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Analysis of today
Assessment of tomorrow

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Even though unlikely to succeed, South Africa's genocide lawsuit threatens Israel's reputation

Israel has reason to worry about the lawsuit that South Africa filed against it at the International Court of Justice, even though the court's decision will take a long time, and there is very little chance of labelling Israel of committing genocide against the Palestinians in Gaza.

The Israeli authorities are aware of their exposure to the risk due to South Africa's demand from December 29. After many years of boycotting the ICJ, they have decided to participate in the process.

The first hearing of the 2 sides will take place in The Hague next week (January 11 and 12), when the representatives of South Africa and Israel will present verbal arguments.

The lawsuit from Pretoria is well-founded because both South Africa and Israel recognise the jurisdiction of the ICJ and the UN Convention on the Prevention and Punishment of the Crime of Genocide from 1948, which is also the principal basis for this process.

The ICJ has jurisdiction over this dispute and will treat it as such. It rapidly responded to a request from South Africa's lawsuit for a temporary measure against Israel, which would prevent its alleged genocidal intent against the Palestinians in Gaza.

Temporary measure

Scheduling the first hearing on short notice shows that the ICJ is clearly giving South Africa's request a favourable reception, even though the merits and evidence have not yet been examined.

This request by South Africa, and particularly the ICJ's rapid reaction, puts Israel in a position to fear a possible decision of the court to issue a temporary measure and to oblige it to stop its operation in Gaza.

Even though the process could extend for years, deciding on a temporary measure against Israel is possible just a few weeks after the first hearing. By that time, the Israeli operation in Gaza will certainly not have ended. The ICJ has shown in recent years that it could easily impose interim measures.

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South Africa's accusations are detailed, supported by documents, official statements, testimonies from the scene and are modelled after the Gambia's lawsuit, on behalf of the Organisation of Islamic Cooperation, against Myanmar for alleged genocide against the Rohingya ethnic group. This case was initiated in 2019, and a decision has not yet been made.

"Israel, since 7 October 2023 in particular, has failed to prevent genocide and has failed to prosecute the direct and public incitement to genocide. More gravely still, Israel has engaged in, is engaging in and risks further engaging in genocidal acts against the Palestinian people in Gaza", stated the 84-page lawsuit of South Africa.

How strong is the evidence?

By opening this process, Israel faces a risk in the short term for its anti-terrorist operation against Hamas in Gaza.

The decision will certainly not be made while the operation lasts, but Israel's reputation as a country that uses the right to respond to a terrorist attack is at stake.

A nation against which genocide was committed finds itself in a situation where it must defend itself before the international court against accusations that it committed genocide.

The South African lawsuit is the first legal expression of widespread anti-Israel sentiment over its action against Hamas, not just among Islamic states. A lawsuit before the

ICJ has a potentially far more devastating effect on Israel, not including the resolutions that frequently circulate through the UN system.

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In a way, the South African legal action is also a consequence of the flooding of international fora, particularly the UN, with condemning resolutions against the Israeli action.

They provided the plaintiff before the ICJ with enough legal and political background to start a court process claiming genocide.

Numerous sources referred to by South Africa, from the circle of UN organisations and officials, confirm this as an argument that should represent the merits of the lawsuit.

However, their credibility has been badly shaken in many cases since October 7 due to the long-standing bias of some UN missions and officials towards the Palestinians.

In addition to these, the South African lawsuit also has weak points. It uses only figures published by Hamas institutions in Gaza as evidence of the mass suffering of Palestinians in Gaza due to the Israeli operation - the number of dead, the number of children killed, and the number of displaced persons - even though these data are considered exaggerated and unreliable.

Pressure on Netanyahu's government

However, these are the elements that, in the long run, give Israel a chance to defend itself against accusations of genocide, as does the fact that ICJ decisions are hardly ever implemented in practice.

In the case of Ukraine's lawsuit against Russia due to aggression in March 2022, this court adopted emergency measures to stop the aggression, but that did not happen.

The lawsuit has already succeeded in one thing, and that is to bring Israel to court, which, amid its anti-terrorist operation, will have to defend itself before the world's highest judicial forum against accusations of committing genocide.

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The process will put further pressure on Israel to agree to negotiations aimed at curbing its activities and ending the humanitarian crisis in Gaza, if not ending it altogether.

At the same time, this process puts even more pressure on the government of Benjamin Netanyahu and his far-right partners, as a factor that decisively contributed to the suspicions of genocidal intent, which is also discussed in the South African lawsuit.

The Israeli government is at its lowest level of trust (15%), and the prime minister and his ultra-right partners are under pressure from US allies for unacceptable statements about the displacement of Palestinians from Gaza and the opening of that space for Israeli settlers.

"This rhetoric is inflammatory and irresponsible. We have been told repeatedly and consistently by the Government of Israel, including by the Prime Minister, that such statements do not reflect the policy of the Israeli government. They should stop

immediately", stated the US State Department regarding the statements of the Israeli Minister of Finance, Bezalel Smotrich and Minister of National Security, Itamar Ben Gvir.