

International Court of Justice

Access

ICJ Statute, Article 35

The Court shall be open to the **states parties** to the present Statute.

The **conditions** under which the Court shall be **open to other states** shall, subject to the special provisions contained in treaties in force, be **laid down by the Security Council**, but in no case shall such conditions place the parties in a position of inequality before the Court.

Legality of Use of Force cases (ICJ 2004)

On Preliminary Objections

The Court concludes that, **at the time of filing** of its Application to institute the present proceedings before the Court on 29 April 1999, the Applicant in the present case, **Serbia and Montenegro, was not a Member of the United Nations**, and, consequently, was not, on that basis, a State party to the Statute of the International Court of Justice. It follows that the **Court was not open to Serbia and Montenegro** under Article 35, paragraph 1, of the Statute.

Security Council Resolution 777 (1992)

Considers that the **Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia** in the United Nations; and therefore recommends to the General Assembly that it decide that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly.

Jurisdiction

ICJ Statute, Article 36

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- a) the interpretation of a treaty;
- b) any question of international law;
- c) the existence of any fact which, if established, would constitute a breach of an international obligation;
- d) the nature or extent of the reparation to be made for the breach of an international obligation.

Military and Paramilitary Activities in and against Nicaragua case (ICJ 1984)

On U.S. challenge to *compulsory jurisdiction*

Although the United States retained the right to modify the contents of the 1946 Declaration or to terminate it, a power which is inherent in any unilateral act of a State, it has, nevertheless assumed an inescapable **obligation towards other States accepting the Optional Clause**, by stating formally and solemnly that any such **change should take effect only after six months** have elapsed as from the date of notice.

Certainly the determination of the States "affected" could not be left to the parties but must be made by the Court. At any rate, this is **a question concerning matters of substance relating to the merits of the case**: obviously the question of what States may be "affected" by the decision on the merits is **not in itself a jurisdictional problem**.

On U.S. challenge to *compromissory clause jurisdiction*

Treaty of Friendship, Commerce, and Navigation (1956)

Any dispute between the Parties as to the interpretation or application of the present Treaty, **not satisfactorily adjusted by diplomacy**, shall be **submitted to the International Court of Justice**, unless the Parties agree to settlement by some other pacific means.

Nicaragua jurisdiction (ICJ 1984)

In the view of the Court, it **does not necessarily follow that**, because a State has **not expressly referred** in negotiations with another State to **a particular treaty** as having been violated by conduct of that other State, **it is debarred from invoking a compromissory clause in that treaty**. The United States was well aware that Nicaragua alleged that its conduct was a breach of international obligations before the present case was instituted; and it is now aware that specific articles of the 1956 Treaty are alleged to have been violated.

On U.S. challenge to *admissibility*

It is necessary to emphasize that Article 24 of the Charter of the United Nations provides that "In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council *primary* responsibility for the maintenance of international peace and security ... " The Charter accordingly **does not confer *exclusive* responsibility upon the Security Council** for the purpose.... **The Council has functions of a political nature** assigned to it, whereas **the Court exercises purely judicial functions**. Both organs can therefore perform their **separate but complementary functions** with respect to the **same events**.

Nor can the Court accept that the present proceedings are objectionable as being in effect an appeal to the Court from an adverse decision of the Security Council. **The Court is not asked to say that the Security Council was wrong** in its decision, nor that there was anything inconsistent with law in the way in which the members of the Council employed their right to vote. **The Court is asked to pass judgment on certain legal aspects** of a situation which has also been considered by the Security Council, a procedure which is **entirely consonant with its position as the principal judicial organ of the United Nations**.

Statute of the International Court of Justice

Article 41

The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.

UN Charter

Article 94

Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Advisory opinions

ICJ Statute, Article 65

The Court may give an advisory opinion on any legal question at the **request of whatever body may be authorized** by or in accordance with the Charter of the United Nations to make such a request.

Construction of a Wall advisory opinion (2004)

Israel has emphasized that it has never consented to the settlement of this wider dispute by the Court or by any other means of compulsory adjudication.... The Court observes that the **lack of consent to the Court's contentious jurisdiction by interested States has no bearing on the Court's jurisdiction to give an advisory opinion**.

The opinion is requested on a question which is of particularly acute concern to the United Nations, and one which is located in a much **broader frame of reference than a bilateral dispute**. In the circumstances, the Court does not consider that to give an opinion would have the effect of **circumventing the principle of consent to judicial settlement**, and the Court accordingly cannot, in the exercise of its discretion, decline to give an opinion on that ground.

ICJ: South Africa v. Israel

The New York Times

U.N. Court Orders Israel to Prevent Genocide, but Does Not Demand Stop to War

The top United Nations court in The Hague did not rule on whether Israel was committing genocide in Gaza, the accusation that South Africa brought before the court.



The International Court of Justice ordered Israel to take actions to prevent genocide against Palestinians in Gaza. Remko De Waal/Agence France-Presse — Getty Images

January 2024

South Africa v. Israel (December 2023)

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 ethnic group**, that being the part of the Palestinian group in the Gaza Strip (“Palestinians in Gaza”). (para. 1)

South Africa is acutely aware of the particular weight of responsibility in initiating proceedings against Israel for violations of the Genocide Convention. However, **South Africa is also acutely aware of its own obligation** — as a State party to the Genocide Convention — **to prevent genocide**. (para. 3)

Provisional measures are necessary in this case to **protect against further, severe and irreparable harm** to the rights of the Palestinian people under the Genocide Convention, which continue to be violated with impunity. South Africa requests that the Court indicate provisional measures to protect and preserve those rights as well as its own rights under the Convention, and to prevent any aggravation or extension of the dispute, pending the determination of the merits of the issues raised by the Application. (para. 115)

Genocide Convention

Article 1

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a **crime under international law** which they **undertake to prevent and to punish**.

Article 2

In the present Convention, genocide means any of the following acts committed with **intent to destroy, in whole or in part, a national, ethnical, racial or religious group**, as such:

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group;
- Forcibly transferring children of the group to another group.

Article 9

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

ICJ Order of 26 January 2024

At this stage of the proceedings, however, the Court is not called upon to determine definitively whether the rights which South Africa wishes to see protected exist. **It need only decide whether the rights claimed by South Africa, and for which it is seeking protection, are plausible.** Moreover, a link must exist between the rights whose protection is sought and the **provisional measures** being requested. (para. 36)

In the Court's view, the facts and circumstances mentioned above are sufficient to conclude that **at least some of the rights claimed by South Africa and for which it is seeking protection are plausible.** This is the case with respect to the **right of the Palestinians in Gaza** to be protected from acts of genocide and related prohibited acts identified in Article III, and the **right of South Africa to seek Israel's compliance** with the latter's obligations under the Convention. (para. 54)

Provisional Measures

The Court concludes on the basis of the above considerations that the conditions required by its Statute for it to indicate provisional measures are met. It is therefore necessary, pending its final decision, for the Court to indicate certain measures in order to protect the rights claimed by South Africa that the Court has found to be plausible. (para. 75)

1. The State of Israel shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to Palestinians in Gaza, **take all measures within its power to prevent the commission of all acts** within the scope of Article II of this Convention.
2. The State of Israel shall **ensure with immediate effect that its military does not commit any acts** described in point 1 above.
3. The State of Israel shall take all measures within its power to **prevent and punish the direct and public incitement to commit genocide** in relation to members of the Palestinian group in the Gaza Strip.

Provisional Measures (cont.)

4. The State of Israel shall take immediate and effective measures to **enable the provision of urgently needed basic services and humanitarian assistance** to address the adverse conditions of life faced by Palestinians in the Gaza Strip.
5. The State of Israel shall take effective measures to **prevent the destruction and ensure the preservation of evidence** related to allegations of acts within the scope of Article II and Article III of the Convention on the Prevention and Punishment of the Crime of Genocide against members of the Palestinian group in the Gaza Strip.
6. The State of Israel shall submit a report to the Court on all measures taken to give effect to this Order within one month as from the date of this Order.
(para. 86)

ICJ Order of 24 May 2024

The State of Israel shall, in conformity with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, and in view of the worsening conditions of life faced by civilians in the Rafah Governorate:

- Immediately **halt its military offensive**, and any other action in the Rafah Governorate, which may inflict on the Palestinian group in Gaza conditions of life that could bring about its physical destruction in whole or in part;
- **Maintain open the Rafah crossing** for unhindered provision at scale of urgently needed basic services and humanitarian assistance;
- Take effective measures to **ensure the unimpeded access to the Gaza Strip of any commission of inquiry, fact-finding mission or other investigative body** mandated by competent organs of the United Nations to investigate allegations of genocide. (para. 57)

UN Security Council Enforcement

Article 24

Members confer on the Security Council primary **responsibility for the maintenance of international peace and security**, and agree that in carrying out its duties under this responsibility the Security Council **acts on their behalf**.

Article 25

The Members of the United Nations agree to **accept and carry out the decisions of the Security Council** in accordance with the present Charter.

Article 2

The Organization is based on the principle of the **sovereign equality** of all its Members....

All Members **shall refrain** in their international relations from the **threat or use of force** against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations....

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially **within the domestic jurisdiction of any state** or shall require the Members to submit such matters to settlement under the present Charter **but this principle shall not prejudice the application of enforcement measures under Chapter VII.**

Chapter VII
*Action with Respect to Threats to the Peace,
Breaches of the Peace, and Acts of Aggression*

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may... call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable.

Article 41

The Security Council may **decide what measures not involving the use of armed force are to be employed** to give effect to its decisions, and it may **call upon** the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it **may take such action by air, sea, or land forces** as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 43

All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to **make available to the Security Council**, on its call and in accordance with a **special agreement** or agreements, **armed forces, assistance, and facilities**, including rights of passage, necessary for the purpose of maintaining international peace and security.

Article 47

There shall be established a **Military Staff Committee** to **advise and assist the Security Council** on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the **employment and command of forces** placed at its disposal, the regulation of armaments, and possible disarmament.... The Military Staff Committee shall be responsible under the Security Council for the **strategic direction of any armed forces** placed at the disposal of the Security Council.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

General Assembly and Collective Security

Article 11

The General Assembly **may discuss** any questions relating to the **maintenance of international peace and security** brought before it by any Member of the United Nations, or by the Security Council.... Any such questions on which **action is necessary** shall be **referred to the Security Council** by the General Assembly either before or after discussion.

Article 12

While the Security Council is exercising in respect of any dispute or situation the **functions assigned to it** in the present Charter, the **General Assembly shall not make any recommendation** with regard to that dispute or situation unless the Security Council so requests.

Uniting for Peace (UNGA Resolution 377, 1950)

Resolves that if the Security Council, because of **lack of unanimity** of the permanent members, **fails to exercise its primary responsibility** for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the **General Assembly shall consider the matter** immediately with a view to making appropriate **recommendations** to Members for collective measures, including in the case of a breach of the peace or act of aggression the **use of armed force when necessary**, to maintain or restore international peace and security.

Recommends to the States Members of the United Nations that each Member maintain within its national armed forces **elements so trained, organized and equipped that they could promptly be made available**, in accordance with its constitutional processes, for service as a United Nations unit or units, **upon recommendation by the Security Council or the General Assembly....**

Certain Expenses of the United Nations (ICJ advisory opinion, 1962)

Thus while it is the Security Council which, exclusively, may order coercive action, the functions and powers conferred by the Charter on the General Assembly are not confined to discussion, consideration, the initiation of studies and the making of recommendations....

It is not possible to find in this description of the functions of UNEF, as outlined by the Secretary-General and concurred in by the General Assembly without a dissenting vote, any evidence that the Force was to be used for purposes of enforcement.... It could not therefore have been patent on the face of the resolution that the establishment of UNEF was in effect "enforcement action" under Chapter VII which, in accordance with the Charter, could be authorized only by the Security Council.

The Court concludes that, from year to year, the expenses of UNEF have been treated by the General Assembly as expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter.