

The Weight of Evidence: Why the ICJ Will Likely Find Israel Guilty of Genocide—and What That Means for Germany

The International Court of Justice (ICJ) stands at a pivotal moment in its history. In *South Africa v. Israel*, the Court is asked to determine whether Israel's actions in the Gaza Strip constitute a violation of the 1948 Genocide Convention. If it finds Israel guilty, a legal and moral earthquake will follow—one that will almost certainly determine the outcome of *Nicaragua v. Germany*, a parallel case accusing Germany of aiding and abetting that same genocide.

But if the Court were to **absolve Israel**, the consequences would be just as historic—though in a darker direction. It would require the ICJ to explain, in exhaustive detail, why a vast and growing body of evidence, precedent, and expert consensus on genocide does *not* apply in this case. That explanation would need to be not just long, but extraordinary—effectively **rewriting decades of genocide jurisprudence** to carve out an unprecedented exception. In short, **Israel's actions, its officials' statements, and its continued defiance of ICJ orders have left the Court with little choice** but to uphold the Genocide Convention—and hold accountable both the perpetrator and those who enabled it.

The Legal Standard: Article II of the Genocide Convention

Under Article II of the 1948 Genocide Convention, genocide is defined as **acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group**, including:

- Killing members of the group,
- Causing serious bodily or mental harm,
- Inflicting conditions of life calculated to destroy the group,
- Preventing births, or
- Forcibly transferring children.

Intent (*dolus specialis*) is what distinguishes genocide from other crimes. The ICJ, along with tribunals in Rwanda and the former Yugoslavia, has long accepted that **intent can be inferred** from “a pattern of conduct,” especially when direct statements of intent are made by high-ranking officials. (See: *Krstić, Akayesu, Bosnia v. Serbia*.)

Israel's Documented Actions: Destruction by Design

There is now a vast and growing record—collected by UN bodies, NGOs, media investigations, and independent experts—showing that Israel's military campaign in Gaza has involved:

- **Widespread killing of civilians**, including tens of thousands of women and children,
- **Destruction of hospitals, schools, and refugee shelters** under the UN flag,
- **Demolition of water infrastructure and desalination plants**,
- **Systematic obstruction of food, fuel, and humanitarian aid**, leading to starvation,
- **Mass displacement**, turning Gaza into a “zone of uninhabitability,”
- **The use of siege tactics and starvation as weapons of war.**

These are not isolated excesses or collateral damage. They reflect a **coherent and sustained campaign** targeting the core elements necessary for life—consistent with Article II(c) of the Genocide Convention: “*conditions of life calculated to bring about a group's destruction.*”

The Statements of Intent: Gallant, Ben Gvir, Katz, and More

Equally damning are the **public statements of genocidal intent** made by Israeli officials at the highest levels, including:

- **Defense Minister Yoav Gallant**, who announced a “complete siege” of Gaza, stating: “*No electricity, no food, no fuel. We are fighting human animals.*”
- **National Security Minister Itamar Ben Gvir**, who openly advocated for “*encouraging the migration*” of Palestinians from Gaza and the West Bank.
- **Energy Minister Israel Katz**, who said: “*No water or electricity will be turned on. Humanitarian aid will not be allowed.*”

These are not fringe voices. They are official state representatives, and their statements have been implemented in policy. Under existing ICJ and ICTY precedent, **such explicit declarations of intent have been accepted as strong evidence of genocidal intent**, particularly when paired with a coordinated campaign of destruction.

The ICJ's Provisional Measures: Genocide Is Already “Plausible”

In January 2024, the ICJ issued **provisional measures** in *South Africa v. Israel*, concluding that **South Africa's claim of genocide was plausible**. The Court instructed Israel to:

- Prevent genocidal acts,
- Allow humanitarian aid,
- Punish incitement,
- And report back within one month.

Israel has **not complied** with these measures. Aid remains obstructed, civilian suffering has intensified, and incitement has gone unpunished. This is more than defiance—it is potentially a **tacit admission of genocidal intent**.

In international law, failure to alter conduct after being officially warned by the world's highest court suggests **knowledge of the risk** and **willingness to proceed regardless**. It transforms plausible risk into credible evidence of intent.

The Precedent Problem: What If the Court Lets This Slide?

If the ICJ ultimately rules that Israel did **not** commit genocide, it would be required to explain:

- Why **acts and intent that met the threshold for genocide in Bosnia, Rwanda, and Myanmar** do not qualify when committed against Palestinians,
- Why **explicit statements by top officials** should be disregarded despite matching prior precedent,
- Why **starvation, destruction of life-sustaining infrastructure, and mass death** are insufficient to prove genocidal policy.

Such a ruling would not only **create a legal double standard**, but **shatter the credibility of international law**. And to justify that exception, the Court would have to depart from its own jurisprudence and issue what would likely become **the longest opinion in its history**.

Nicaragua v. Germany: The Next Domino

If the ICJ finds Israel guilty of genocide, then **Germany's role as a key arms supplier and diplomatic defender** makes it the most likely next state to be found in breach. Germany:

- Supplied arms during the Gaza assault,
- Defended Israel at the ICJ,
- Ignored UN and NGO warnings,
- And suppressed internal dissent.

If Israel is guilty, Germany's material and political support could satisfy the requirements of **aiding and abetting genocide** under Article III(e). The case of *Nicaragua v. Germany* thus hinges directly on the outcome of *South Africa v. Israel*.

Conclusion: Defiance as Confirmation

The ICJ was created to prevent the crimes of the 20th century from repeating in the 21st. Israel's actions in Gaza and its **failure to comply with the ICJ's provisional measures** now place the Court in a position where inaction would be as consequential as action.

By continuing a campaign of mass destruction and deprivation **after being warned** that such acts may constitute genocide, Israel has not only tested the legal threshold — it may have **confirmed** the very intent that makes genocide prosecutable.

If the ICJ wishes to uphold the integrity of the Genocide Convention, it must respond decisively. Anything less would not only betray the Convention's purpose, but declare, in effect, that some states are simply **above the law**.

And if the ICJ chooses to excuse or dismiss what so many credible experts and institutions have already recognized as a textbook case of genocide, it will not merely fail Palestine. It will fail itself. It will reduce the Genocide Convention to a political tool, and international law to performance. The Court may not be physically dismantled, but it will have **dismantled its own credibility**.

If the ICJ allows Israel to get away with this, it will not be the world that abandons the Court. **It will be the Court that abandons the world.**