

At The Hague ICJ, Israel Mounted a Defense Based in an Alternate Reality

Israel's rebuttal against charges of genocide was as weak in offering documented facts as South Africa's case was powerful.

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A team of Israeli lawyers and officials presented their defense at The Hague on Friday in the second day of the genocide case [brought before the International Court of Justice](#) by the government of South Africa. The lawyers portrayed Israel as the actual victim of genocide, not Gaza, accused South Africa of supporting Hamas, and painted South Africa's government as functioning as the legal arm of the Palestinian militants who led the deadly raids into Israel on October 7.

Israel benefitted greatly from the fact that there was no cross examination permitted or debate allowed during these proceedings. It embarked on a bold mission to do in a court of international law what its military and political officials have done day and night throughout the course of this war against Gaza: unleash a deluge of what was known within the Trump administration as "alternative facts."

Israel's defense was the inverse of South Africa's case yesterday, and as weak in offering documented facts as South Africa's was powerful. History began on October 7, the Israelis seemed to say, South Africa is Hamas, South Africa did not give Israel a chance to meet up and chat about Gaza before suing for genocide, and actually the Israel Defense Forces is the most moral entity on Earth. As for the voluminous public statements by senior Israeli officials indicating genocidal intent, those were just "random assertions" by some irrelevant underlings. Prime Minister Benjamin Netanyahu's statements invoking a murderous story from the Bible about killing the women, infants, and cattle of your enemies? The South Africans just don't understand theology and presented Netanyahu's words out of context.

January 12, 2023. ICJ Hearings. Presentation by Israel

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While Israel's lawyers made legal arguments that the genocide charges leveled against it are invalid, their primary strategy was to appeal to the court on jurisdictional and procedural matters, hoping that they could form the basis for the panel of international judges to dismiss South Africa's case. Aware of the global audience, Israel also sought to reinforce its claims of righteousness and self-defense in fighting the war in Gaza.

Israel's representative Tal Becker opened his government's rebuttal by telling the judges at the ICJ that South Africa's case "profoundly distorted the factual and legal picture," claiming it sought to erase Jewish history. He charged that the legal arguments made by South Africa's team were "barely distinguishable" from Hamas's rhetoric and accused them of "weaponizing" the term "genocide."

Becker called October 7 "the largest calculated mass murder of Jews since the Holocaust" and pleaded with the court to factor in the "brutality and lawlessness" of the enemy Israel says it is fighting in Gaza. Israel, he said, has a lawful right to use all available means to respond "to the slaughter of October 7 which Hamas has vowed to repeat."

He repeatedly attacked the South African government, accusing it of doing Hamas's bidding and alleging that its true agenda was to "thwart" Israel's right to defend itself. "South Africa enjoys close relations with Hamas," Becker said. "These relations have continued unabated even after the October 7 atrocities." He said that South Africa, not Israel, should be subjected to provisional measures by the ICJ for its alleged support of Hamas. Becker neglected to mention the fact that Netanyahu himself [long advocated](#)[Opens in a new tab](#) for

Hamas to retain power in Gaza and worked to ensure the flow of money to the group from Qatar continued over the years, believing it to be the best strategy to prevent the establishment of a Palestinian state.

Becker rejected South Africa's characterization of the historical scale of civilian destruction in Gaza — which has now killed over 10,000 children — arguing that what is actually “unparalleled and unprecedented” in this war is Hamas “embedding its military operations throughout Gaza within and beneath” densely populated areas. Becker spoke as though many of Israel's most outlandish claims about Hamas's underground operations have not been proven false or shown to be greatly exaggerated, such as the Israeli claim that there was essentially a Hamas Pentagon [under al-Shifa Hospital](#).



Some of the wounded at al-Shifa hospital (Source: Gaza Health Ministry)

Becker also alleged that South Africa's lawyers had failed to mention how many of the buildings blown up and destroyed in Gaza over the past three months of sustained Israeli bombing were actually “boobytrapped” by Hamas rather than destroyed by Israel. It was a risible claim given not only the scale of the Israeli bombardment of entire neighborhoods, but also because Israeli soldiers have [posted videosOpens in a new tab](#) of themselves [gleefully hitting the detonate buttonOpens in a new tab](#) to obliterate whole neighborhoods. He dismissed civilian death and injury figures provided by Gaza health authorities, saying that South Africa's lawyers had failed to mention how many of the dead Palestinians were actually Hamas operatives. It was a striking point given that Israeli officials have openly and repeatedly said that there are no innocents in Gaza, and that United Nations workers and journalists killed by Israel are actually secret Hamas agents.

“The nightmarish environment created by Hamas has been concealed by” South Africa, Becker charged. “Israel is committed to comply with the law, but it does so in the face of Hamas's utter contempt for the law.” Becker did not bother to address any of the [scores of U.N. resolutionsOpens in a new tab](#) over the decades condemning the illegality of Israel's apartheid regime and its illegal occupations, not to mention its own well-documented use of Palestinian children as [civilian shieldsOpens in a new tab](#) and the intentional [killing and](#)

[maiming](#)Opens in a new tab of nonviolent protesters.

Becker also claimed that Israel was complying with international law in all of its operations in Gaza. “Israel does not seek to destroy a people, but to protect a people — its [own] people,” he said, adding that Israel is engaged in a “war of defense against Hamas, not the Palestinian people.” There could “hardly be a charge more false and more malevolent than the charge of genocide.” He accused South Africa of abusing the world court and turning it into an “aggressor’s charter.”

Malcolm Shaw, a British lawyer representing Israel, opened his argument by attacking South Africa’s reference on Thursday to what it described as Israel’s 75-year Nakba against the Palestinians. Shaw called this characterization as “outrageous” and said the only relevant historical “context” were the events of October 7, which he termed “the real genocide in this situation.” Given the civilian death toll caused by Israel in Gaza — upward of 23,000 as of this week — it was a stunning statement. By Israel’s own official count, some 1,200 people were killed on October 7. Of these, 274 were soldiers, 764 were civilians, 57 were Israeli police, and 38 were local security guards. It has still not been determined how many Israelis were killed in “friendly fire” incidents by Israeli forces who responded to the Hamas attacks that day.

Shaw and other lawyers representing Israel acknowledged that civilians had been killed during Israel’s military operations, though Shaw contended that “armed conflict, even when fully justified and conducted lawfully, is brutal and costs lives.” But, he said, Israel was engaged in a lawful and proportionate military campaign and said the ICJ was not an appropriate venue to review the Gaza war. “The only category before this court is genocide. Not every conflict is genocidal,” Shaw asserted. “If claims of genocide were to become the common currency of our conflict ... the essence of this crime would be diluted and lost.”

Shaw spent much of his time arguing that South Africa had failed to follow the mandated procedures for bringing a third-party genocide charge before the world court. He accused South Africa’s government of failing to sufficiently engage in direct communications with Israel to inform it that there was a conflict between the two states. South Africa “seems to believe that it does not take two to tango,” he said. South Africa “decided unilaterally that a dispute existed” between Israel and South Africa, despite what Shaw called Israel’s “conciliatory and friendly” offers to meet with South Africa to discuss its concerns about the Gaza war. This defies common sense, given that in November, Pretoria publicly accused Israel of genocide and [called for](#)Opens in a new tab the International Criminal Court to issue a warrant for Netanyahu’s arrest. Israel responded by withdrawing its ambassador.

Shaw then addressed the voluminous statements made by Israeli officials introduced in court by South Africa as evidence of “genocidal intent.” Shaw dismissed these statements as “random assertions” that failed “to demonstrate that Israel has or has had the intent to destroy” the Palestinian people. He contended that none of those statements constituted an official policy of the Israeli government and said the only relevant factor for the court to consider is whether such statements reflected official decisions or directives made by the Israeli leaders and its war Cabinet. Shaw declared they did not, citing several official Israeli statements directing armed forces to comply with international laws and to make efforts to protect civilians from harm or death. He neglected to respond to the direct connections drawn, including through video evidence, by South Africa’s legal team showing how Israeli forces on the ground echoed Israeli officials’ statements about destroying Gaza as they laid siege to the strip.

The British lawyer directly addressed Netanyahu's invocation of the biblical story of the destruction of Amalek, in which God ordered the Israelites to "attack the Amalekites and totally destroy all that belongs to them. Do not spare them; put to death men and women, children and infants, cattle and sheep, camels and donkeys." Shaw argued there was "no need here for a theological discussion." South Africa, he charged, took Netanyahu's words out of context and failed to include the portion of his statement where he emphasized that the IDF was the "most moral army in the world" and "does everything to avoid harming the uninvolved." The implication of Shaw's argument is that Netanyahu's platitudes about the nobility of the IDF somehow nullified the significance of invoking a violent biblical edict to describe a military operation against people Israeli Defense Minister Yoav Gallant described as "human animals."

After offering a litany of public Israeli statements about protecting civilians and offering humanitarian aid to the Palestinians, Shaw quipped, "Genocidal intent?" as though these words and claims somehow erase the actual actions the entire world has watched daily for more than three months. With no sense of shame, Shaw characterized Israel's statements directing Palestinians in Gaza to immediately evacuate their homes as a humanitarian gesture. Yesterday, South Africa called the evacuation order for over a million people on short notice an act of genocide in and of itself.



Girl holds improvised white flag, to tell Israel to respect Geneva Conventions and spare her fleeing family. Photo credit: Yasser Qudih

In a moment of supreme gaslighting, Shaw concluded his presentation by accusing the government of South Africa of "complicity in genocide" and failing in its "duty to prevent genocide." He charged, "South Africa has given succor and support to Hamas at the least." He said the allegations against Israel "verge on the outrageous" and argued that Hamas's conduct, not Israel's, meets the "statutory definition of genocide." Unlike Hamas, he continued, Israel has made "unprecedented efforts at mitigating civilian harm ... as well as alleviating hardship and suffering" to its own detriment.

Galit Rajuan, another Israeli lawyer, argued that Israel was operating within the rules of law in its attacks on Gaza. She spent considerable time accusing Hamas of using hospitals and other civilian sites to operate militarily and to hold Israeli hostages. South Africa, she said, pretended “as if Israel is operating in Gaza against no armed adversary” and said the civilian deaths and destruction caused by Israel’s operations is “the desired outcome” Hamas wants. “Many civilian deaths are caused by Hamas,” she alleged.

She repeated claims that have been debunked about Hamas using hospitals for military operations and holding hostages, claiming that any damage Israel had done to hospitals in Gaza was “always as a direct result of Hamas’s abhorrent method of warfare.”

Responding to South Africa’s assertion that Palestinians were given just 24 hours to flee their homes and hospitals, Rajuan claimed Israel had given the warnings weeks in advance through leaflets, online maps, and social media accounts. She did not mention that Israel has frequently shut down the internet in areas of Gaza and has repeatedly struck areas to which it told people to flee.

After describing what she characterized as Israel’s extensive efforts to deliver aid to the people of Gaza, Rajuan said it was evidence that the charge of genocide is “frankly untenable.” She said she had only told the court of a “mere fraction” of the efforts Israel had made to warn civilians to leave their homes and to deliver aid but that it “is enough to demonstrate ... that the allegation of the intent to commit genocide is baseless.” Her portrayal of Israel as a beneficent humanitarian moving mountains to alleviate the suffering Palestinians would be laughable if it wasn’t so deadly. But such statements are easy to offer when your official policy is to portray aid organizations and U.N. workers as Hamas operatives.

[For monthsOpens in a new tab](#), international aid organizations have condemned Israel, which functions as the overlord of what goes in and out of Gaza, for obstructing humanitarian aid deliveries into Gaza. Just this week, [U.N. officials saidOpens in a new tab](#) that Israel is blocking it from getting aid to northern Gaza, while [the World Health Organization saidOpens in a new tab](#) it is facing “insurmountable” challenges in delivering aid. Nonetheless, Omri Sender, another lawyer for Israel, claimed that Israel is delivering large quantities of aid daily to Gaza, despite “Hamas constantly stealing it.” He told the judges that “Israel no doubt meets the legal test of concrete measures aimed specifically ... at ensuring the rights of the Palestinians in Gaza to exist.”

Christopher Staker closed Israel’s legal arguments by charging that South Africa was trying to force a unilateral ceasefire by Israel and that this would allow Hamas to be “free to continue attacks, which it has a stated [intent] to do.” He said that the civilian carnage and destruction in Gaza cited by South Africa do not inherently constitute genocide and that it is “not within the court’s power” to order provisional measures directing Israel to cease all military operations under the Genocide Convention. He contended that Israel has a legitimate right to engage in military conduct in Gaza that South Africa is seeking to restrain, and that an ICJ order to cease all operations would cause “irreparable prejudice” to the rights of Israel. South Africa, in its argument on Thursday, contended that by refusing to cease its operations, Israel was ensuring that the pile of Palestinian corpses would continue to grow alongside the amputations of limbs without anesthesia and babies dying of treatable illnesses.

Staker took a page from Netanyahu’s well-worn propaganda playbook and compared the

Gaza war to World War II, saying an international court ordering Israel to cease operations in Gaza would be akin to a court in the 1940s forcing the Allies in World War II to surrender to the Axis powers in Europe. He said a suspension of military operations would “deprive Israel of the ability to contend with the security threat against it” and allow Hamas to commit further atrocities. Such measures by the ICJ, he alleged, would assist Hamas. He also said the orders requested by South Africa were too broadly framed and, if enforced by the world court, would incapacitate Israeli operations in Palestinian territories other than Gaza. He said this as though Israel is protecting a country club in the West Bank from robbers and vandals rather than presiding over an illegal apartheid regime where Palestinians are subjected to conditions not unlike those found in South Africa decades ago.

Staker also said that South Africa’s request that the court order Israel to preserve evidence of potential crimes had no basis in fact and that no proof was offered that Israel was destroying evidence in Gaza. He said such an order would be an “unprincipled and unnecessary tarnishing of [Israel’s] reputation.” Staker may want to peruse the list of Palestinian libraries, archives, cultural sites, monuments, historic churches, and mosques that Israel has destroyed. Not to mention the academics, poets, storytellers, and historians its forces have erased from the earth.

Israel’s representative Gilad Noam closed his government’s defense by claiming that South Africa portrayed Israel as a “lawless state that regards itself as beyond and above the law. ... in which the entire society” has “become consumed with destroying an entire population.” This was remarkable in that it represented an accurate characterization of precisely what South Africa argued in its presentation. Of course, Noam assured the court that this characterization was “patently false.”

South Africa, Noam said, “defames not only the Israeli leadership but also [Israeli] society.” Returning to the statements made by Israeli officials that South Africa’s lawyers said constituted proof of genocidal intent, Noam claimed that some of these “harsh” statements by Israel’s leaders were in response to the “destruction of Jews and Israelis.” He said that Israel’s courts take incitement seriously and are currently investigating such cases.

Noam accused South Africa of engaging in a “concerted and cynical effort to pervert the term ‘genocide’ itself.” He asked the judges to reject the requests to order a halting of Israeli military operations in Gaza and to dismiss South Africa’s case in full. The president of the court, U.S. Judge Joan Donoghue, adjourned the hearing, saying the judges would rule as soon as possible.

During its presentation before the court, Israel made no arguments to defend its conduct in Gaza that it—and its backers in the Biden administration for that matter—has not made repeatedly in the media over the past three months as part of its propaganda campaign to justify the unjustifiable. Each day that passes, more Palestinians will die at the hands of U.S. munitions fired by Israeli forces and the already dire humanitarian situation will deteriorate further. Should the court take Israel’s side and dismiss South Africa’s claims, Israel will point to that as evidence of the justness of its cause. If the judges approve South Africa’s request for an order to halt Israel’s military attacks, the question will be called on whether Israel and its sponsors in Washington, D.C., will respect international law. If history offers any insight on that matter, the future remains grim for the Palestinians of Gaza.

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