

'ICJ verdict in the Gaza crisis raises hope'

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The court lacks the power to compel Israel to obey its directives



By Venu Rajamony Issue Date: February 11, 2024 Updated: February 04, 2024 07:23 IST



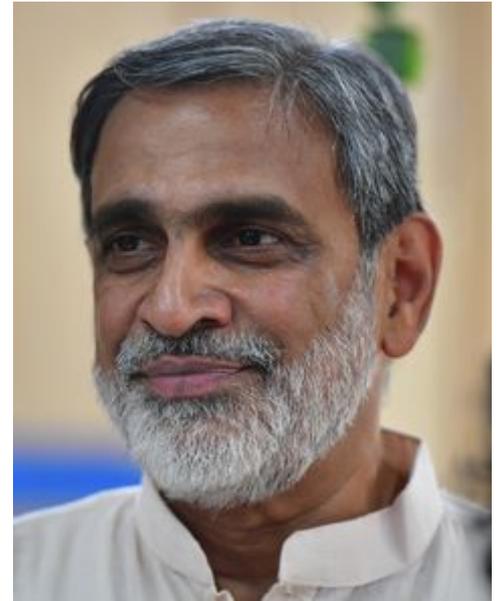
Future tense: A child lies on a bicycle packed with belongings as Palestinians flee Khan Younis towards Rafah during the Israeli ground operation in Gaza | Reuters

On January 26, 2024, a 17-judge bench of the International Court of Justice (ICJ) indicated provisional measures in the case filed by South Africa accusing Israel of violations of the Convention on the Prevention and Punishment of the Crime of Genocide, lighting a beacon of hope for an end to the war in Gaza.

The interim orders refrained from calling for an immediate ceasefire, much to the dismay of the people of Gaza and their supporters. However, it recognised that the catastrophic humanitarian situation in Gaza is at serious risk of deteriorating further and there is a real and imminent risk that irreparable prejudice will be caused to the rights of the people of Gaza.

The ICJ in its provisional measures ordered Israel to:

1. Take all measures within its power to prevent the commission in Gaza of all acts tantamount to genocide, in particular: (a) killing (b) causing serious bodily or mental harm (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, and (d) imposing measures intended to prevent births.
2. Ensure with immediate effect that its military does not commit any acts described above.
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 Palestinians in the Gaza Strip.
5. Take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations.
6. Submit a report within one month detailing its compliance with the measures.



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The main parties to the conflict were quick to react to the orders. President Mahmoud Abbas declared the ICJ's decision a "historic victory" and a "landmark moment in the struggle for Palestinian freedom". He urged the international community to pressure Israel to comply with the orders, highlighting the urgency of ending the "occupation and apartheid". President Cyril Ramaphosa of South Africa hailed the decision as "a decisive victory for international law and human rights", affirming his country's commitment to standing up for the oppressed. Foreign Minister Naledi Pandor stressed the "moral imperative" of holding Israel accountable, calling the measures a "significant step towards securing justice for the Palestinian people". Israeli Prime Minister Benjamin Netanyahu, on the other hand, called the decision "scandalous and detached from reality", accusing the court of "blatant anti-semitism". He vowed to "reject and defy" the orders, claiming they "undermine Israel's right to self-defence". Foreign Minister Eli Cohen echoed Netanyahu's sentiments, calling the ruling "a dangerous precedent" and a "blatant attempt to delegitimise Israel".

The ICJ, which represents all major regions and legal jurisdictions of the world, has been a strong supporter of victims of human rights violations. The court's orders in this case follow precedents it set in the case filed in 2019 by the Gambia on behalf of the Organisation of Islamic Cooperation (OIC) against Myanmar over the Rohingya issue and the Kulbhushan Jhadav case filed by India in 2017 against Pakistan. In both these cases, the ICJ issued quick provisional measures to protect the victims. It is to the ICJ's credit that it has emerged as a judicial body which can dispense quick justice in support of innocents.

The fact that countries continue to approach the ICJ over such matters and the accused countries appear before the court and defend themselves strengthens international law. It reflects the faith most nations have in the world court and the respect with which they view its decisions. However, international law remains weak when it comes to providing long-term and lasting solutions. Unfortunately, the ICJ's orders in this case will not lead to an end to the war. Israel has already rejected the provisional measures. Moreover, the ICJ takes two or three years to deliver a final verdict.

Proving legal intent for genocide is difficult in international law. It would not suffice to merely point out the ongoing suffering and human cost. South Africa would need to convince the ICJ that Israel's actions fall within the definition of genocide contained in the 'Genocide Convention'—that they have been committed with the intent to destroy a national, ethnic, racial or religious group, in whole or in part. The final verdict may not be in favour of the Palestinians.

The ICJ's orders are binding as per international law, but the court does not have any enforcement machinery. The only institution which can take a country to task for disobeying the court's orders is the UN Security Council. Sadly, the UNSC is dominated by its five permanent members who do not hesitate to use their veto power. Israel has been able to get away with impunity and has ignored similar verdicts in the past and repeated UN General Assembly resolutions because of the support of the United States.

The need of the hour is an immediate end to the killings and the horrendous devastation and destruction in Gaza. For this to happen, domestic and international opinion must force the Israeli government to change its current policy. It must be seen that Israel's actions are counter-productive and will only lead to continued conflict, terrorism, regional instability and an embittered Palestinian population. The importance of the provisional measures indicated by the ICJ rests in the fact that it places on public record the court's orders and views on the situation in Gaza. Hopefully, this independent and collective judicial opinion of the majority judges of the world court will result in mobilising international opinion, and in particular, the people in Israel and the US to convince the Israeli government to end hostilities and commence an immediate search for political solutions. The ICJ's provisional measures provide a spark of hope. Translating it into lasting peace and a brighter future for Israelis and Palestinians alike will require continued and concerted efforts by the international community, a genuine commitment from Israel, and an unwavering resolve on the part of the Palestinians.

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