



dipam

DİPLOMATİK İLİŞKİLER ve POLİTİK ARAŞTIRMALAR MERKEZİ
CENTER for DIPLOMATIC AFFAIRS and POLITICAL STUDIES

JANUARY 2024 | No: 26

WHAT DOES THE ICJ DECISION MEAN?

There were important developments in the genocide case brought by the Republic of South Africa (RSA) against Israel at the International Court of Justice (ICJ) on December 29, 2023. Following trials on January 11-12, interim measures were granted on January 26. The RSA had previously asked the Court to impose interim measures because Israel had been found guilty of genocide and urgently needed to stop these crimes, in an 84-page defense full of evidence. In its defense, Israel argued that its actions were within the scope of the right of self-defense and that it was not guilty of genocide, but mainly on the basis that the ICJ was not competent to hear this case. The ICJ ruled in its latest decision that it was competent

to hear this case. During the announcement of today's decision, the court showed that it accepted as evidence the statements of Israeli President Herzog that Palestinian civilians were also responsible for the attacks on Israel, the Israeli Defense Minister's reference to Gazans as "humanoid animals" and many other statements by Netanyahu.

In international law, states are represented by state officials, including the head of state, the head of government and the foreign minister. Since October 7, almost every statement made by Israeli officials has been a confession. It is legally significant that the ICJ cited this in the form of direct quotations and by name.

Politically, it shows that these officials are leaders who cannot foresee the future of their state and cannot calculate the cost of their words.

The Court also demonstrated its decisiveness in its decision by quoting statements by UN and its officials about the humanitarian tragedy in Palestine during all these attacks, such as “The humanitarian situation in Gaza is catastrophic.” The UN has long been criticized for its dysfunctionality and inability to do anything about Palestine. Indeed, the UN Secretary-General could not even get the Rafah crossing opened and the UN Security Council could not even pass a ceasefire resolution. So much so that the UN system itself and the necessity of the organization became questionable. First of all, the RSA showed that there were still areas that could be evaluated within the UN system. In a sense, the UN took advantage of this last chance to save its reputation. UN buildings bombed by Israel, UN officials killed, UN aid not delivered, UN Secretary-General’s words ignored, the UNSC unable to take decisions, and then the ICJ, saved the UN’s image to some extent. Nevertheless, this process has shown that every seemingly inconclusive official word, every General Assembly and Security Council meeting is proof of what was said. In a sense, Israel was condemned to stand trial for the crime of genocide based on the words of Israeli officials.

The Court’s explanations in justifying its decision to impose the injunction are also important. Although the Court has not yet made its final decision on the merits, it ruled that Israel should take an urgent decision on the grounds that until this decision is made, Israel may commit irreversible crimes in Gaza and cause irreversible deaths, destruction and

displacement. These decisions are necessary to prevent the commission of the acts specified in Article 2 of the Convention on the Prevention of the Crime of Genocide. Article 2 of the Convention on the Prevention of the Crime of Genocide, that the Israeli army itself take measures to prevent the commission of these acts, that those who call for genocide against the Palestinians be prevented from doing so, and that the perpetrators of the crime be punished, Urgent and effective measures to improve the living conditions of Palestinians in Gaza by providing them with access to humanitarian aid and basic services, measures to prevent the destruction and preserve evidence of genocide in the territory, and finally a report on compliance with all these measures to be submitted by Israel to the ICJ a month later.

The fact that all these decisions were taken by a margin of 15 to 2 and 16 to 1 is not only important but also raises questions. Is the Jewish lobby not as powerful as it used to be? Is the influence of the Jewish lobby or the US at the ICJ limited? Was this decision taken to lower the pulse of the American public and world public opinion to some extent? The voting rates actually answer the first two questions. It seems that the Jewish lobby or the US was unable or unwilling to manipulate the ICJ in the way they wanted. But the answer to the third question as to why this could not be done is not clear enough to say yes or no. It may indeed have been an attempt to lower the pulse of the peoples. But it seems more rational to think that this was done not by telling the ICJ how to make a decision, but by not putting pressure on it to make a decision. At the end of the day, no matter what obstacles are encountered, the ICJ will be able to make a decision in favor of Israel, the one-time victim of genocide.

Another important aspect of the ICJ's decision was the declaration of the Palestinians as a group that meets the requirements of a people under international law. Indeed, despite the statements of many Israeli officials such as Golda Meir and Bezalel Smotrich that "there is no such thing as the Palestinian people", the ICJ defined the Palestinians as a "national, ethnic, racial and religious" group that must be protected under Article 2 of the Genocide Convention. This definitively ended the debate on whether the Palestinians are a people or not. As such, this precedent-setting ruling is also an extremely important victory for the Palestinian right to self-determination.

The ICJ also ruled that Israel cannot use the right of self-defense, which it has been claiming all along, against this Palestinian group as a whole. The ICJ will also notify the UNSC of all these rulings. This notification, coming directly from the ICJ, could lead to a reconvening of the UNSC and could even lead to a resolution. The resolution is more important to influence the undecided members of the General Assembly than the Security Council. Indeed, one of the world's most authoritative courts has openly spoken out about Israel's crimes, thus overcoming the reservations of many states. Of course, the ICJ does not have an executive body. In a way, this is a consequence of the fact that international law is positioned above states, but does not interfere with their sovereignty. Many international courts have limited enforcement capabilities. Nevertheless, all these decisions taken by the UN court are of great importance both in terms of the importance of the Council and the power of public opinion. It is also very important that Israel is declared guilty of genocide in a way that will go down in history and that what the Palestinians are going through is

recognized by international law. Following the ICJ's decision, UN Secretary-General Antonio Guterres' statement that the court's rulings are binding and that they stand behind the decision on this issue seems meaningful. Indeed, if Israel does not comply with the ruling, the UNSC reserves the right to impose sanctions on Israel under Articles 36 and 37 of the UN Charter.

In addition to this resolution, which puts Israel in a very difficult situation, there is also an advisory resolution that the UN Secretary-General has asked the ICJ to take regarding Israeli settlers. These two resolutions are likely to prevent Israel from massacring civilians as it has been doing for more than 110 days. However, the Palestinian side must also be very careful during this one-month period. The 'emergence of new evidence', one of the conditions in Article 60 of the ICJ Statute, may lead to a change in the Court's decision. It is conceivable that Israel may try to get the Court to change its decision by bringing Hamas's actions to the Court in this way.

The part of the case that leads to a decision on the substance of the case, whether or not to declare Israel guilty of genocide, could take years. As a result of the case, Israel may be sentenced to compensation and many other outcomes may emerge. However, it is most important that public interest in the case does not wane during this long period of time. But at the first stage, Israel needs to be forced to implement this decision. As a matter of urgency, Israel must ensure the passage of humanitarian aid and end the blackout of electricity, water and fuel.

Although the cynical and cynical statements from Israeli officials are

disappointing, it should not be forgotten that they will also serve as evidence. This is also the reason why the ministers immediately after the decision were obliged to refrain from commenting on the decision. It is known that the court will consider all these statements against them.

Of course, Netanyahu and his team can be expected to resist the verdict. This is certainly not the “honorable exit” Netanyahu expected from this war, which has become the *raison d’être* of his political career. Nevertheless, it seems that Israel will not be able to continue its aggressive actions and rhetoric as easily as before.

In addition to the RSA and countries like Türkiye that support this cause, many states and the world community are now more aware of the violations of international law against the Palestinian people.



DİPLOMATİK İLİŞKİLER ve POLİTİK ARAŞTIRMALAR MERKEZİ
CENTER for DIPLOMATIC AFFAIRS and POLITICAL STUDIES

+90 216 310 30 40 info@dipam.org

+90 216 310 30 50 www.dipam.org

Merdivenköy Mah. Nur Sok. Business İstanbul
A Blok Kat:12 No:115, Kadıköy/İstanbul

ABOUT THE AUTHOR

Zehra AYDIN İŞCAN is a specialist at DİPAM. She is a PhD candidate at Marmara University, Department of Political Science and International Relations. Her areas of specialization are international law and peace studies. In addition to these fields, she has also worked in regions such as Bosnia and Herzegovina, Kosovo, Libya and on issues such as human rights and the environment.