

The Day After for EU Diplomacy? Israel-Palestine and the Aftermath of South Africa's Genocide Case Before the ICJ.

BUILDING RESILIENCE IN THE SOUTH SERIES – COMMENTARY

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On October 7th 2023, the world woke up to a simple, bitter reality: a fair, reciprocal resolution to the question of Israel-Palestine, although eluded for years, could not be circumvented forever. The 1200 casualties suffered by Israel and the unprecedented number of civilian and military hostages taken by Hamas and other armed factions in Gaza paved the way for vigorous Western support for a brutal air and ground attack on the Gaza Strip, the most densely populated area in the world. As the Israeli retaliation campaign advanced, with food, water, fuel and medicine almost entirely cut off for the civilian population in Gaza, the number of casualties soon became unbearable. With the Israeli leadership reiterating over and over again its intention to displace Gazans, fight “human animals”, “clean” Gaza and other

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similar vocabulary, mass protests across Europe and the world began shouting “Stop the Genocide”.

Post-apartheid South Africa took this one step further on December 29th 2023 by instituting a case against Israel in front of the highest UN court, the International Court of Justice (ICJ), accusing it of genocidal intent and practice in Gaza and hence breaches of the Genocide Convention both countries are signatories to. Noticeably, South Africa’s argumentation did not start with October 7, but placed both Hamas’s and Israel’s actions in the broader context of Israel’s violence towards Palestinians, including what South Africa described as a 75-year apartheid, a 56-year occupation, and a 16-year blockade of the Strip.

Proceedings before the Court take years, but States can request emergency steps known as provisional measures. As part of this emergency procedure, on January 26th 2023, the Court established a risk of genocide in Gaza, ordering Israel to take measures to prevent it. Notably, it did not order the end of its military operation in the Strip, although the death toll had already surpassed 20.000 by then. Additionally, Israel was ordered to send a report to the Court detailing all measures undertaken to comply with its provisional measures within thirty days. Yet since the Court’s ruling, the civilian death toll in Gaza has seen thousands of additional casualties, and at the time of publication, Israel might be preparing an assault on Rafah.

A major problem, however, is that the ICJ lacks enforcement mechanisms. Illustratively, Israel utterly disregarded what the Court ruled as its illegal occupation of the West Bank in 2004. As such, the Court’s recent decisions are only enforceable within the framework of a permanent ceasefire voted in at the Security Council level, which the U.S. vetoed on February 20th 2023 for the third time since the start of

Israel's military offensive on Gaza. Apart from the UK abstaining, all thirteen members voted in favour, expressing their frustration with the U.S for sabotaging an end to a massacre that has already caused more than 29.000 Palestinian deaths.

Yet, if not enforceable on the ground, the Court's decision does shift the moral and political framing of the situation in Gaza from a war between two extremely uneven parties on the most densely populated area in the world, to crimes amounting to genocide.

A SHACKY EU SOFT POWER AND THE UNIFICATION OF THE GLOBAL SOUTH

The EU's official stance on Israel's war on Gaza obeys an intrinsically incoherent logic. In an attempt to refute accusations of double standards in the ways it has been dealing with the Ukrainian war and its expectations of unwavering support from Southern partners compared to its support for Israel, High Representative for Foreign Affairs, Joseph Borrell, argued: *"Europe's influence in the world rests primarily on our soft power. We have taken steps to strengthen our defence capabilities and we have a powerful economy, but we are not yet a hard power. Our global role stems principally from how consistently we defend universal principles and values."*¹

Last Wednesday, the European Parliament (EP) finally voted in favour of an unconditional, "immediate and permanent" ceasefire in Gaza. This is a significant step forward, although mainly symbolic, as the last call for a ceasefire was conditioned on the release of Israeli hostages and the dismantling of Hamas. However, ahead of the next European Council and with a lack of support from the Commission, a permanent ceasefire has not been established as the official stance of the EU.

¹ https://www.eeas.europa.eu/eeas/what-eu-stands-gaza-and-israeli-palestinian-conflict_en

As the EU presents itself as primarily concerned with upholding “international and humanitarian law”, two questions immediately arise: Why are there no measures undertaken to push for the implementation of a permanent ceasefire, including sanctions against Israeli crimes? And why is the EU pausing its funding of the UN Relief and Works Agency for Palestinian refugees in the Near East (UNWRA)?²

The answer has as much to do with the EU’s own incoherence as it has to do with the extent of internal divisions on Israel/Palestine within the bloc. Within the UN General Assembly (UNGA), the first vote in favour of a humanitarian truce in October 2023 saw most Western countries either abstaining or voting against, starkly contrasting with the 120-majority that voted in favour. This was an early sign of the extent of the West’s isolation on the international scene. A second ceasefire resolution in December 2023 passed with an astounding 153-majority, with only 10 countries against (including Israel, the U.S., Austria and the Czech Republic) and 23 abstaining (including Germany, Italy, the Netherlands and Hungary).

On an internal level, the EU’s long-standing hesitant stance on a ceasefire – calling for a humanitarian pause instead – echoes the growing discord between the Commission’s president, Ursula Von der Leyen, and Borrell. Following a much-criticized visit to Tel Aviv in October 2023, Von der Leyen, who never hid her personal affiliation with Israel, declared unwavering support for Israel’s right to defend itself (a right that clashes with international law) while neglecting to mention the EU’s support for Palestinian statehood, despite a two-state solution being a core part of the bloc’s position. Although Borrell and most EU leaders’ initial reaction did not differ much, as Israel’s military incursion in Gaza quickly proved indiscriminate, divisions soon became evident. Recently reacting on Von der Leyen’s October 2023

² The UNRWA supports around six million Palestinian refugees who live within and outside Palestine. It provides direct services, such as schools, primary health centres, and other social services. Nearly the entire population in Gaza now relies on UNRWA for basic necessities, including food, water and hygiene supplies.

trip, Borrell said: *"That trip (...), with such an absolutely pro-Israeli stance, without representing anyone but herself in a matter of international politics, has had a high geopolitical cost for Europe,"* adding the West's position is *"sowing the seeds of hate for generations to come"*. Borrell's latest criticism of President Biden's unwavering military support to Israel should be perceived both as attempting to have an independent European voice in the Middle East as much as trying to restore the EU's credibility as a beacon for human rights.

Yet, the problem stems from the EU wanting to present itself as a neutral counterpart, which it is not.

For starters, European arms transfers are directly involved in the war effort in Gaza, specifically through Germany, Italy and France. 23.9% of Israel's weaponry comes from Germany and 5.9% from Italy. Arms deals between Germany and Israel amounted to 1.39 billion dollars between 2015 and 2020, and 327 million euros in 2023 alone, ten times more than in 2022. Italy sells 12 million euros worth of arms to Israel per year, and arms deals between France and Israel amounted to 200 million euros between 2013-2022.³ However, the ICJ ruling seems to have had some impact on halting arms exports to Israel within the EU: Spain, Italy and Wallonia recently announced they had ceased all arms transfers to Israel linked to its offensive on Gaza.

Following the revelation that a small number of Palestinian workers at the UNWRA might be involved in the October 7th attacks, the U.S., followed, by a number of European countries, decided to immediately suspend their funding, including Germany, Sweden, France, the Netherlands, Italy, and the EU itself. It is noteworthy

³ <https://www.aa.com.tr/en/europe/germany-uk-under-scrutiny-for-continuing-arms-support-to-israel-amid-genocide-prosecution/3140116#:~:text=Germany's%20arms%20sales%20to%20Israel,a%20tenfold%20increase%20from%202022.>

to mention the decision came after the ICJ ruled that the Israeli government must immediately enable the provision of basic services and humanitarian aid to preserve Palestinian lives in Gaza. On February 24th, the Agency's general commissioner attributed UNRWA's inability to provide life-saving humanitarian aid to Palestinian refugees, including in Gaza, to *"Israel's repeated calls to dismantle UNRWA and the freezing of funding by donors at a time of unprecedented humanitarian needs in Gaza."*

The irony is not lost on many. The fact many prominent EU members – and the bloc itself – chose to act upon unverified claims rather than the thousands of documented Israeli war crimes, amidst a man-made, large-scale hunger in Gaza which could amount to complicity in genocide, has been denounced as a staggering case of double standards.

On December 30th 2022, the UNGA requested an advisory opinion from the ICJ on the illegality of Israel's 57-year occupation of Gaza, the West Bank and East Jerusalem since 1967. The week-long hearings started on Monday 19th, and saw 52 countries, mostly from the global South, and three organisations (the League of Arab States, the Organisation of Islamic Cooperation and the African Union) present oral arguments before the Court. This is the largest number of parties to participate in any single ICJ case since the Court was established in 1945. The vast majority of countries argued the occupation is illegal and should be halted.

China upheld that the use of armed resistance by Palestinians against the Israeli occupying force is legitimate before international law. South Africa argued Israel is maintaining a colonial apartheid system and that settlements must be dismantled and reparations paid. Even countries that have historically strong ties with Israel, like the Netherlands and Belgium, had robust words of condemnation. France, although reinstating its support for Israel's right to defend itself and the liberation

of Israeli hostages, nonetheless argued Israel is an occupying force of Palestinian territories according to Article 42 of the 1907 Hague regulation regarding the laws and customs of war.

Last Friday, Nicaragua announced it had filed a case against Germany at the ICJ, alleging that Germany's political, financial, and military support, along with its defunding of UNWRA, is "facilitating genocide" in Gaza. In a unified effort last week, 200 parliamentarians from thirteen countries signed a declaration calling for an arms sale ban to Israel, stating their refusal to be complicit in "Israel's grave violation of international law." Among the signatories are nine current or former political party leaders, including Manuel Bompard, coordinator of France Insoumise; Peter Mertens, national secretary of the Workers' Party of Belgium; Bernd Riexinger, former leader of Germany's Die Linke; Ione Belarra, leader of Spain's Podemos; Jimmy Dijk, leader of the Dutch Socialist Party; and Thomas Pringle, an Irish Teachta Dála (member of parliament). In parallel, protests and mobilisations for a ceasefire and beyond are ongoing in Europe.

Belgian universities are witnessing a powerful call for the boycott of Israeli academic institutions, coined "Break Up with Israel". Recently, the Hague Court of Appeal ordered the Dutch government to stop supplying Israel with F-35 fighter jet parts because there was a "clear risk" that serious violations of international humanitarian law would be committed with the aircraft in Gaza. While Borrell warned that President Biden is losing the votes of young Democrats due to its unwavering support of Israel's military operation in Gaza, European elections also risk losing both first-time voters and progressive voices disenchanted with their leaders' stance on a potential genocide.

The war on Gaza seems to be an ultimate revealer of North-South asymmetries and the profound injustice created by international institutions inherited from World War II. While very few countries overtly support Israel's military operation in Gaza, international institutions and geopolitical power asymmetries are so unbalanced – overwhelmingly so in the Global North – that one single country, the U.S., is able to veto a ceasefire decided by 153 nations at the UNGA. Today, there are clearly two geopolitical camps emerging: one led by the U.S., intent on circumventing a ceasefire and supporting Israel's war on Gaza no matter the cost, and another led by South Africa, determined to bring justice to Palestinians and hold Israel accountable for its war crimes. These camps offer a startlingly clear representation of the conflicting interests and values between the Global North and the Global South.

What the EU perceives as a balancing act is actually increasingly isolating it on the international scene and rendering it irrelevant. If anything, Gaza should be perceived as the last opportunity for Europe to redeem itself and win back some credibility. After it moved beyond its “you are either a supporter or an enemy” position vis-à-vis its non-Western counterparts following the Russian aggression of Ukraine, the Union commenced a process that attempted to build real allyships with the Global South. Since October 7th, this has entirely collapsed.

If any effort is to be made to exorcise the colonial demons of the past and the present, the EU should recognize accusations of double standards stem from reality. It cannot expect countries and citizens in the Global South to align with its position on the Ukrainian conflict without having a firm position on Gaza now. In addition, it should listen to what young European citizens have been shouting for months, or risk alienating a whole portion of voters in the upcoming elections.

Recommendations:

1. ***Amend and Strengthen Relations with the Global South:*** To mend and build genuine alliances with countries in the Global South, the EU must take accusations of double standards seriously and address them with concrete actions. If it wishes to present itself as an upholder of international law and human rights, the EU should adopt a clear position advocating for an immediate and durable ceasefire, halt all arms deliveries to Israel in accordance with the ICJ's ruling on the risk of genocide in Gaza, and impose sanctions on Israeli interests within the bloc.
2. ***Adopt a Consistent and Independent Foreign Policy Stance:*** The EU should ensure its foreign policy is consistent and principled, particularly regarding conflicts happening within and outside of its territory. The automatic alignment with the American foreign policy agenda is rendering the EU invisible on the international scene. In addition, structural changes on EU foreign policy should be prioritised in the next mandate; in particular, the adoption of a majority voting system in foreign policy decision-making. Currently, the consensus-based approach often leads to delays and compromises that dilute the EU's stance on urgent international issues, reducing its ability to act swiftly and decisively.
3. ***Engage with Youth and Civil Society ahead of the 2024 European Elections:*** The EU must listen to and incorporate the voices of young Europeans and civil society organisations into its policies and decision-making processes, including in foreign policy. One way to do this is through listening to youth-led organisations that can help promote voter participation and pinpoint the priorities of tomorrow's voters, amongst which a ceasefire in Gaza is increasingly paramount.

About the BIC

The BIC is an independent, non-profit, think-and-do tank based in the capital of Europe that is committed to developing solutions to address the cyclical drivers of insecurity, economic fragility, and conflict the Middle East and North Africa. Our goal is to bring added value to the highest levels of political discourse by bringing systemic issues to the forefront of the conversation.

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