



Pacta Sunt Servanda and the Genocide Convention: A Case Comment on South Africa v. Israel

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Abstract

The South Africa v. Israel case at the International Court of Justice (ICJ) is a strong example of how international law functions in the context of armed conflict, and states under allegations of serious crimes involving mass atrocity crimes. The Court emphasises the significance of treaty obligations and judicial entities in promoting human life when legal obligations are subordinated to political or security imperatives. The pacta sunt servanda principle, which mandates that treaties be carried out in good faith and that they remain obligatory on the parties even in complex or unstable situations, is a crucial component of this case. The 1948 Genocide Convention sits squarely against this backdrop, as it requires more than a simple prohibition against genocide, it additionally requires more than a prohibition against genocide, but active steps to prevent genocide from occurring. The prevalence of armed conflict frequently leads to the real risk that non-combatant populations will be irreparably harmed, which relies on such treaty obligations as are necessary to preserve human dignity and human life. This case comment purports to provide a doctrinal and analytical discourse on how the ICJ interpreted and applied pacta sunt servanda in conjunction with the preventive obligations under the Genocide Convention. It examines the Court's reasoning for providing provisional measures, the range of obligations that states owe to those involved in these circumstances, and the legal standard used to determine the likelihood that genocidal damage would be caused. This discussion draws on past assessments, situations that have established a precedent, and humanitarian considerations to continue the ongoing debate on how treaty obligations can be satisfied. Ultimately, this judgment shows how the judiciary uses, in this case, judicial action not simply to reaffirm principles of international law but also to address issues of fact and law, as well as advance the larger discussion on state responsibility for international law obligations and the provision of humanitarian protection, and to advance the continuity of the international legal regime.

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Introduction

The *South Africa v. Israel* case (Application of the Convention on the Prevention and Punishment of the Genocide in the Gaza Strip (South Africa v. Israel), 2025) is an important example of modern international law in action, considering the capacity of judicial instances to act on treaty obligations in an active armed conflict. The International Court of Justice's (ICJ) role in January 2024 indicates the contemporary nature of codified legal regimes constraining state action in emergencies, especially mass atrocity crimes. This issue brings forth the tension between political pragmatism and legal liability that underpins the whole purpose of international courts, namely, to prevent norms aimed at protecting a person's life from being relegated to national interest or national security.

The principle of *pacta sunt servanda*, which requires the parties to perform treaties in force in good faith, makes the treaties binding on them (United Nations, Vienna Convention on the Law of Treaties, 1969). The principle forms the backbone of treaty law by ensuring states honour their commitments even under challenging circumstances. Without this foundational rule, predictability and stability would compromise the international legal system, and the system would risk reducing treaty obligations to formalities rather than enforceable duties.

The Genocide Convention of 1948 is particularly significant in this regard, which aimed to deter and punish the crime of genocide. The Convention requires parties to actively work to prevent genocide in addition to abstaining from committing it (United Nations, Convention on the



Prevention and Punishment of the Crime of Genocide, 1948). When conflicts arise, civilians are most vulnerable. Without a doubt, the Genocide Convention provides a unique protective shield in this respect, in that it states that in the decisions that States make and in the military strategies used and geopolitical context, they must also keep in mind the protection of human life and human dignity.

The ICJ's interpretation and application of the traditional rule of *Pacta sunt servanda* in relation to the Convention on the Prevention of the Crime of Genocide will be discussed doctrinally and analytically in this case comment. It will also unpack the legal basis for the Court's provisional measure, the scope of obligations owed *erga omnes partes*, and a legal interpretation of the preventive threshold when determining whether or not there is a credible risk of genocide occurring. This case comment will provide analysis from the historical context, relevant case law, and humanitarian factors to better understand the case and its implications for honouring treaty law while engaged in armed conflict. The present discussion aims to clarify how judicial intervention can reinforce legal norms while addressing practical challenges, thereby contributing to the broader discourse on state responsibility, humanitarian protection, and the resilience of international law.

Historical and Doctrinal Background

The principle of *pacta sunt servanda*, which means agreements must be kept, originates in Roman law. The Romans viewed contracts as sacred and fundamental to social and economic stability. This principle became one of the cornerstones of international relations through the influence of natural law theorists such as Hugo Grotius. In *De Jure Belli ac Pacis*, Grotius argued that the faithful fulfilment of agreements was essential for maintaining order among sovereign states and avoiding conflict (Grotius, 1925). The principle was later codified in the Vienna Convention on the Law of Treaties (1969), which states that every treaty in force must be performed in good faith, underscoring that compliance must reflect both formal adherence and substantive intent.

The Genocide Convention of 1948 builds upon this framework by imposing binding obligations on states to prevent and punish acts of genocide. Adopted in the aftermath of World War II, the Convention represents one of the most profound commitments to protecting human dignity and

preventing crimes against humanity. Its universal applicability is reinforced through obligations owed *erga omnes partes*, meaning that all state parties share a collective interest in its enforcement. The international community recognises prohibitions against genocide as *ius cogens* norms, which are peremptory principles that allow no derogation (Cassese, 2003).

The ICJ's jurisprudence has further solidified the binding nature of such obligations. In *LaGrand* (2001), the Court affirmed that provisional measures issued under its Statute are legally binding, which ensures that an entity cannot ignore urgent relief without consequence (*LaGrand (Germany v. United States of America)*, 2001). Similarly, *The Gambia v. Myanmar* (2020) clarified that states can be issued with preventive orders based on plausible risk for genocide, which is, once again, further evidence of the Court's willingness to act before atrocities are committed (*The Gambia v. Myanmar*, 2022). Together, these developments highlight the doctrinal importance of *pacta sunt servanda* not merely as a procedural rule, but as a substantive guarantee, which ensures that an entity enforces humanitarian obligations in good faith.

Legal Framework

The Vienna Convention on the Law of Treaties (1969) provides the most important legal basis for how to interpret treaty obligations, particularly Article 26, which codifies the principle of *pacta sunt servanda*. The principle of treaty observance means that parties must perform every treaty in force in good faith, and in a way that means all parties will observe the treaty's terms. The principle of good faith requires that states will not comply in a legal or formal sense, but also in spirit and substance, to the purposes and objectives of the agreement concerning trust, predictability, and cooperation in their international engagements.

A critical extension of treaty obligations is the notion of *erga omnes partes*, which entails obligations owed by all state parties in common. Such a principle recognises that particular stipulations in the treaty, such as the Genocide Convention, engage the parties and the international community. The International Court of Justice recognised the standing of any state party to engage its entitlement to invoke the responsibility of another state when fundamental norms are at stake, even where it is not the injured party (*Application of the Convention on the Prevention and Punishment of the Crime of*



Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), 2007).

Furthermore, *jus cogens* norms, which are peremptory rules of international law, interact with treaty obligations and permit no derogation. Prohibitions against genocide, torture, and crimes against humanity are widely recognised as *jus cogens*, meaning that states cannot justify breaches on grounds of national security or exceptional circumstances. This interaction strengthens the binding nature of treaty commitments, as obligations that conflict with peremptory norms are invalid.

Finally, it is critical to distinguish between interim measures and final judgment. Provisional measures, issued under Article 41 of the ICJ Statute, are temporary but binding orders designed to prevent irreparable harm before making a final decision. Provisional measures do not constitute a judgment, which resolves a legal responsibility after all proceedings, because they protect rights and duties at important moments by obligating states to respect their treaty commitments during a dispute.

Factual and Procedural Context

On 29 December 2023, South Africa applied to the International Court of Justice (ICJ), accusing Israel of committing acts that violated the Genocide Convention in connection with its military operations in Gaza (Application Instituting Proceedings Containing a Request for the Indication of Provisional Measures (South Africa v. Israel), 2023). South Africa alleged that Israel's blockade of essential goods, large-scale civilian displacement, and destruction of infrastructure amounted to acts prohibited under Article II of the Convention, including killing members of a protected group and inflicting conditions intended to bring about their destruction. It argued that Israel's conduct posed a serious risk of genocide and that all state parties to the Convention had a collective responsibility to prevent such crimes.

Israel denied the allegations and stated that it acted in self-defence. Military actions were undertaken in self-defence based on Hamas's attacks against Israel, which several countries deemed as terrorist attacks. Israeli officials said civilian casualties were caused accidentally, and they established humanitarian corridors that allowed for aid and evacuations that were ongoing. Israel also questioned South Africa's standing, claiming it had no direct interest in the

dispute and that the case was politically motivated.

On 24 January 2024, after much deliberation, the ICJ issued six provisional measures with binding force, including an order that Israel must take all measures to ensure its acts of genocide cease; an order that Israel permit humanitarian passage; an order that Israel submit intermediate reports of its compliance with the orders. The ICJ continued by stating that governments must uphold their responsibilities under the Genocide Convention, even if genocide is still occurring during an armed war. All in all, the state responses to the ICJ, or lack of strong immediate response, were varied globally. Some states, international organisations or agencies welcomed the decision and universally regarded it as strengthening humanitarian assertions and building international accountability (United Nations, Advisory Opinion of the ICJ on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, and from the Illegality of the Continued Presence of Israel in the OPT, 2024). Others criticised it as judicial overreach in an ongoing conflict, raising concerns about enforcement and political implications.

Legal Issues Before the Court

The proceedings in *South Africa v. Israel* raised several complex legal issues before the International Court of Justice (ICJ), each of which tested the boundaries of treaty law and the preventive character of the Genocide Convention.

a) The Standing of South Africa

Israel's first preliminary objection was that South Africa could not pursue the case, due to a lack of locus standi, because the Gaza conflict did not directly impact it, but the Court rejected the objection. The Court reflected its decision in *The Gambia v Myanmar* (2020) by stating that obligations arising from the Genocide Convention are erga omnes partes, meaning they are due collectively to all parties to the Convention. Suppose a breach of an obligation arising from the Genocide Convention is established. That interpretation establishes that any party to the Convention can hold other parties responsible for a breach, regardless of whether that party has suffered personal harm or grievance. In introducing South Africa's claim into this context, the Court highlighted that genocide prevention is not simply a legal interest of a bilateral or regional



nature. However, it is a legal interest in universal content.

b) Threshold for Provisional Relief

Another significant issue was the evidentiary standard for the issuance of provisional measures. According to Israel, South Africa had not established genocidal intent, and/or acts beyond a reasonable doubt. The ICJ, however, used the plausibility standard adopted in previous ICJ cases, which requires only that the rights asserted be plausibly grounded in fact and law (Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), 2024). This lighter evidentiary standard reflects the preventive logic underlying the Genocide Convention; if one waits until all the proof is available, this may defeat the purpose of prevention because the harm will have already occurred (Schabas, 2022).

c) Binding Nature of Provisional Measures

Israel further contended that provisional measures were merely recommendatory. Drawing from its landmark judgment in *LaGrand* (2001), the Court rejected this view, holding that such measures are legally binding under Article 41 of the ICJ Statute. Provisional measures thus impose procedural and substantive duties, including immediate compliance, reporting, and restraint from conduct that could frustrate the Court's final judgment.

d) Duty to Prevent Genocide

Finally, the Court highlighted that the obligation to prevent genocide, found in Article I of the Convention, arose when genocide was at serious risk of occurring and not because it had already occurred. The fact that genocide prohibition has the status of a *jus cogens* power only adds to the Court's determination that the obligation is strong enough to displace competing claims to justification like military necessity or national security. As such, the ICJ's interpretation as outlined above reinforced that prevention is a legally binding obligation, and competing state interests cannot be used as an excuse for non-compliance.

Court's Reasoning and Judgment Analysis

In the case of *South Africa v. Israel*, the International Court of Justice (ICJ) navigated the use of its jurisdiction by helping, following recognised legal norms in pursuit of its reasoning. First, the Court established its jurisdictional basis from Israel's ratification of the Genocide Convention without reservations to the dispute settlement clause. The Court emphasised that both governments were obliged by the terms of the treaty and should behave in good faith in accordance with the Vienna Convention on the Law of Treaties.

The Court applied a plausibility standard to determine the risk of genocide, stating it did not need to establish a serious risk at the provisional stage. The Court referred to its earlier jurisprudence, citing *The Gambia v. Myanmar* (2020), and signalled that credible evidence, including civilian casualties and blockades, was sufficient to create the obligation to prevent. This standard typifies the Court's preventive duty under the Genocide Convention. The ICJ grounded its interpretation of irreparable harm in humanitarian realities. It found that an entity cannot undo the destruction of life, health, and living conditions, so it requires urgent intervention to prevent further damage. Therefore, the Court designed its orders to prevent irreversible consequences before final judgment, including ensuring humanitarian access and evidence preservation.

Although the Court moderated its intervention to avoid overreaching at the point of adjudication, it appreciated the tension between judicial restraint and the need for immediate relief. Instead of prohibiting a cessation of hostilities, the court made binding orders of provisional measures, while attempting to buttress its legitimacy in the face of a human rights emergency. However, the judgment faces enormous constraints in its enforcement because it is not coercively enforceable by the ICJ if the judgment requires compliance. Even if it required compliance, the political realities of different definitions of national security would leave no effective enforcement of compliance. The compliance difficulties posed by geopolitical realities and limits lead to broader questions relating to the place of international law in relation to war.

Practical and Broader Implications

This ruling in *South Africa v. Israel* will have profound implications for increasing treaty compliance, creating humanitarian norms, and serving as a vehicle for judicial intervention in



armed conflicts. The ICJ's order sends a clear message to states that obligations under the Genocide Convention should be undertaken in good faith. It sends a strong message since legal obligations under treaties do not allow you to be suspended, even in crisis mode. In this context, it serves as an important reminder that states must exercise accountability and caring attitudes towards morally and legally vulnerable populations during some untenable risks.

Furthermore, it also strengthens the normative framework of genocide prevention by reinforcing the concept of normative frameworks such as the Responsibility to Protect (R2P) connected with legal obligations. The Court was able to intervene at the level of serious risk, instead of only intervening after effective atrocities have taken place, and they were able to turn to the changing expectations of states calling them to intervene at much earlier stages in an attempt to prevent mass atrocities (United Nations, 2005 World Summit Outcome, 2005). In contrast, judicial bodies face the challenge of creating legitimacy versus what is practicable. The ICJ is calibrated to show the capacity for courts to adjudicate politically sensitive disputes without losing neutrality. While enforcing orders continues to be of limited efficacy, judicial orders can compel state behaviour by establishing norms and allowing for international scrutiny.

Additionally, the judgment highlights the relevance of digital evidence. States and civil society are beginning to utilise satellite imagery, open source reporting, and forensic investigations to document human rights violations accurately in real time, and how they are established and monitored has significantly changed (Weizman, 2017). Ultimately, this case invokes wider ethical and governance questions. The conflict between state sovereignty and human rights obligations exemplifies that there are moments when the legal commitments indicate that the state must diverge from its interests. The fact that the Court identifies collective responsibilities and universal standards illustrates that respect for human dignity is central to the legitimacy of global governance.

Conclusion

The case of *South Africa v. Israel* emphasises the continuing relevance of *pacta sunt servanda* as a binding norm of treaty law and a preventative measure for humanitarian norms during armed conflict. The judgment also confirmed that states

must not abandon or avoid obligations under the Genocide Convention during times of political tension, military necessity, or threat of genocide. The Court highlighted that it is a preventive institution when it employed a plausible threshold and issued binding provisional measures. The Court also demonstrated its reasoning that obligations owed *erga omnes partes* are collective obligations owed by the international community, as a whole, to protect vulnerable populations from mass atrocities.

Nevertheless, the case emphasises the practical difficulties with implementing international law. Enforcement mechanisms are still weak, and compliance can often suffer from political considerations. The requirement of good faith and for states to cooperate illustrates a need for more robust institutional support and developed monitoring mechanisms to determine whether accountability is achieved. In addition, the growing ability to use digital evidence is a promising avenue for documenting violations; however, there still needs to be proper protocols in place to verify authenticity and the chain of custody.

We provide a few recommendations in light of the complicated challenges in the international system. First, treaty bodies and judicial bodies should use real-time monitoring mechanisms by incorporating open source intelligence and satellite monitoring into the formal reporting obligations of states. Second, states should strengthen cooperation modalities by establishing independent compliance committees that can utilise provisional orders and assist in giving states humanitarian access. Third, we would emphasise educating legal practitioners, military actors, and policy makers in interpreting and advancing obligations according to *jus cogens* norms.

Finally, we emphasise the critical importance of diplomatic engagement, transparency, and multilateral dialogue in reaffirming the principle of good faith. Although the fundamental tenet of international relations is sovereignty, states should not be exempt from their obligation to uphold and defend human dignity and to stop mass crimes. As this case demonstrates, the rule of law can still be an important and effective global governance mechanism, so long as political will and operational frameworks are in place to enhance legal obligations.



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