



MESTRADO EM PRÁTICA JURÍDICA

INTERNATIONAL JUSTICE

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90 min.

The State of Palestine wants to initiate procedures against Israel, claiming that some acts that are being committed since October 2023 in Gaza amount to acts of genocide. As such, it has initiated a procedure before the International Court of Justice (ICJ), claiming that Israel has breached the Convention on the Prevention and Punishment of the Crime of Genocide. It further adds that Israel has signed that Convention and that, pursuant to Article IX, the ICJ is the responsible body to analyse this case. Article IX reads as follows:

“the 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”.

- 1) Can the State of Palestine initiate such procedure before the ICJ? **(3 val.)**

ICJ – jurisdictional body of the UN

Article 93 UN Charter – All UN Member States are ipso iure parties to the ICJ Statute

Standing before the ICJ in disputes: only States (Art. 34 ICJ Statute)

The State of Palestine is not recognized as a State by the UN, having only the quality of Observer Member

- 2) Can the State of South Africa, a signatory State of the Genocide Convention, initiate the same procedure before the ICJ? **(3 val.)**



Standing before the ICJ in disputes: only States (Art. 34 ICJ Statute)

South Africa being a signatory of the Genocide Convention has legal standing, pursuant to Article IX

Cases: Gambia vs Myanmar, Ukraine vs Russia (on the same Convention)

- 3) Can the General Assembly ask the ICJ whether the acts of Israel are breaching the Genocide Convention? How? **(3 val.)**

The GA does not have legal standing for a jurisdictional procedure

Only possibility: by requesting an advisory opinion, under Art 65 ICJ Statute

Cases: The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory

- 4) Assume that South Africa also claims that some Israeli commanders should be punished criminally for the acts of genocide. Is the ICJ competent to deal with this punishment? What can South Africa do to enforce this alleged criminal responsibility? **(4 val.)**

The ICJ does not have competence to deal with criminal responsibility of individuals

Competent body – the ICC

Competence: Art. 5 – international criminal crimes

Art. 13 – the procedure in the ICC may begin by a denunciation made by a State Party

- 5) The competent judges find that there have been some killings and sexual violence, and some disproportionate attacks have been made, namely targeting of hospitals and refugee camps. However, there is no proof that the responsible persons were acting with the purpose to eradicate the Palestinian people. Could there be any punishment of the responsible commanders and how? **(3 val.)**

Art. 6: crime of genocide encompasses acts such as killings and possibly sexual violence when causing serious bodily or mental harm.



However: acts must have been committed with the specific intent of destroying, in whole or in part, a racial, ethnic, religious or national group;

When this intent is not proven, acts may still amount to other crimes foreseen in the Rome Statute.

In this case: war crimes: Article 8 Rome Statute (committed during an armed conflict)

- 6) Now suppose that the UK has been supporting Israel in Gaza and has made some hostages allegedly working for the Hamas. The hostages were taken to a detention center in Tel Aviv and were subjected to acts of torture perpetrated by the British officers, so they would confess where Hamas' main operations are taking place. The hostages' family members have decided to apply to the European Court of Human Rights, claiming that UK is breaching Article 3 of the European Convention on Human Rights. Do you think that their application can be successful? **(4 val.)**

Uk – Party to the ECHR – the ECourt is a body with “mandatory jurisdiction”

Legal standing – Art. 33 and 34 ECHR, always against States + individuals as complainants

Admissibility criteria – Art. 35 ECHR

Jurisdiction – Art. 1 ECHR – “effective control” criteria

Cases - Al-Saadoon & Mufdhi v. the United Kingdom