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[The ICJ delivers a stinging rebuke to Israel over the war in Gaza \(economist.com\)](https://www.economist.com/news/international/2024/01/26/the-icj-delivers-a-stinging-rebuke-to-israel-over-the-war-in-gaza)

Israel and Gaza

The ICJ delivers a stinging rebuke to Israel over the war in Gaza

But as the court has not ordered a ceasefire, its ruling is largely symbolic



image: getty images

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There was no hiding the fury behind the nearly unanimous rulings of the 17 judges of the International Court of Justice (icj) in The Hague. On January 26th they ordered Israel to “take all measures within its power” to prevent acts of genocide by its forces in Gaza, to prevent and punish incitement to genocide and to ensure that more aid reaches the strip. Yet because the court pointedly declined to order Israel to halt its military operations against Hamas, its ruling is largely symbolic. It is a rebuke to the way in which Israel has waged the war—and perhaps more importantly to the conduct of Binyamin Netanyahu’s government—but one that is unlikely to constrain significantly its ability to keep fighting Hamas. Though in ordering Israel to report in a month on the steps it has taken, the court appears to be reserving the right to take further steps.

The order, in a case brought by South Africa under the Genocide Convention of 1948, makes it clear that the court has not found that Israel is committing acts of genocide. The icj will only decide whether this is the case after a full trial that could last years. And the bar for it to reach such a conclusion is high: South Africa would have to prove that Israel set out to kill or harm Palestinians with the deliberate intention of destroying them as a group. That seems improbable. But at this stage of the proceedings the court merely had to decide whether it is “plausible” that acts of genocide could be occurring. This was a much lower threshold for South Africa to cross. That it was able to do so underlines how Mr Netanyahu has mismanaged a war that was sparked after Hamas attacked Israel on October 7th, killing some 1,200 people, most of them civilians, raping and torturing many and kidnapping about 240.

In order to convince the court that it was at least plausible that Israel’s response has been genocidal, South Africa had to show not only that Israel was killing people—something easily done since the death toll in Gaza has now surpassed 26,000 people according to the Hamas-run health authorities—but also that Israel did so with genocidal intent. Its main evidence for this came in the form of public statements by some Israeli officials and politicians. The judgment highlighted concerns about dehumanising language and said it had taken note of such statements. One cited in the ruling was by Yoav Gallant, the defence minister, in which he ordered a “complete siege” of Gaza and compared Hamas terrorists to “animals”. (South Africa claimed he was referring to all Palestinians; the full quote suggests he was not.) Another was by Israel Katz, now the foreign minister, who said that civilians in Gaza “will not receive a drop of water or a single battery until they leave the world”.

Israel argues that these quotes have been taken out of context and do not reflect official policy, which is to adhere to international humanitarian law, the body of law which governs armed conflicts. The fact that it had to

try to explain away these and other more inflammatory comments made by government ministers is an indictment of Mr Netanyahu. He has been unwilling to rein in the Jewish supremacists and religious conservatives in his coalition, whose support he relies on to cling to power. After Amichai Eliyahu, the heritage minister, suggested dropping a nuclear bomb on Gaza, the only penalty was a temporary suspension from attending cabinet meetings. Tellingly Aharon Barak, Israel's most renowned jurist and its appointee to the icj panel hearing the case, voted with the majority of judges in ordering it to prevent and punish incitement to genocide. "Although I am convinced that there is no plausibility of genocide...I have voted in favour in the hope that the measure will help to decrease tensions and discourage damaging rhetoric," he wrote in a separate opinion.

A second indictment concerning Mr Netanyahu's conduct in the war relates to the humanitarian crisis in Gaza and the looming famine there. The icj panel considered the collapsing health system, lack of food and clean water and the risk of the situation worsening as evidence of the need for it to make a provisional finding against Israel. The court's order that Israel should ensure more aid reaches Gaza was also supported by Mr Barak.

The court's orders are unlikely to affect the fighting itself in Gaza. Israel has long argued that its use of force is already in line with international law. And the court has no means to force it to change its behaviour. In so far as the rulings add to the pressure on Israel to ease the humanitarian crisis in Gaza and to prosecute incitement to genocide, they may do some good. But this comes at a cost. Many will interpret the provisional ruling to mean that Israel has been implicated in genocide, a finding that will almost certainly be overturned, but not for a decade or more. Until then, however, Israel will have been unfairly tainted.

The judges also risk weakening the Genocide Convention and the icj itself. By finding against Israel on such flimsy evidence, and using such a low threshold of "plausibility", it has set a precedent that will almost certainly lead to many more spurious cases being brought before the icj. That means the judges may have made it harder for the world to stop genocides in the future.