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# Turkey's Legal Contribution to the South Africa v. Israel Case: An Analysis within the Framework of Article 63 of the ICJ Statute

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**Abstract**

This study examines the legal submission made by Turkey regarding its intervention in the judicial proceedings initiated by South Africa against Israel. The study considers Turkey's legal reasoning in comparison with the approaches adopted by other intervening states. It identifies common legal approaches among intervening states, including their emphasis on the *jus cogens* status of the prohibition of genocide, the *erga omnes partes* nature of obligations to prevent genocide, and the possibility of establishing genocidal intent through indirect evidence. Turkey's intervention makes distinctive contributions in three areas: its interpretation of responsibilities arising from occupying power status; its argument that systematic destruction of health systems constitutes genocide; and its analysis of the relationship between apartheid and genocide. The study also identifies aspects that could have strengthened Turkey's application, including a more comprehensive challenge to Israel's self-defense argument, greater emphasis on cultural heritage destruction as evidence of genocidal intent, deeper analysis of the prevention obligation's scope, and more thorough examination of humanitarian aid obstruction. The research concludes that Article 63 interventions serve as important mechanisms for developing and clarifying international norms. The ICJ's assessment of these interventions will potentially contribute significantly to the evolution of international law regarding *erga omnes partes* obligations, determination of genocidal intent, and the scope of genocide prevention obligations. Future research should include detailed analysis of the ICJ's assessments of intervention applications in this case and examination of their effects on the development of international law, particularly concerning the relationship between genocide and other international crimes, and the scope of prevention obligations for occupying powers.

**Keywords:** Palestine, Turkey, International Law, International Court of Justice, Genocide.

**Anahtar Kelimeler:** En az 5 Türkçe Anahtar Kelime sunulmalı; aralarına virgül, en sona nokta konulmalı. (İlk anahtar kelime Filistin olmalı ve anahtar kelimeler genelden özele doğru sıralanmalı.)

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# Güney Afrika v. İsrail Davasına Türkiye'nin Hukuki Katkısı: UAD Statüsü'nün 63. Maddesi Çerçevesinde Bir Analiz


## Özet

Bu çalışma, Türkiye'nin Güney Afrika'nın İsrail'e karşı başlattığı yargı sürecine müdahalesine ilişkin yaptığı hukuki sunumu incelemektedir. Çalışma, Türkiye'nin hukuki gerekçesini diğer müdahil devletler tarafından benimsenen yaklaşımlarla karşılaştırmalı olarak ele almaktadır. Soykırım yasağının jus cogens statüsüne, soykırımı önleme yükümlülüğünün erga omnes partes niteliğine ve soykırım niyetinin dolaylı kanıtlarla ortaya konması olasılığına yaptıkları vurgu da dâhil olmak üzere, müdahil devletler arasındaki ortak hukuki yaklaşımları tespit etmektedir. Türkiye'nin müdahalesi üç alanda ayırt edici katkılarda bulunmaktadır: işgalci güç statüsünden kaynaklanan sorumlulukların yorumlanması; sağlık sistemlerinin sistematik olarak tahrip edilmesinin soykırım teşkil ettiği argümanı ve apartheid ile soykırım arasındaki ilişkinin analizi. Çalışma ayrıca, İsrail'in meşru müdafaa argümanına daha kapsamlı bir itiraz, soykırım niyetinin kanıtı olarak kültürel mirasın tahribine daha fazla vurgu, önleme yükümlülüğünün kapsamına ilişkin daha derin bir analiz ve insani yardımın engellenmesine ilişkin daha kapsamlı bir inceleme gibi Türkiye'nin başvurusunu güçlendirebilecek hususları da tespit etmektedir. Araştırma, Madde 63 müdahalelerinin uluslararası normların geliştirilmesi ve açıklığa kavuşturulması için önemli mekanizmalar olarak hizmet ettiği sonucuna varmaktadır. UAD'nin bu müdahalelere ilişkin değerlendirmesi, erga omnes partes yükümlülükler, soykırım niyetinin tespiti ve soykırımı önleme yükümlülüklerinin kapsamına ilişkin uluslararası hukukun evrimine potansiyel olarak önemli katkı sağlayacaktır. Gelecekteki araştırmalar, UAD'nin bu davadaki müdahale başvurularına ilişkin değerlendirmelerinin ayrıntılı analizini ve bunların uluslararası hukukun gelişimi üzerindeki etkilerinin, özellikle de soykırım ile diğer uluslararası suçlar arasındaki ilişki ve işgalci güçler için önleme yükümlülüklerinin kapsamı açısından incelenmesini içermelidir.


**Anahtar Kelimeler:** Filistin, Türkiye, Uluslararası Hukuk, Uluslararası Adalet Divanı, Soykırım

## Introduction

The offense of genocide is considered among the gravest breaches of international legal norms and was the subject of the 1948 Convention concerning Genocide Prevention and Punishment, imposing substantive responsibilities upon its signatories. Article IX of the Convention establishes the International Court of Justice's authority to adjudicate disputes among parties regarding allegedly genocidal acts. In this context, through adjudicating multiple contentious cases, the ICJ has established a comprehensive interpretive framework regarding genocidal acts.[1] On the 29th of December 2023, South Africa commenced judicial action against Israel by filing an application with the ICJ, alleging violations of the Convention on the Prevention and Punishment of the Crime of Genocide

[1] For example, International Court of Justice. *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion*. I.C.J. Reports (1951): para. 23-24., International Court of Justice. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro).* I.C.J. Reports (2007), para. 143-144, 186-189, 190-201, International Court of Justice. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia*)., I.C.J. Reports (2015), para. 407-439.

(Genocide Convention).[2] Following the October 7, 2023 events, South African authorities contended that Israeli state organs and representatives had acted contrary to their Genocide Convention commitments.[3] South Africa additionally petitioned for interim protective directives pursuant to the Statute's Article 41 and corresponding procedural regulations, seeking safeguards for Palestinian population's Convention-protected rights and ensuring Israeli compliance with treaty obligations.[4] South Africa asserts that Israel has demonstrated actions that bear the hallmarks of genocidal intent. By the date of the application, South Africa estimates that 21,110 Palestinians have lost their lives, of whom approximately 70% were women and children. Furthermore, approximately 55,000 people have been injured, and around 2 million people have been displaced.[5] Moreover, civilian infrastructure has been severely damaged[6] and it is reported that 93% of the population is facing a hunger crisis due to restrictions on humanitarian aid entering Gaza.[7] Furthermore, it is asserted that official statements by Israeli state authorities are of such a nature as to substantiate the existence of genocidal intent.[8] Following South Africa's institution of proceedings, Colombia, Mexico, Libya, Spain, Turkey, Chile, Maldives, Bolivia, Ireland, Cuba, and Belize submitted requests to intervene pursuant to Article 63 of the ICJ Statute. Meanwhile, Nicaragua requested to intervene under Article 62, and Palestine submitted intervention requests under both Article 62 and Article 63.

The ICJ Statute's Article 62 provides a mechanism through which nations may seek to participate in ongoing disputes before the Court, provided that it demonstrates that its legal interests are affected. The procedural framework enabling states to participate in cases involving treaty interpretation is codified in Article 63 of the ICJ Statute, provided that the other States parties to the treaty have been informed of the situation[9].

In accordance with Article 62 of the Statute of the ICJ, the ICJ requires applications to demonstrate a concrete legal interest prior to the conclusion of the written proceedings.[10] Nations seeking to join proceedings must establish a concrete juridical stake in the matter's

2 International Court of Justice, *Press Release: The Republic of South Africa institutes proceedings against the State of Israel and requests the Court to indicate provisional measures*, Press Release No. 2023/77, December 29, 2023, 1.

3 ICJ, *Press Release No. 2023/77*, 1.

4 ICJ, *Press Release No. 2023/77*, 1.

5 International Court of Justice, *Application Instituting Proceedings and Request for Provisional Measures (South Africa v. Israel*), December 29, 2023, 28, para. 19.

6 ICJ, *Application Instituting Proceedings and Request for Provisional Measures (South Africa v. Israel)*, December 29, 2023, 126-136, para. 88-94.

7 ICJ, *Application Instituting Proceedings and Request for Provisional Measures*, 94-106, para. 61-70.

8 ICJ, *Application Instituting Proceedings and Request for Provisional Measures*, 140, para. 101.

9 Malcolm N. Shaw, *Uluslararası Hukuk*, ed. İbrahim Kaya, çev. Yücel Acer (Ankara: TÜBA, 2018), 800-803.

10 Due to these requirements, the ICJ has rejected intervention requests in numerous disputes. For the relevant disputes, see International Court of Justice, *Nuclear Tests (New Zealand v. France), Application by Fiji for Permission to Intervene*, ICJ Reports, 1974, p. 253, International Court of Justice, *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, "Application by Malta for Permission to Intervene," *ICJ Reports*, 1981, p. 3., International Court of Justice, *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*, "Application by Nicaragua for Permission to Intervene," *ICJ Reports*, 1990, 92.

outcome[11] and must address the grounds of the concept of "legal interest" in a comprehensive manner[12].

In this particular context, Nicaragua, which submitted an application under Article 62 of the ICJ Statute in the South Africa v. Israel case, asserts that its legal interests stem from the *erga omnes partes* rights and obligations emanating from its status as a signatory to the Genocide Convention[13] and specifically targets the obligations to combat genocide, the protection of Nicaragua's legal rights, and the determination of Israel's responsibility.[14] Palestine, which has submitted applications under Articles 62 and 63 of the ICJ Statute, identifies its legal interests in its Article 62 application as: the Palestinian people being subjected to genocidal actions,[15] the genocide occurring on Palestinian territory,[16] and Palestine possessing the status of a "specially affected state."[17]

Article 63 of the Statute of the International Court of Justice (ICJ) constitutes a significant judicial mechanism, bestowing upon third States that are parties to multilateral treaties a "right of intervention" in the interpretation of said treaties. This right, which finds its origins in the Hague Conventions of 1899 and 1907, differs from the right of intervention under Article 62 in that it is more objective: the third State must be a party to the multilateral treaty concerned. In terms of concluded cases, PCIJ/ICJ has previously adjudicated a total of five cases (SS "Wimbledon," Haya de la Torre, Nicaragua, Nuclear Testing and Whaling in the Antarctic), and it has been accepted in three of them.[18] The admissibility of an application is contingent upon the fulfillment of three criteria: first, the third State is a party to the relevant treaty; second, the interpretation of the treaty is at issue in the case; and third, the communication refers to that interpretation. Since 1936, PCIJ/ICJ has possessed the authority to adjudicate the admissibility of intervention. The intervention's scope is circumscribed; the intervening state is not a party to the case, yet it is bound by the Court's decision on the interpretation of the relevant treaty. This promotes consistent interpretation of multilateral treaties.[19]

Eleven nation-states, including Palestine, have submitted formal applications seeking to intervene pursuant to Article 63 provisions. A thorough examination of the states' arguments discloses a variety of methodologies. The Colombian government grounds its





11 Republic of Philippines, *Application of the Republic of the Philippines for Permission to Intervene, Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, International Court of Justice, (2001), 596.
12 Republic of Philippines, *Application for Permission to Intervene*, 596.
13 Republic of Nicaragua, *Declaration of Intervention before the International Court of Justice: Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, International Court of Justice, January 22, 2024, 7-8, para. 13–15.
14 Republic of Nicaragua, *Declaration of Intervention*, 9-10, para. 21 (a-d).
15 State of Palestine, *Request for Intervention and Declaration of Intervention of the State of Palestine," Application to intervene by the State of Palestine in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, International Court of Justice, May 31, 2024, 13, para. 26.
16 State of Palestine, *Request for Intervention*, 14, para. 29.
17 State of Palestine, *Request for Intervention*, 14, para. 31.
18 Juan José Quintana, *Litigation at the International Court of Justice: Practice and Procedure* (Leiden: Brill Nijhoff, 2015), 929–931.
19 Quintana, *Litigation at the International Court of Justice*, 927–963.

juridical interest in its treaty party status and the resulting collective enforcement responsibilities, its *erga omnes partes* obligations,[20] the urgent need for protection of the Palestinian people,[21] and the imperative to contribute to the accurate interpretation of the convention.[22] While Libya's application text, which is both concise and politically focused, highlights Israel's genocidal intent[23] the Mexica's submission highlights three key elements: first, genocide's occurrence within warfare contexts,[24] secondly, the need to consider the destruction of cultural heritage within the scope of the crime of genocide[25] and thirdly, the legal consequences of preventing access to humanitarian aid.[26] Spain emphasises the argument that preventing humanitarian aid constitutes the crime of genocide[27] while Chile draws attention to the obligation of prevention in situations where states have effective control.[28] According to Cuba, the prohibition against genocide possesses both peremptory norm status and obligations owed to the international community as a whole.[29] In this context, Israel's Prevention responsibilities constitute outcome-focused duties rather than mere procedural obligations.[30] The obligation of result stipulates that the efficacy of measures undertaken by a state within the context of a given purpose is irrelevant; no justification can be proffered to evade responsibility. In this regard, in contrast to the obligation of due diligence, the undertaking of reasonable measures is insufficient to exonerate responsibility. Cuba asserts that, given Israel's status as an occupying power, it bears an obligation of result rather than a mere obligation of due diligence.[31] The Irish submission advocates for an expansive understanding of *dolus specialis* (special intent) that encompasses predictable outcomes of state actions[32] while the

[20] Republic of Colombia, *Declaration of Intervention before the International Court of Justice: Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel*), International Court of Justice, April 5, 2024, 10, para. 23.

[21] Republic of Colombia, *Declaration of Intervention*, 8-9, para-21-22.

[22] Republic of Colombia, *Declaration of Intervention*, 10, para. 24.

[23] State of Libya, *Declaration of Intervention before the International Court of Justice: Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel*), International Court of Justice May 10, 2024, 2, para. 6.

[24] Mexico, *Declaration of Intervention before the International Court of Justice: Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel),* International Court of Justice, May 28, 2024, 5-6, para. 23-27.

[25] Mexico, *Declaration of Intervention*, 7-8, para. 34-37.

[26] Mexico, *Declaration of Intervention*, 8-10, para. 38-43.

[27] Spain, *Declaration of Intervention before the International Court of Justice: Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel),* International Court of Justice, June 28, 2024, 8-10, para. 32-35.

[28] Chile, *Declaration of Intervention before the International Court of Justice: Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel),* International Court of Justice, Sept 13, 2024, 10-11,14, para. 36-38, 52.

[29] Republic of Cuba, *Declaration of Intervention before the International Court of Justice: Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel),* International Court of Justice, January 8, 2025, 5-7, para. 11-19.

[30] Republic of Cuba, *Declaration of Intervention*, 17-19, para. 51-57.

[31] Republic of Cuba, *Declaration of Intervention*, 17, para- 51-52.

[32] Ireland, *Declaration of Intervention before the International Court of Justice: Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel),* International Court of Justice, January 6, 2025, 11-14, para. 33-42.

Maldives indicates that genocide is encouraged by Israeli state officials.[33] The originality of this study lies in its contribution to the existing literature by evaluating Turkey's arguments together with the current jurisprudence and other intervention applications, thereby filling a significant gap in the existing body of knowledge.

This paper examines the juridical framework and substantive arguments advanced in Turkey's petition for third-party participation in the South African proceedings against Israel. The paper starts with an examination of the general framework of the case and the applications of other states. Then, Turkey's intervention application is evaluated in conjunction with the relevant jurisprudence and applications of other states. Finally, the paper provides conclusions.

**General Framework of the South Africa-Israel Case**

*Subject of the Case And Legal Arguments*

The case between South Africa and Israel pertains to the former's allegation that the latter has violated the 1948 Convention on the Prevention and Punishment of the Crime of Genocide in the military operations it initiated subsequent to October 7, 2023. It is argued that the jurisdiction is based on Article IX of the 1948 Genocide Convention[34] with reference to Article 36(1) of the ICJ Statute[35]. Both litigating parties maintain unrestricted adherence to both conventional instruments, having registered no qualifying declarations concerning any operative provisions. [36]

The application asserts that the number of Palestinians killed has exceeded 21,110, with women and children constituting 70% of the fatalities. It further states that 7,729 children have been killed, at an average rate of 115 children daily, and that civilian infrastructure has been targeted.[37]

In accordance with Article II(a) of the 1948 Genocide Convention, the South African government alleges that these events would be designated as acts of genocide.[38] Article II (a) conceptualizes genocide as the intentional elimination of demographically defined protected groups through deliberate destructive actions aimed at their collective existence.[39] In this context, the act of "killing 115 children every day," as stated in the



33 Republic of Maldives, *Declaration of Intervention before the International Court of Justice: Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel),* International Court of Justice, October 1, 2024.19-27, para. 53-76.

34 Genocide Convention IX "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 for 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."

35 ICJ Statute art. 36(1) "The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force."

36 ICJ, "States Entitled to Appear before the Court," accessed January 31, 2025, https://www.icj-cij.org/states-entitled-to-appear., United Nations Treaty Collection, "1. Convention on the Prevention and Punishment of the Crime of Genocide," accessed January 31, 2025, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4. Accessed January 31, 2025

37 ICJ, *Application (South Africa v. Israel)*, 74-84, para. 45-50.

38 ICJ, *Application (South Africa v. Israel),* 168-169, para. 114.

39 1948 Genocide Convention, art. II.(a)

application text,[40] gives the impression that the actions are not random but are part of a systematic policy. Indeed, the statements made by high-ranking Israeli statesmen, retired soldiers, and even the general public, such as "completely destroying the region" or "fighting with animal-like people,"[41] indicate a congruence between discourse and action. This, in turn, satisfies the criteria for the special intent (*dolus specialis*) element of the crime of genocide[42]. Secondly, the 1948 Genocide treaty's Article II(b) characterizes genocidal acts as including the infliction of serious bodily or mental harm on members of a group. The terms "physical injury" and "mental harm" are generally defined as damage to internal and external organs or impairment of external appearance,[43] serious physical pain, or mental suffering.[44] It is the considered opinion of South Africa that the subjection of Palestinians in Gaza to mutilation, psychological trauma, and inhumane and degrading treatment constitutes a violation of the relevant provisos.[45] Conversely, South Africa asserts that the deterioration of health, education, hunger and thirst, shelter, and birth conditions in Gaza by Israel[46] constitutes a violation of the obligations arising from the 1948 Genocide Convention. Consequently, South Africa asserts that Israel has violated its Convention obligations through multiple mechanisms, including, but not limited to, the following: failure to implement preventative measures; direct commission of prohibited acts; instigation of genocidal acts; complicity in genocidal actions; non-prosecution of responsible parties; and omission to establish requisite domestic legal frameworks as required under the 1948 Convention.[47] Following the identification of the aforementioned contraventions, the Republic of South Africa has emphasised the urgency of a swift resolution concerning the implementation of provisional measures on the matter in question.[48] In this regard, the application posits that the court possesses *prima facie* jurisdiction, obviating the necessity for a comprehensive determination of the court's jurisdiction.[49] *Prima facie* jurisdiction, accruing from Article 41 of the ICJ Statute, constitutes

[40] In order for the crime of genocide to come into existence, according to some authors, it is sufficient to kill one person, according to others at least two people with genocidal intent. For detailed information, see. bkz. Lars Berster, "Article II," in *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary*, ed. Christian J. Tams, Lars Berster, and Björn Schiffbauer, 1st ed. (Oxford: Beck/Hart, 2014), 116–118.

[41] ICJ, *Application (South Africa v. Israel)*, 140-156, para. 101-107

[42] The concept of special intent for genocide (*dolus specialis*) denotes the deliberate intention to destroy, in whole or in part, members of a particular group. It is important to note that this concept is interpreted differently in case law, as evidenced by the divergent interpretations of the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Tribunal for the former Yugoslavia (ICTY), and the International Commission of Jurists (ICJ). For instance, in the case of Bosnia and Herzegovina v. Serbia, the ICJ applied specific intent solely to Srebrenica, but not to other acts of violence. For a more detailed discussion of this subject, see. Yusuf Aksar, "The Specific Intent (*Dolus Specialis*) Requirement of the Crime of Genocide: Confluence or Conflict between the Practice of Ad Hoc Tribunals and ICJ," *Uluslararası İlişkiler* 6, no. 23 (2009): 113–126.

[43] International Criminal Tribunal for Rwanda, *Kayishema ve Ruzindana*, Trial Chamber, May 21, 1999, para. 109. International Criminal Tribunal for Rwanda, *Kayishema v. Ruzindana*, ICTR-95-1-T, Judgment, May 21, 1999.

[44] International Criminal Tribunal for the Former Yugoslavia (ICTY), *Prosecutor v. Radislav Krstić*, Case No. ICTY-98-33-T, Trial Chamber Judgment, August 2, 2001, para. 510, International Criminal Tribunal for the Former Yugoslavia (ICTY), *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. ICTY-02-60-T, Trial Chamber Judgment, January 17, 2005, para. 645.

[45] ICJ, *Application (South Africa v. Israel*), 168-169, para. 114.

[46] ICJ, *Application (South Africa v. Israel*). 168-169, para. 114.

[47] ICJ, *Application (South Africa v. Israel*). 168-169, para. 114.

[48] ICJ, *Application (South Africa v. Israel*), 170-172, para. 117-119.

[49] ICJ, *Application (South Africa v. Israel*), 174-180, para. 120-128.

a sine qua non for the evaluation of a request for provisional measures.[50] It has been asserted that determining this jurisdiction is sufficient. South Africa has requested a number of provisional measures to protect Palestinians' rights to exist as a group and not to be subjected to genocide. South Africa has also requested its *erga omnes partes* rights arising from the Genocide Convention.[51] The justification for this request is rooted in the appalling loss of life, with approximately 21,000 Palestinians (7,729 of whom were children) having been killed at the time of application, 93% of the population facing the risk of starvation, and the displacement of approximately 2 million people, as well as the urgency of the situation and the risk of irreparable harm.[52] Provisional measures including stopping military operations, preserving evidence and reporting, and preventing the aggravation of the dispute have been requested[53].

In its counter-arguments, the Israeli government contested these characterizations and requests for provisional measures in a session on January 12, 2024. According to Israel, in accordance with court jurisprudence, for a dispute to be considered before the ICJ, the parties must have clearly opposing views, the relevant dispute must be objectively determinable, and the respondent state must have been informed of the relevant situation and given the opportunity to respond.[54] In light of South Africa's notification of genocide concerns to Israel on 21 December 2023, Israel made two requests for meetings. In addition to these requests remaining unanswered, South Africa took the initiative to file a lawsuit on 29 December 2023, due to the lack of response to the genocide concerns.[55]

In this context, Israel asserts that the eight-day period preceding the initiation of legal proceedings was inadequate for the evaluation of the situation between South Africa and Israel. According to Israel, the Republic of South Africa instigated legal proceedings without providing the State of Israel with a reasonable timeframe for the discussion of the matter. This course of action effectively disregarded the ongoing efforts to engage in diplomatic dialogue between the involved parties. According to Israel, this state of affairs calls into question the existence of a genuine dispute[56].

Secondly, Israel asserts that the primary cause of civilian casualties is the employment of military tactics by Hamas, including the utilisation of hospitals for military purposes.[57]





50 In order to ascertain the existence of *prima facie* jurisdiction, it is necessary to determine the likelihood of success in the case. If the case is deemed to be unsuccessful, it would be futile to reach a decision on the matter. Initially, the ICJ did not accord much attention to this issue, but over time, the determination of the chance of success evolved into what is now known as the "reasonableness test." The reasonableness test also necessitated the existence of certain evidence. Karin Oellers-Frahm and Andreas Zimmermann, "Article 41," in *The Statute of the International Court of Justice: A Commentary*, 3rd ed., ed. Andreas Zimmermann, Christian J. Tams, Karin Oellers-Frahm, and Christian Tomuschat (Oxford: Oxford University Press, 2019), 1156–1159.

51 ICJ, *Application (South Africa v. Israel*), 178-184, para. 129-135.

52 ICJ, *Application (South Africa v. Israel*), 184-190, para. 136-143.

53 ICJ, *Application (South Africa v. Israel*), 190-194, para. 144-147.

54 Malcolm Shaw. "Prima Facie Jurisdiction and the Preservation of the Rights of the Parties.", *Request for the Indication of Provisional Measures Submitted by the Republic of South Africa on 29 December 2023 in the Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*. The International Court of Justice, 2023. 24-28, para. 11-27.

55 Shaw, "*Prima Facie Jurisdiction*", 27-28, para. 21-27

56 Shaw, "*Prima Facie Jurisdiction*", 27-28, para. 21-27

57 Galit Raguan, "Facts on the Ground," *International Court of Justice Hearing Transcript*, 41, para. 5–6.

Furthermore, Israel has endorsed the establishment of humanitarian aid corridors and has disseminated evacuation warnings.[58] The Israeli authorities have implemented mechanisms facilitating potable water distribution and healthcare resource provision.[59] Israel consequently asserted that the evidentiary standard for irreversible harm had not been met, thereby rendering supplementary judicial protective directives procedurally unnecessary, based on the factual circumstances presented.[60] Accordingly, the Israeli position articulates a dual juridical foundation, invoking self-defensive prerogatives as legitimized under international law in response to Hamas-initiated hostilities. Concurrently, it endeavors to project institutional legitimacy through strategic self-characterization as an entity purportedly operating within established parameters of rule-of-law principles.[61]

When ruling on jurisdictional objections in late January 2024, the Court found Israel's preliminary arguments unpersuasive, such as lack of jurisdiction and absence of a dispute.[62] Conversely, the ICJ accepted South Africa's arguments regarding the urgency of the situation in Gaza and the risk of irreversible harm,[63] and while not completely halting Israel's military operations, the court issued six basic provisional measures under the Genocide Convention.[64]

South Africa filed an additional provisional measures request on February 12, 2024, emphasizing critical conditions in Rafah and seeking cessation of military activities in that region. The Court, however, determined that the proper implementation of its January 26 decision would provide adequate protection without requiring additional judicial directives.

A subsequent submission by the South African legal team underscored the humanitarian situation in the Gaza region, emphasizing the importance of ensuring unimpeded access to food and other essential supplies. It was suggested that Israel's actions may have contributed to this challenging situation.[65] The Israeli authorities contended that opposing forces were employing civilian presence as tactical protection while simultaneously

58 Galit Raguan, "*Facts on the Ground*," 45, para. 43.

59 Omri Sender, "Lack of Risk of Irreparable Prejudice and Urgency," *International Court of Justice Hearing Transcript*, 51, para. 10.

60 Omri Sender, "*Lack of Risk*", 50, para. 6.

61 Gilad Noam, *International Court of Justice Hearing Transcript*, 71-75, para. 1-26.

62 International Court of Justice, *Order of 26 January 2024*, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel*), 8-12, para. 15-32. In his dissenting opinion, Judge Barak emphasised Israel's right to self-defence against terrorist activities and the baselessness of the genocide allegations. Aharon Barak, "Separate Opinion," *International Court of Justice*, January 26, 2024, 1-10, Judge Sebutinde stated that the essence of the conflict was political in nature, that interim measures were unnecessary and that there was insufficient evidence for the claim of genocide. Julia Sebutinde, "Dissenting Opinion,", *International Court of Justice,* January 26, 2024, 1-11.

63 ICJ, *Order of 26 January 2024,* 15-17, 20-22, para. 46-54, 63-74.

64 ICJ, *Order of 26 January 2024,* 24-26, para. 75-86.

65 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), Urgent Request and Application for the Indication of Additional Provisional Measures*, March 6, 2024, ss. 1-11, para. 1-14.

asserting diligent implementation of humanitarian assistance facilitation measures.[66] As a result of this third application, the ICJ treated the hunger and famine in Gaza as an extremely grave situation[67] and introduced new measures for the delivery of humanitarian aid, emphasizing that the existing measures were insufficient.[68] On 10 May 2024, the Republic of South Africa submitted a supplementary petition of heightened exigency, premised on the assertion that previously implemented judicial safeguards had proven inadequate. The formal submission indicated the emergence of new circumstances, wherein designated safe havens that had been established for the protection of Palestinian civilians had been utilised to inflict widespread destruction. This change in use was a clear violation of the 1948 Genocide Convention's main protective rules.[69] It further requested the cessation of military operations in Rafah and the facilitation of unobstructed access to Gaza.[70] Additionally, recent statements by Israeli state officials, which could be presented as evidence of Israel's genocidal intent, were documented.[71] In the face of these allegations, Israel emphasized that it was exercising its right to self-defense, that it was taking the necessary measures for civilians[72] and that HAMAS forming a significant force in Rafah was the main reason for the operations.[73] Ultimately, in its decision dated 24 May 2024, the ICJ found South Africa's arguments to be well-founded and, emphasising the gravity of the situation in Rafah[74] stated that Israel should cease its military operations, maintain the crossing in Rafah for the purpose of humanitarian aid, and permit UN investigation teams to enter Gaza.[75] Consequently, the South African representation emphasizes the contravention of the 1948 Genocide Convention's substantive provisions, asserting that the documented actions constitute genocidal conduct under international law, and further contending that the Israeli state perpetuates such contraventions through its non-adherence to provisional judicial directives while persisting in contested military

66 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)*, *Observations of the State of Israel on the Request Filed by South Africa on 6 March 202*4, 1-21.

67 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),* Order of 28 March 2024, para. 18-21. Judge Barak argued that the decision was political rather than legal, that there had been no real change in the situation and that the role of HAMAS had been ignored. Barak, "Separate Opinion," *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel),* Order of 28 March 2024, 1-7, para. 1-37.

68 ICJ, *Application (South Africa v. Israel),* 4-5, 8-10, para. 22-23, 45-47.

69 International Court of Justice, *South Africa v. Israel, "Urgent Request*," May 10, 2024, 1-2, para. 5

70 ICJ, "*Urgent Request*", 6-8, para. 20-28.

71 ICJ, "*Urgent Request*", 8-10, para. 29-33.

72 In its response to Judge Nolte's question, Israel again referred to the measures taken to minimise civilian casualties. State of Israel, "Response to Judge Nolte's Question," *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), International Court of Justice* (May 18, 2024), 2, para. 4. A report by an independent organisation refutes Israel's arguments. See Republic of South Africa. "Comments on Israel's Response with Forensic Architecture Report." *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel). International Court of Justice*, May 20, 2024.

73 International Court of Justice, *Verbatim Record, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel*), *Public Sitting*, CR 2024/28 (May 17, 2024), para. 13-31.

74 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),* Order of 24 May 2024, para. 29.

75 ICJ, *Order of 24 May 2024,* 14, 57(2).

operations. In contrast, the Israeli counterargument suggests that there are legitimate reasons for self-defense following the October 7th hostilities. They also strongly disagree with claims that there was any intention of genocide. They argue that they have taken steps to protect civilians and that there is no need for special legal action. In its decisions, the International Court of Justice has carefully considered the well-being of non-combatants in the Gaza territory, issuing directives that call on Israeli authorities to take immediate and effective protective measures in the operational theater.

**General Analysis of Intervention Applications**

Even though the presence of significant disparities in the jurisprudence of the intervening states' submissions gives rise to considerable analytical challenges, a number of fundamental propositions are common to all intervention applications. These propositions include the contravention of international legal principles in Gaza activities, the satisfaction of genocidal definitional parameters, the maintenance of jurisdictional authority by the Court, and the interpretive relevance of humanitarian law principles. Furthermore, a general consensus exists regarding the constitutive elements of prohibited conduct. The principal interpretive differentiation that emerges pertains to the evidentiary standards for establishing the distinctive mental element, particularly concerning the probative value of specific Israeli actions. However, these divergences in evidential assessments do not indicate fundamental conceptual disagreement regarding the Convention's definitional architecture.

Analyzing the diverse submissions requires categorical organization to identify thematic commonalities and divergences among intervening states. In this context, the applications made under Articles 62 and 63 of the ICJ Statute will be analysed and evaluated separately. Turkey's arguments will be discussed comparatively, taking into account the relevant arguments.

*Applications under Article 62 of the ICJ Statute*

In the proceedings, Nicaragua pursued Article 62 participation in an exclusive manner, whereas Palestine and Belize employed dual-track approaches invoking both statutory mechanisms. Belize's submission introduces a proposition that is provocative in terms of jurisprudence concerning the potential commission of genocide absent immediate civilian victimisation – a conceptual framework that generates significant scholarly scepticism. This raises the contested question of whether humanitarian law violations independently satisfy Convention definitional parameters, representing a doctrinally unorthodox position advanced in Belize's intervention.[76] The Nicaraguan submission asserts that the actions of the State of Israel constitute violations of the initial six articles of the Convention, which encompass definitional elements, preventative obligations, and implementation mechanisms.[77] Within this juridical framework, Nicaragua articulates that its petition for

[76] Belize, *Application for Permission to Intervene in the case concerning before 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*), 30 January 2025, 24, para. 59.

[77] Republic of Nicaragua, *Declaration of Intervention*, 5-7.

intervention was predicated upon the assertion that the Genocide Convention's provisions establish obligations of an *erga omnes partes* character, thereby imposing collective responsibility upon all signatory states to undertake preventative and punitive measures against genocidal acts, while simultaneously acknowledging that Article VIII of the Convention confers jurisdictional standing to seek recourse through United Nations institutional mechanisms.[78] The application incorporates a comprehensive array of evidence, encompassing analyses grounded in statistical data and assertions made by high-ranking Israeli officials.[79] Notwithstanding, while the application adopts a circumspect stance on subjects such as the Palestinian people's right to self-determination or violations of humanitarian law principles, it appears to prioritize the favorable provisions enshrined within the Genocide Convention. In this context, the application's approach to *erga omnes partes* obligations may contribute to developments that increase the collective action capacity of the international community.

Palestine has petitioned for participatory status through dual statutory mechanisms. First, it invoked Article 62 on the basis that South African proceedings implicate its direct interests. Second, it sought Article 63 intervention predicated on its unconditional adherence to the Genocide Convention as a contracting party without qualifying reservations.[80] With regard to the application under Article 62, which concerns the status of a direct victim of genocide, the fact that the relevant acts took place on Palestinian territory, and the emphasis on the *erga omnes partes* obligation, the processing has been successful.[81] In contrast, the application under Article 63 has been justified in the context of a special approach to Articles I-VI and IX of the Genocide Convention and the historical background to the subject.[82] Despite emphasising its status as a "specially affected state" in its application, Palestine's approach to issues such as demonstrating *dolus specialis* evidence of Israel's genocidal intent or violations of humanitarian law rules appears to lack substantiality. It can be contended that, should the application be accepted, further elaboration on these matters will be provided in subsequent stages of the case. However, the emphasis on the occurrence of relevant acts within occupied territories has been deemed inadequate.

While it appears that Palestine has adopted a robust strategy with regard to the procedural aspects of its application, it must be acknowledged that there are numerous elements that could be further reinforced in terms of substance. Given that Palestine's arguments concerning its application are founded on its status as a direct party and victim, there is a substantial possibility that it will have a significant impact on the course of the case as outlined in Article 62. Article 62's fundamental purpose is to enable the State of Palestine





78 Republic of Nicaragua, *Declaration of Intervention,* 8-10, para.17-21.
79 Republic of Nicaragua, *Declaration of Intervention*, 14-24.
80 State of Palestine, *Declaration Recognizing the Competence of the International Court of Justice and Request for Intervention and Declaration of Intervention in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel),* International Court of Justice, May 31, 2024, 1-2, para.1-5.
81 State of Palestine, *Declaration of Intervention*, 12-18, para. 20-37.
82 State of Palestine, Declaration of Intervention, 18-20. para. 38-47.

to become a party to this particular case, and it would be judicious for the ICJ to accept the application.

The same argument cannot be made for Nicaragua's application. Nicaragua's actions serve only to extend and obfuscate the proceedings for reasons that include the absence of any directly impacting circumstances, its evident inadequacy in substantiating its legal interest, and the impending implementation of a novel procedure that would empower Nicaragua to present its own arguments should the application be granted.[83] The ICJ has been noted for its notably cautious approach to applications under Article 62, having rejected 70% of the relevant applications since 1945.[84] This observation indicates that the two applications made under Article 62 do not contribute equally to the proceedings, and their respective arguments are not equally robust. The probability of the application of Palestine being accepted is significantly higher than that of Nicaragua. This is due to factors including the content of the applications, the legal interest of the parties concerned, and the fact that Palestine is a directly affected state and victim. However, it is crucial to acknowledge the omission of crucial elements such as genocide, the concept of *dolus specialis*, and violations of humanitarian law in both applications, which precludes a comprehensive evaluation of these issues.

As stated in the press release of April 1, 2025, Nicaragua's application under Article 62 was withdrawn.[85] However, it is crucial to emphasise that Nicaragua's withdrawal of its application under Article 62 was a strategic move, anticipated and prepared for, in anticipation of the adverse consequences that would have ensued had the application been pursued.

*Applications under Article 63 of the ICJ Statute*

The ICJ Statute's Article 63 establishes a procedural mechanism through which treaty signatories may participate in interpretive proceedings, conditional upon satisfying the procedural requirements articulated in the Court's Rules. This provision enhances judicial legitimacy through several mechanisms: preventing duplicative litigation, fostering greater adherence to juridical principles, and enabling contracting states to contribute to authoritative treaty construction.[86]





[83] Juliette McIntyre, Why Nicaragua's Article 62 Intervention in South Africa v. Israel is Potentially Unhelpful, VerfBlog, February 11 2024, https://verfassungsblog.de/why-nicaraguas-article-62-intervention-in-south-africa-v-israel-is-potentially-unhelpful/, DOI: 10.59704/79991772098d56b6. Accessed February 24, 2025.

[84] McIntyre, *"Why Nicaragua's Article 62 Intervention,"* VerfBlog, February 11, 2024, https://verfassungsblog.de/why-nicaraguas-article-62-intervention-in-south-africa-v-israel-is-potentially-unhelpful/. Accessed February 25, 2025.

[85] International Court of Justice, *Press Release*: *Nicaragua withdraws its Application for permission to intervene in the proceedings*, Press Release No: No. 2025/15, April 3, 2025, 1.

[86] Nu Thanh Binh Ton, "Article 63 Intervention before the International Court of Justice: New Developments and the Way Forward," Opinio Juris (blog), July 26, 2024, https://opiniojuris.org/2024/07/26/article-63-intervention-before-the-international-court-of-justice-new-developments-and-the-way-forward/. Accessed February 25, 2025.

Although the arguments of the States applying for intervention in the South Africa-Israel case are generally compatible with each other, there are also differences between them in significant respects.

*Common Legal Approaches*

The conformity between the intervention applications is pervasive. First, all states that have applied under Article 63, assert the existence of ICJ's jurisdiction and their right to intervene. They also acknowledege genocide's absolute prohibition within the international legal order.[87] In this context, while states applying for intervention generally emphasise *erga omnes partes* obligations arising from the Genocide Convention,[88] some states directly refer to *erga omnes* obligations.[89] States may ground genocide prevention and punishment obligations in ICJ jurisprudence, communal international responsibilities, or the Convention's humanitarian objectives and obligatory character. Despite varied juridical foundations, intervening states consistently refer to obligations owed either universally or to all treaty participants concerning prohibition enforcement. Analytical consensus emerges regarding both the existence of juridical interest in fulfilling these collective obligations and the procedural entitlement of states to assert these responsibilities against violating entities.[90] It can be posited that the states' approaches to this issue are consistent with the jurisprudence of the ICJ. Indeed, the ICJ acknowledged in the Gambia-Myanmar case that obligations related to genocide possess an *erga omnes partes* character[91] and this approach was reiterated in the South Africa-Israel case.[92] The jurisprudential evolution is exemplified by Judge Xue's recalibrated position regarding *erga omnes partes* standing—having previously expressed skepticism toward such obligation-based litigation, she adopted a nuanced approach in the South Africa-Israel proceedings, acknowledging the distinctive contextual considerations applicable to the Palestinian situation.[93] In this context, the ICJ's approach in the South Africa-Israel case is of critical importance in clarifying the issue.

[87] For example Republic of Bolivia, *Declaration of Intervention by the Plurinational State of Bolivia," Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), International Court of Justice*, October 8, 2024, 14-22, para. 31-59. Republic of Colombia, Declaration of Intervention, 18-54, para. 18-183. State of Libya, Declaration of Intervention, 2-6. Mexico, Declaration of Intervention, 12-13, para. 51-56. Republic of Chile, Declaration of Intervention, 2-20, para. 9-71.

[88] Bolivia, Declaration of Intervention, 11, para.25., Colombia, Declaration of Intervention, 7, para. 16., Libya, Declaration of Intervention, 3, para. 6.

[89] Ireland, Declaration of Intervention, 4, para. 12., Spain, Declaration of Intervention, 3, para.14., Mexico, Declaration of Intervention, 3-5, para.10-15. Chile, Declaration of Intervention, 3, para.14.

[90] *Erga omnes* obligations and *erga omnes partes* obligations have different meanings. While *erga omnes partes* obligation requires being a party to an international treaty, the concept of *erga omnes* obligation has a broader context. For detailed information, see. Berat Lale Akkutay, *Viyana Andlaşmalar Hukuku Sözleşmesi, Objektif Rejim Yaratan Andlaşma Teorisi ve Erga Omnes Yükümlülüklerin Andlaşmalarla İlişkisi Çerçevesinde Uluslararası Andlaşmaların Üçüncü Devletlere Etkisi*, 1st edition (Ankara: Adalet Yayınevi, 2020), 207-217.

[91] International Court of Justice, The Gambia v. Myanmar, *Preliminary Objections*, January 20, 2021, 34, para. 108.

[92] International Court of Justice, *South Africa v. Israel, Request for the Indication of Provisional Measures, Order*, January 26, 2024, para. 33, s.12.

[93] Pearce Clancy, "Erga Omnes Partes Standing after South Africa v Israel," EJIL: Talk!, February 1, 2024, https://www.ejiltalk.org/erga-omnes-partes-standing-after-south-africa-v-israel/. Accessed February 26, 2025.

Next, intervening states consistently advance a secondary jurisprudential contention regarding the hierarchical status of genocide prohibition as a peremptory norm (*jus cogens*) within international legal frameworks. Upon examination of the judicial determinations articulated by the International Court of Justice in the seminal cases concerning *Bosnia and Herzegovina-Serbia and Montenegro* and *Croatia-Serbia*[94] scholarly consensus has emerged affirming the non-derogable character of anti-genocide principles as constituting a *jus cogens* norm.[95]

A methodological commonality observed across submissions involves the application of interpretive principles codified in Articles 31 and 32 of the VCLT when analyzing the disputed provisions within their contextual framework.

Beyond the conventional classification and hermeneutical approaches, participating states have demonstrated particular attention to evidentiary standards for establishing genocidal intent alongside the autonomous legal character of incitement provisions within the Convention's regulatory architecture. These elements have received varied emphasis across national submissions.

The mental element (*mens rea*) of the genocide has two elements: knowledge and intent.[96] The specialized term "*dolus specialis*" designates the distinctive intentional requirement—specifically, the deliberate aim to eradicate, either completely or partially, a demographically defined protected group. Although systematic planning is not dispositive, empirical evidence consistently demonstrates that genocidal conduct invariably incorporates structured organizational frameworks.[97]

International legal jurisprudence on the prosecution of genocide reveals that the evidence of the specific intent required for a conviction of genocide can also be established indirectly. The ICTR jurisprudence has provided that the requisite distinctive intentional element can be satisfactorily demonstrated through circumstantial evidence since it was not possible for any individual other than the accused to ascertain the thoughts and intentions of the accused, and it was not reasonable to expect the accused to provide testimony incriminating themselves.[98] In this context, the applications of intervening states suggest that the provenance of genocidal intent can be established through indirect evidence. For instance, according to Ireland, recklessly committing a prohibited act despite awareness of the consequences of one's actions, enables the determination and substantiation of special





94 International Court of Justice, *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. 222, para. 161; International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment*, I.C.J. Reports 2015, para. 87.

95 Colombia, Declaration of Intervention, 7, para. 16, Ireland, Declaration of Intervention, 4, para.12, Spain, Declaration of Intervention, 3, para. 14., Libya, Declaration of Intervention, 3, para.6. Maldives, Declaration of Intervention, 4, para.5. Mexico, Declaration of Intervention, 4, para.17-19., Cuba, Declaration of Intervention, 5-11, 49-51, para. 11,14,18,197,205.

96 William A. Schabas, Genocide in International Law: The Crime of Crimes, 2nd ed. (Cambridge: Cambridge University Press, 2009), 241-307.

97 Örneğin Prosecutor v. Krstić (Case No. IT-98-33-T), Judgment, 2 August 2001, para. 572.

98 International Criminal Tribunal for Rwanda, Prosecutor v. Gacumbitsi (Case No. ICTR-2001-64-A), Judgment, July 7, 2006, para. 40.

intent.[99] The Maldives position is cognate with that of Ireland as it states that special intent can be determined by inferences, provided that it is the *only reasonable conclusion*. Furthermore, genocidal intent can be determined based on acts not covered by genocide, or by having knowledge of the plan and policy.[100] According to Chile, even if it is inherently impossible to prove special intent with direct evidence, lack of evidence does not prevent the determination of intent.[101] In a similar vein, the Spanish government asserted that inferences could be drawn through the utilisation of indirect evidence, with statements issued by Israeli officials being deemed as a potential aid in this particular context.[102]

Conversely, it has been observed that the states requesting intervention tend to reach a consensus on various issues, including the distinct conditions under which individual and state responsibility are ascribed in the context of the genocide,[103] the obligation to prevent genocide,[104] and the independent nature of the crime of incitement to genocide.[105] As is apparent, states requesting intervention have adopted an approach consistent with existing jurisprudence. It is manifest that states are motivated to expand the ambit of responsibility, encompassing diverse rubrics such as the obligation to prevent and the criminalization of incitement to genocide, in addition to actions directly causative of genocide, through interpretive latitude within the Genocide Convention. Conversely, states frequently resort to the concepts of *erga omnes* or *erga omnes partes,* with the objective of fortifying their application within this particular context.

*Different Legal Approaches*

Even though it is reasonable argue that intervening states do not display a significant divergence on fundamental issues in their applications, his paper identifies that there are also discrepancies in their arguments on the theory of the sources of international law, international humanitarian law and the elements that constitute genocide in the specific case. It is important to note that these discrepancies do not necessarily imply that states are refuting each others' grounds for applications.

Intervening states demonstrate conceptual differences regarding the normative foundations of genocide prohibition obligations. Genocide is a grave violation that transcends its designation as a mere violation of human rights. It is an infraction that mandates specific duties upon all states that are parties of the Genocide Convention. In this context, the inquiry as to whether these stipulated obligations engender any responsibilities beyond those prescribed by international treaty law continues to be a matter of scholarly contention.





99 Ireland, *Declaration of Intervention*, 9-12, para. 24-32.
100 Maldives, *Declaration of Intervention*, 16-19, para. 44-52.
101 Chile, *Declaration of Intervention*, 8-9, para. 30-33.
102 Spain, *Declaration of Intervention*, 6-7, para.22-27.
103 Ireland, *Declaration of Intervention*, 21-22, para. 44-47, Maldives, *Declaration of Intervention*, 18-21, para.51-58, Chile, *Declaration of Intervention*, 13, para.48, Mexico, *Declaration of Intervention*, 12-13, para. 51-56.
104 Maldives, *Declaration of Intervention*, 14, para. 36-38, Chile, *Declaration of Intervention*, 9-12, para. 34-46.
105 Maldives, *Declaration of Intervention*, 19-25, para. 53-63, Chile, *Declaration of Intervention*, 16-20, para. 59-71.

Scholarly debate persists concerning whether genocide prohibition derives from treaty law exclusively or also from customary norms.[106] Indeed, as asserted by certain scholars, it is not possible to claim that any principle of human rights law, including the proscription of genocide, is derived from customary international law.[107] The Court's seminal Advisory Opinion—representing a cornerstone interpretation of the Convention—notably abstains from customary law terminology, instead grounding genocidal prohibition on moral imperatives and characterizing prevention duties as binding upon states regardless of the establishment of customary obligation.[108] The Court thus establishes that genocidal prohibition exists independently of customary international law rather than deriving its normative force from them.[109] It is evident that the prohibition of genocide has become a recognised norm of customary international law, as asserted by Cuba, the Maldives, Mexico and Belize.[110] The Libyan submission advocates for customary norm application in treaty interpretation and obligation determination, while Chile's position conceptualizes customary principles as humanitarian law foundations rather than autonomous prohibitory mechanisms regarding exterminatory conduct.[111] The remaining intervening entities demonstrate notable restraint regarding customary norm invocation, rendering judicial clarification about this interpretive divergence particularly consequential for doctrinal coherence.

In constructing their arguments, states tend to focus on certain issues in varying degrees. Chile and Spain, for instance, place greater emphasis than other states on the more holistic assessment of evidence in determining special intent related to the crime of genocide,[112] while Mexico emphasises that the situation of armed conflict is not important in determining genocide[113] and that the destruction of cultural heritage[114] and the obstruction of humanitarian aid would constitute the crime of genocide.[115] Conversely, Bolivia places a specific emphasis on the role of rape and other sexual violence crimes within the context of genocide,[116] while Colombia focuses on siege, starvation, and widespread destruction of civilian and medical infrastructure.[117] It is evident that there is a consensus on the gravity of genocide, its prevention, and its punishment. However, the same clarity is not present in issues such as the content and scope of the crime of genocide, which become apparent

106 Michael Wood, Customary International Law and Human Rights, EUI Working Paper AEL 2016/03 (San Domenico di Fiesole: European University Institute, Academy of European Law, 2016), 1-11.

107 H. Thirlway, "Human Rights in Customary Law: An Attempt to Define Some of the Issues," Leiden Journal of International Law 28 (2015): 495–500.

108 International Court of Justice, *Reservations to the Convention on Genocide, Advisory Opinion*: I.C. J. Reports 1951, 1-5, 23.

109 Schabas states that the prohibition of genocide is understood as a rule of customary international law, although the relevant text does not explicitly say so. William A. Schabas, The Customary International Law of Human Rights (Oxford: Oxford University Press, 2021), 115.

110 Cuba, *Declaration of Intervention*, 14, para. 42., Maldives, *Declaration of Intervention*, 14, para. 38, Mexico, *Declaration of Intervention*, 4, para.20, Belize, *Declaration of Intervention*, 18, para. 39.

111 Libya, *Declaration of Intervention*, 5, Chile, *Declaration of Intervention*, 14, para. 52.

112 Chile, *Declaration of Intervention*, 9. para.33, Spain, *Declaration of Intervention*, 6, para. 22-25.

113 Mexico, *Declaration of Intervention*, 5-6, para. 23-27.

114 Mexico, *Declaration of Intervention*, 7-8, para. 34-37.

115 Mexico, *Declaration of Intervention*, 8-10, para. 38-43.

116 Bolivia, *Declaration of Intervention*, 17, para. 41.

117 Colombia, *Declaration of Intervention*, 25, para. 71.

with minor differences. In this context, the arguments presented in the relevant case are significant in terms of eliminating these ambiguities. In the subsequent section, a detailed examination of Turkey's arguments will be conducted, and their contribution to the case will be discussed by comparing them with the arguments of other states.

*Turkey's Application for Intervention*

Turkey formally petitioned for third-party participation on August 7, 2024, regarding the proceedings initiated by South Africa concerning alleged Convention violations in the Gaza region, invoking the statutory provision governing treaty interpretation interventions. In parallel to other participating states, Turkey seeks to advance interpretive understanding of the Convention's operative provisions based on its treaty signatory status. The Turkish submission contains eight discrete segments encompassing procedural foundations, contextual background, participatory entitlement, hermeneutical analysis of substantive articles, juridical recommendations, and evidentiary documentation.

Turkey's decision to apply under Article 63 is not explicitly stated; however, it is evident that its implicit preference for this article is strategic. First, the potential ramifications of an Article 62 application are substantial. These ramifications include protracted procedures and the possibility of rejection. For these reasons, an Article 62 application is a less than optimal course of action. This assertion is further substantiated by the precedent established by the Nicaraguan request, which demonstrates that an Article 62 request is more prone to unanticipated consequences irrespective of its good faith. In conclusion, it can be posited that by opting for Article 63, Turkey is seeking a more favorable application and is attempting to play an active role in the interpretation of the provisions of the Genocide Convention.

In its preliminary submission section, Turkey establishes its juridical standing through treaty participation status in a manner methodologically parallel to other intervening entities, anchoring its procedural entitlement in the relevant statutory and regulatory provisions governing third-party participation.[118]

In the second part of the application, Turkey attempts to emphasise the humanitarian crisis in Gaza through blockade, hunger and the collapse of the health system.[119] As is repeatedly emphasised in the application of South Africa and the jurisprudence of the ICJ, the situation in Gaza is "catastrophic." This section reiterates the aforementioned jurisprudence and South Africa's arguments, while also referencing several UN Security Council resolutions (2712, 2720, 2728). The context is set in terms of Israel's presence in the region with the status of "occupier" and the obligations of the "occupying" state.[120]

Turkey's most substantial contribution to the substance of the case is presented in Section VI of its intervention application. Firstly, a central element of Turkey's legal reasoning is

[118] Republic of Türkiye, *Declaration of Intervention of the Republic of Türkiye: Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel),* International Court of Justice, August 7, 2024. 3-4

[119] Türkiye, *Declaration of Intervention*, 4-13, para. 5-29.

[120] Türkiye, *Declaration of Intervention*, 4, para.5

the differentiation between preventive duties and punitive responsibilities under the Convention,[121] asserting that Israel's effective control over Gaza brings about an obligation to prevent genocidal practices perpetrated within the control zone.[122] The submission articulates that juridical entities maintain duties to deploy feasible preventative mechanisms, with responsibility calibrated according to territorial proximity, relational connections, and capacity considerations within established jurisprudential parameters.[123] This analytical framework suggests that deliberate inaction despite possessing preventative capacity creates attributable responsibility under the established accountability mechanisms.[124]

While acknowledging potential state liability under conventional international law as outlined in Article 1 provisions, the submission demonstrates a restrained approach in establishing a causal nexus between capacity and obligation. Turkey emphasises the capacity for both individuals and the state to be held responsible. It is content to provide the ICJ with suggestions for determining the evidence that would substantiate the relevant responsibility in the specific case.[125] On the other hand, Turkey's emphasis on effective control and its explicit reference to occupation signifies a more nuanced approach compared to the arguments of other states. This section undertakes an examination of Turkey's efforts to attribute responsibility to Israel on a broad basis. The examination involves a review of the portion of the ICJ's advisory opinion of July 19, 2024, which supports the effective control argument, as well as reports from institutions such as the UN or WHO. Additionally, special stress is placed on the "due diligence" argument.

Regarding *mens rea* assessment, the Turkish position aligns with other intervening states' interpretive frameworks. Turkey states that genocidal intent is, in most cases, of a "systematic and planned" nature. Therefore, even if genocidal intent cannot be determined directly, it can be determined from concrete events.[126]

By drawing parallels between the present case and that of the Bosnian Genocide, Turkey advances several significant arguments. Firstly, it asserts that the present situation is more severe than that which transpired in the Bosnian Genocide case. Secondly, it seeks to make a technically and critically legal contribution to the application for intervention. The ICJ asserts that in the Bosnian Genocide case, methods such as siege, starvation, and aerial bombardment by Serbian forces may constitute the genocide. However, it is contended that there is a paucity of evidence to substantiate the specific intent (*dolus specialis*) of the crime of genocide.[127] Turkey, conversely, contends that the circumstances in Gaza are





121 Türkiye, *Declaration of Intervention*, 17-19, para. 40-49.
122 Türkiye, *Declaration of Intervention*, 19-20, para. 47-51.
123 Türkiye, *Declaration of Intervention,* 19-20, para. 47-51.
124 In the same direction, see. Chile, *Declaration of Intervention*, 10, para. 36-37.
125 Türkiye, *Declaration of Intervention*, 17-19, para. 47-51.
126 Türkiye, *Declaration of Intervention*, 26, para. 70.
127 International Court of Justice, *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, para. 324., The ICTY adopted a similar approach in Prosecutor v. Stanislav Galić. International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Stanislav Galić, Trial Chamber,* Judgment of 5 December 2003, Case No. IT-98-29 T, para. 593.

considerably more severe and that the extant evidence to establish the existence of *dolus specialis* is more robust. In this context, the argument was supported by evidence of the extent of civilian casualties and Israel's obstruction of humanitarian aid and its starvation policy.[128] Contemporaneous pronouncements by senior Israeli governmental authorities may constitute probative material for establishing the requisite *mens rea* component.[129] Conversely, given the Turkish government's assertion that Israel's actions are indicative of a deliberate and systematic effort to destroy a whole group, the state of Israel stands accused of committing the crime of genocide.[130] In essence, Turkey's position does not entail a rejection of the prevailing case law. Rather, it constitutes a confirmation and emphasis that the events in Gaza exceed the critical threshold delineated in the aforementioned case law.

Turkey's submission offers a distinct perspective, positing that the systemic degradation of healthcare infrastructure below functional thresholds constitutes an actionable form of group-directed destructive conduct under the Convention. Applying the ICTR's Akayesu precedent, it can be reasonably contended that the systematic imposition of conditions precipitating mortality across temporal dimensions satisfies the Convention's definitional parameters, beyond direct lethal action against protected populations.[131] It is important to recognise the significant impact made on the observed outcome by the reduction of the health services in Gaza below minimum possible levels through what is referred to as "slow death measures." In this particular context, the argument is made that the element of extermination in the crime of genocide can be actualised within a stipulated timeframe. It is interesting to note that this approach is not yet reflected in the jurisprudence of the ICJ. The argument that the relevant offence can be embodied through the targeting of health systems is a unique approach in terms of the concrete case.

On the other hand, although they have different intentions, the similarity of apartheid and genocidal intent and the emphasis that genocide can take place in an apartheid regime are striking[132].

The legal framework posits that national authorities bear responsibility to implement punitive measures against agents engaged in genocide, to establish the requisite provisions within their domestic legislation, and to initiate judicial proceedings. It is further emphasised that official duties or national law do not supersede these obligations.[133]

It is evident that the Turkish application concerning the South African proceedings demonstrates a high degree of jurisprudential sophistication. This is evidenced by its meticulously reasoned analysis of the Genocide Convention's operative provisions. These provisions span definitional elements, preventative duties, and enforcement mechanisms





[128] Türkiye, *Declaration of Intervention*, 31, para. 81-83.
[129] Türkiye, *Declaration of Intervention*, 34, para. 93.
[130] Türkiye, *Declaration of Intervention*, 32, para.85-86
[131] International Criminal Tribunal for Rwanda, *Prosecutor v. Akayesu, ICTR-96.4.T,* Judgment, September 2, 1998, para. 503.
[132] Türkiye, *Declaration of Intervention*, 37, para.103-105.
[133] Türkiye, *Declaration of Intervention*, 40-45, para. 116-133.

across the treaty's initial six articles. It even raises specific arguments that may enable the expansion of the extant literature and jurisprudence on the subject. The application's analytical framework establishes conceptual linkages between segregationist policies and exterminatory practices, and advances the proposition that the destruction of healthcare infrastructure constitutes genocidal conduct. The document employs international criminal tribunal precedents in a systematic manner to establish augmented standards of accountability for territorial administrators exercising effective control.

**Conclusion**

The present research has undertaken a thorough examination of Turkey's request for third-party involvement in accordance with the provisions of ICJ Statute Article 63 within the South African proceedings against Israel. The Turkish submission is situated within the broader context of similarly positioned states' juridical arguments, as evidenced by the employment of comparative analytical methodologies.

This examination suggests a certain conceptual convergence among participating states regarding fundamental interpretive matters, including the *jus cogens* status of the prohibition of genocide, the *erga omnes* partes nature of the obligation to prevent genocide, and the possibility of proving genocidal intent through indirect evidence. This common ground could be seen as a positive development for the strengthening of fundamental norms of international law.

Turkey's intervention application is distinguished by its distinctive approaches in certain areas, particularly in three domains. Firstly, Turkey's interpretation of the scope of responsibilities arising from the status of occupying power merits particular attention. Secondly, the argument that the systematic destruction of health systems may constitute the crime of genocide is significant. Thirdly, the analytical approach adopted in relation to the conceptual relationship between apartheid and genocide is worthy of note. It may be observed with justice that these arguments have the potential to expand the conceptual framework of genocide law.

Nevertheless, it should be noted that there are certain aspects in Turkey's application that could have been strengthened. To begin with, a more comprehensive legal analysis could have been presented to counter Israel's argument of self-defense. It is an established fact that the right to self-defense is subject to certain fundamental principles, including proportionality, necessity, and distinction. Turkey could have provided a more detailed analysis of the manner in which Israel's argument for self-defense becomes invalid when evaluated within the framework of the aforementioned principles. In particular, the incorporation of concrete data and legal assessments demonstrating the inconsistency of the operations that affect civilians in Gaza with the principle of proportionality could have significantly enhanced the persuasiveness of the application.

Secondly, Turkey could have placed greater emphasis on the role of cultural heritage destruction in determining genocidal intent, as referenced in Mexico's application. It has been observed that deliberate damage to culturally significant sites is often seen as a key

indicator of specific intent in atrocity proceedings. This assertion is supported by the adjudicative practices of international criminal tribunals concerning former Yugoslavia and Rwanda. Incorporating analytical consideration of documented harm to Islamic architectural and historical patrimony could have enhanced the evidentiary framework for establishing the requisite mental element in genocide determinations. It is possible that this interpretive expansion was precluded by a concern among Turkey's legal representatives that expanding the *actus reus* elements excessively might weaken the submission's jurisprudential precision. Such cautious adherence to established doctrinal parameters could possibly be regarded as a defensible strategic choice for litigants seeking to maintain consistency with prevailing judicial precedents.

Thirdly, the Turkish submission might have benefited from a more nuanced examination of the substantive dimensions of preventative duties. The integration of the conceptual framework advocated in the Cuban intervention, which reconceptualizes prevention as outcome-focused rather than means-oriented, could have contributed to a stronger jurisprudential contribution by Turkey. This theoretical re-framing could have significant implications for the establishment of heightened standards of accountability for territorial administrators exercising effective control.

It is worth noting that a potential enhancement to Turkey's intervention could have involved a more extensive examination of the territorial application of genocide prevention responsibilities in occupied territories, and of the obstruction of humanitarian aid in terms of the crime of genocide. The Spanish and Mexican submissions posit that systematically impeding humanitarian assistance potentially constitutes a manifestation of genocidal conduct through the imposition of existentially threatening living conditions upon protected groups, thereby satisfying the definitional elements under the Convention's Article II(c) provisions concerning deliberate infliction of destructive circumstances.

The legal merit of the application would have been further enhanced if Turkey had presented a comprehensive argument on the differences of opinion regarding the standard for proving genocidal intent. Indeed, the most salient point regarding genocidal intent is that such intent cannot be definitively established through public declaration, thereby precluding universal and straightforward testimony. Genocide is considered one of the gravest crimes prohibited by international law. It is not reasonable to expect that states would be expected to indicate expressly that they have the intent to commit genocide. Consequently, it can be posited that the determination of evidence indicative of genocide can be substantiated by the presence of a reasonable inference, given the existence of pertinent data.

The findings of this study suggest that intervention mechanisms in international law, particularly interventions under Article 63, could play a significant role in the development and clarification of international norms. The Court's jurisprudential assessment of third-party participation requests has the potential to advance international legal doctrine in several key areas. These include the multilateral treaty obligations owed to all contracting

states, the evidentiary standards for establishing specific genocidal *mens rea*, and the substantive dimensions of preventative duties within the genocide prohibition framework.

It would be beneficial for future scholarly inquiry to include a thorough evaluation of how the Court assessed third-party interventions in the South Africa-Israel proceedings, along with an analysis of the implications of these judicial determinations for the evolution of international legal principles. Moreover, further academic exploration concerning the conceptual and normative intersections between genocidal acts and other crimes—particularly the apartheid framework—could substantively enrich the theoretical literature. A thorough examination of the preventative obligations specifically applicable to occupying powers within the genocide prohibition regime could be a fruitful avenue for scholarly exploration, as it has the potential to illuminate the intricate interplay between humanitarian legal frameworks and human rights jurisprudence.

**Declarations:**

1. **Ethics committee approval:** Not needed for this study.

**2. Author contribution:** The author declares that no one else has contributed to the article.

**3. Competing interests:** The author declares no competing interests.

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