical destruction of Palestinians in whole or in part. South Africa also presented supporting material, including video footage, to demonstrate the circumstances surrounding the alleged atrocities. Footage released by the Israel Defense Forces (IDF) and Palestinians was among the material discussed in media coverage of the proceedings (SABC News, 2024). These allegations and materials formed part of South Africa’s argument that urgent measures were necessary to protect Palestinians. However, humanitarian suffering and the presentation of evidence must be distinguished from a final legal determination that genocide has occurred, which requires assessing the applicable legal elements, including specific intent.

The primary objective of South Africa’s application was to seek measures to prevent acts prohibited by the Genocide Convention and protect Palestinians in Gaza. As stated by Ronald Lamola, South Africa’s Minister of Justice and Correctional Services, the proceedings represented South Africa’s fulfillment of its obligations under the Genocide Convention, to which the country is a party. South Africa instituted proceedings against Israel on 29 December 2023 and requested provisional measures from the ICJ (International Court of Justice, 2024). The Court issued its first order on provisional measures on 26 January 2024 and subsequently indicated additional measures in March and May 2024. These developments demonstrate that South Africa successfully brought the case before the Court and obtained judicial consideration of its requests. Nevertheless, the continuation of hostilities and reports of civilian casualties raised concerns about the extent to which legal proceedings could achieve the broader humanitarian objective. For example, Al Jazeera (2024b) reported the killing of six Palestinians in the West Bank. Such

reports illustrate the continuing humanitarian crisis, although they do not, by themselves, establish that South Africa's legal initiative had failed.

Regarding licensing, South Africa relied on the Genocide Convention as the legal basis for bringing the case before the ICJ. Unlike procedures that may apply to other types of disputes, South Africa did not need to negotiate a separate agreement with Israel to establish the Court's jurisdiction. Instead, it invoked Article IX of the Convention, which allows parties to submit disputes concerning the Convention's interpretation, application, or fulfillment to the ICJ. The application also requested provisional measures to protect Palestinians from further acts prohibited by the Convention (International Court of Justice, 2024). The Court's orders show that the legal mechanism was available and that the Court considered South Africa's requests. However, obtaining provisional measures does not automatically ensure that the requested protection will be fully realized on the ground. This distinction highlights a limitation of relying on international judicial proceedings to address an ongoing humanitarian crisis.

The use of military force constitutes another dimension of humanitarian intervention. Wilson-Roberts (2000) identifies the use of force as a measure to be considered only as a last resort, and to be conducted proportionately and in compliance with international humanitarian law. In this case, South Africa did not deploy military forces against Israel. Its actions were confined to legal and diplomatic measures intended to prevent alleged violations and pursue accountability. In contrast, Israel deployed the IDF in its military operations in Gaza, while attacks involving Israeli forces were also reported in southern Lebanon (Schwartz & Ebrahim, 2024). This difference shows that South Africa's initiative was not a conventional military humanitarian intervention. Instead, it relied on international adjudication as a non-military means of pursuing humanitarian objectives. Consequently, the absence of South African military force should not be treated as a failure to implement its legal strategy; rather, it illustrates the distinction between military intervention and legal action under international law.

South Africa initially acted as the applicant in the ICJ proceedings, but other states later expressed support for the case or sought to participate. Between February and June 2024, several states submitted applications for permission to intervene or declarations of intervention under the ICJ Statute. These states included Nicaragua, Belgium, Colombia, Türkiye, Egypt, the Maldives, Mexico, Ireland, Chile, Palestine, and Spain, while Libya was also among the states reported in discussions of international participation. Such participation indicates that South Africa's initiative attracted broader international attention and support for legal arguments concerning the interpretation and application of the Genocide Convention. Nevertheless, these states should not be described collectively as additional countries suing Israel, because applications to intervene are procedurally distinct from joining the principal case as applicants. International participation may strengthen the visibility and legal significance of the proceedings, but it does not automatically ensure compliance with the Court's orders or bring the conflict to an end.

Israel, meanwhile, has consistently rejected the allegation that it is committing genocide against Palestinians and has defended its military operations as necessary for Israeli security. Israeli officials have characterized South Africa's allegations as dishonest or unfounded. Israel's position reflects a fundamental disagreement between the parties over the nature of the conflict and how they interpret their obligations under international law. At the United Nations General Assembly, Israel's ambassador, Gilad Erdan, tore up a copy of the UN Charter in protest against the United Nations' treatment of Israel, an incident reported by the BBC (2024). During the ICJ proceedings, Israel's representatives also presented arguments rejecting the genocide allegations and defending Israel's actions. Prime Minister

Benjamin Netanyahu similarly described South Africa's accusations as false and outrageous. These responses demonstrate the political and legal opposition confronting South Africa's initiative. However, Israel's rejection of the allegations does not resolve the legal questions before the Court; the Court must determine them through the applicable judicial process.

The findings show that the limitations of South Africa's initiative cannot be explained simply as an inability to sue Israel before the ICJ. South Africa successfully instituted proceedings under the Genocide Convention, obtained provisional measures, and attracted international attention and participation. Nevertheless, the continuation of hostilities, Israel's rejection of the allegations, and the absence of a direct enforcement mechanism under South Africa's own control illustrate the difficulties of translating international legal action into immediate humanitarian outcomes. Viewed through the lens of humanitarian intervention, the case highlights the importance of humanitarian objectives, a legal basis for action, international support, and the protection of civilians. At the same time, the lack of military intervention and the limits of judicial enforcement show that legal proceedings alone cannot immediately end violence. South Africa's experience therefore highlights both the value and the limitations of international adjudication as a means of pursuing accountability and protecting Palestinians.

5. Discussion

The Israel–Palestine conflict reflects competing national claims, historical developments, and unresolved questions concerning Palestinian self-determination. The Balfour Declaration of 1917 supported establishing a national home for Jewish people in Palestine, contributing to the historical context of competing political aspirations (Haddad & Chughtai, 2023). The displacement of more than 750,000 Palestinians during the 1948 Nakba remains central to Palestinian historical memory. Ram (2009) explains how the Nakba has been subject to contested collective memory and historical representation, illustrating the enduring significance of displacement in Israeli–Palestinian relations. These historical experiences provide essential context for understanding South Africa's legal action and its emphasis on protecting Palestinians.

South Africa instituted proceedings against Israel before the ICJ on December 29, 2023, alleging violations of the Convention on the Prevention and Punishment of the Crime of Genocide. Its application highlighted alleged killings, serious bodily or mental harm, and conditions of life that could lead to the physical destruction of Palestinians in Gaza. On January 26, 2024, the Court ordered provisional measures requiring Israel to take all feasible measures to prevent acts prohibited under the Convention (International Court of Justice, 2024). However, provisional measures do not constitute a final determination that genocide has occurred. Alexander (2024) situates the proceedings within the Convention's legal framework and emphasizes their significance for international adjudication. Lachowski (2025) similarly examines the Court's successive orders and the challenges of addressing politically sensitive disputes through provisional measures.

On licensing, South Africa relied on Article IX of the Genocide Convention, which gives the ICJ jurisdiction over disputes concerning the Convention's interpretation, application, or fulfillment. This approach demonstrates how states can pursue accountability through established international legal mechanisms without resorting to military force. The Court subsequently issued additional provisional measures in March and May 2024, reflecting continuing judicial consideration of the situation. Nevertheless, judicial orders and their practical implementation are distinct. The continuation of hostilities illustrates the difficulty of translating legal obligations into immediate humanitarian protection.

South Africa's initiative also attracted international attention, including participation by other states through procedures available under the ICJ Statute. Such participation can contribute legal perspectives and reinforce scrutiny of compliance with the Genocide Convention. Nevertheless, intervention proceedings must be distinguished from joining the principal case as an applicant. Furthermore, Israel rejected the genocide allegations and defended its military operations on security grounds. These opposing positions demonstrate the political sensitivity of the proceedings, although neither political support nor rejection determines the ultimate legal merits of the case.

The findings also reveal the limits of interpreting South Africa's initiative through conventional humanitarian intervention theory. Wilson-Roberts (2000) identifies proportionality, last resort, and compliance with international humanitarian law as relevant considerations in evaluating humanitarian intervention. However, South Africa did not undertake military intervention; it pursued judicial remedies and diplomatic action. Its initiative is therefore more accurately understood as a legal strategy for humanitarian protection and accountability. The central limitation lies not in its inability to bring proceedings, but in the difficulty of securing immediate protection through international institutions. The case demonstrates the importance of international adjudication while highlighting the gap between judicial decisions and humanitarian outcomes on the ground.

6. Conclusion

This study concludes that South Africa's initiative against Israel demonstrates both the potential and limitations of international judicial proceedings as a means of pursuing humanitarian protection and accountability. The findings show that South Africa successfully instituted proceedings before the ICJ under the Genocide Convention, obtained provisional measures, and attracted broader international attention and participation. Therefore, its intervention's limitations should not be interpreted as an inability to bring a case against Israel. Instead, the central challenge is translating judicial decisions into immediate humanitarian outcomes. The continuation of hostilities, Israel's rejection of the genocide allegations, and the limited capacity of South Africa to ensure compliance independently illustrate the gap between international legal obligations and their implementation. The findings also show that South Africa's initiative is a non-military legal strategy rather than a conventional humanitarian intervention involving armed force.

These findings have theoretical and practical implications. The study extends humanitarian intervention theory by showing the relevance and limits of its dimensions when examining legal and diplomatic action rather than military intervention. The case highlights the importance of effective implementation mechanisms, sustained international cooperation, and continued monitoring of compliance with judicial measures to strengthen civilian protection. Nevertheless, this study is limited by its reliance on secondary documentary sources and its focus on one case, which restricts the generalizability of the findings and does not independently establish the legal merits of the genocide allegations. Future research should compare other international judicial proceedings involving humanitarian crises, examine how provisional measures are implemented and enforced over time, and investigate how diplomatic pressure, state participation, and institutional mechanisms influence compliance with international court decisions.

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Ethical approval was obtained for this study. The manuscript represents original work and has not been previously published, nor is it under consideration by another journal.

Data Disclosure Statement

The data that support the findings of this study are available from the corresponding author upon reasonable request.



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