

## Chapter 9, Problem I

In the last five years, the International Court of Justice has been the forum for three inter-state cases concerning allegations of genocide: *The Gambia v. Myanmar*, concerning the latter's treatment of the Rohingya minority group; *Ukraine v. Russia*, concerning the latter's invasion of Ukraine; and *South Africa v. Israel*, concerning the latter's actions in the Gaza Strip following the Hamas attacks of October 2023.

The Myanmar case has advanced the furthest, with the Court ruling in July 2022 that it had jurisdiction over the case. Its most significant finding was that Gambia had standing to bring the claim against Myanmar simply by virtue of being a party to the Genocide Convention:

107. All the States parties to the Genocide Convention thus have a common interest to ensure the prevention, suppression and punishment of genocide, by committing themselves to fulfilling the obligations contained in the Convention. . . . [S]uch a common interest implies that the obligations in question are owed by any State party to all the other States parties to the relevant convention; they are obligations *erga omnes partes*, in the sense that each State party has an interest in compliance with them in any given case . . .

108. . . .The common interest in compliance with the relevant obligations under the Genocide Convention entails that any State party, without distinction, is entitled to invoke the responsibility of another State party for an alleged breach of its obligations *erga omnes partes*. Responsibility for an alleged breach of obligations *erga omnes partes* under the Genocide Convention may be invoked through the institution of proceedings before the Court, regardless of whether a special interest can be demonstrated. . . .

113. The Court acknowledges that Bangladesh, which borders Myanmar, has faced a large influx of members of the Rohingya group who have fled Myanmar. However, this fact does not affect the right of all other Contracting Parties to assert the common interest in compliance with the obligations *erga omnes partes* under the Convention and therefore does not preclude The Gambia's standing . . . [T]he Genocide Convention "was manifestly adopted for a purely humanitarian and civilizing purpose", and "its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality" (Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion [1951]).

In the case against Russia, Ukraine did not claim that Russia had committed genocide in Ukraine. Rather, it alleged that Russia had illegally invoked the Genocide Convention – claiming that Ukraine was committing genocide against ethnic Russians -- as a justification for its invasion. In March 2022, in its provisional measures order, the Court found that Ukraine's rights under the Convention were at irreparable risk of harm and ordered Russia to "immediately suspend the military operations" in Ukraine. The Court later accepted the interventions of 32 states – all on the side of Ukraine – but rejected an application to intervene by the United States, on the ground that the United States could not intervene on issues of jurisdiction as it had issued a reservation to Genocide Convention concerning the compulsory jurisdiction of the ICJ.

In the case against Israel, South Africa alleged:

The acts and omissions by Israel complained of by South Africa are genocidal in character because they are intended to bring about the destruction of a substantial part of the Palestinian national, racial and ethnical group, that being the part of the Palestinian group in the Gaza Strip ('Palestinians in Gaza'). The acts in question include killing Palestinians in Gaza, causing them serious bodily and mental harm, and inflicting on them conditions of life calculated to bring about their physical destruction. The acts are all attributable to Israel, which has failed to prevent genocide and is committing genocide in manifest violation of the Genocide Convention.

South Africa sought a complete withdrawal of Israeli forces from Gaza and a cessation of genocidal acts, among other measures. At hearings in January 2024, Israel denied that its forces were committing genocide and argued against any provisional measures. The [hearings](#) received significant media attention.

In its [order](#) of January 26, the Court found a risk of irreparable harm to South Africa's rights under the Convention and ordered Israel to: (1) "take all measures within its power to prevent the commission" of the acts listed in Article II of the Convention; (2) ensure that its military does not undertake such acts; (3) "take all measures within its power to prevent and punish the direct and public incitement to commit genocide"; (4) "take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance" to Gaza; and (5) report to the Court within a month on the implementation of the measures. The votes were 15-2 and 16-1 on the various orders. Three judges noted that the court had not adequately addressed whether there was any evidence that Israel had the special intent required for the commission of genocide. In its wake, both sides declared victory – South Africa insofar as Israel was now being held accountable for its conduct, and Israel in that its right to self-defense had not been questioned nor had it been found to have committed genocide.