

**Melinda SZAPPANYOS:**  
**Genocide "à la mode"?<sup>1</sup>**

**Executive Summary**

- On the 26 June 2026, the Democratic Republic of the Congo made its third attempt to start a procedure against Rwanda in front of the International Court of Justice (ICJ) for mass violation of human right, that amount to genocide. Since 2019, this is the fifth application submitted to the ICJ based on Art. IX of the Genocide Convention.
- Although the ICJ has faced considerable criticism, there is currently no other forum capable of establishing state responsibility for the commission of genocide. The ICJ is therefore a "make-do" solution.
- However, the rise in the number of genocide cases may carry the risk that the number of States Parties to the Genocide Convention will stagnate, that the number of reservations will not decrease, and that some States may even denounce the Convention.
- The DRC to succeed in this procedure needs to prove that genocidal acts were committed by militia members on the instruction or under the direction or control of Rwanda with the aim to physically destroy the targeted groups mentioned in the application.

**The conflict between the Democratic Republic of the Congo (DRC) and Rwanda is not new, but gained attention again recently, when the president of the United States listed it as "solved" by him. Despite such a claim mass human rights violations did not end in Eastern Congo. However, conflicts are not only fought with weapons, but with legal claims as well. Most recently, with the institution of proceedings of the International Court of Justice (ICJ) by the DRC, claiming the violation of three universal human rights treaties and the Genocide Convention by Rwanda in the territory of Eastern DRC. The present analysis aims to discover whether the ICJ is the right forum to deal with the responsibility of Rwanda and to identify the questions the ICJ will probably have to address.**

**1. Introduction**

In the last 15 years, referring a case to the ICJ for genocide became "fashionable". On the 26 June 2026 the newest application was submitted to the ICJ by the DRC claiming that Rwanda violates the Genocide Convention of 1948 (hereinafter Genocide Convention or Convention),<sup>2</sup> and human

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<sup>2</sup> Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277.

rights treaties (CEDAW,<sup>3</sup> ICERD<sup>4</sup> and the CAT<sup>5</sup>).<sup>6</sup> We should note that this is not the first attempt, it was preceded by two applications unsuccessfully.<sup>7</sup>

This application is the newest development of a trend. Currently, there are 5 cases, including this one, pending before the ICJ, based on the compromissory clause of the Convention, which states that "[D]isputes 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."<sup>8</sup>

Argument of the present analyses: The prohibition of genocide is a jus cogens norm, all members of the international community have the responsibility to prevent, to punish and, above all, not to commit genocide. In fact, genocide is one of the worst of international crimes. Thus, it is evident that more norms prohibiting it, the better and the more enforcement mechanism are there to deal with such situation, is also for the better. An important question of this analysis however is whether turning to the ICJ is an appropriate and potentially successful action or using other forum/fora would benefit both the international community and the victims more.

Besides, a global analysis at least should attempt to foresee what the DRC can expect from this application, not necessarily predicting the exact result, but pointing out what questions may be raised by the ICJ in deciding on the application.

## **2. Cases Overview**

The newest application claims that Rwanda committed genocide in the eastern part of the DRC. According to the application, not only Hutus, but other ethnic groups were also the victims of such conduct since 1996, namely the Nyindu, the Bembe, the Lega, the Nande, the Hunde and the Bashi.<sup>9</sup> The application was made possible in 2008, when Rwanda decided to withdraw its reservation to Art. IX of the Convention.<sup>10</sup> The DRC requested the ICJ to establish the violation of all conventions invoked and order Rwanda to fulfil all obligations as a violator of international law according to customary law norms (cessation of the violation, provide satisfaction and provide guarantee against repetition).<sup>11</sup>

<sup>3</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

<sup>4</sup> International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entered into force 4 January 1969) 660 UNTS 195.

<sup>5</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

<sup>6</sup> REPUBLIQUE DEMOCRATIQUE DU CONGO: [Requête introductive d'instance: Application de la convention pour la prévention et la répression du crime de génocide, de la convention internationale sur l'élimination de toutes les formes de discrimination raciale, de la convention internationale sur l'élimination de toutes les formes de discrimination à l'égard des femmes et de la convention contre la torture ou autres peines ou traitements cruels, inhumains et dégradants](#). [Democratic Republic of the Congo: Application initiating proceedings: Application of the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment] 26 juin 2026 [online, 2026.07.13]

<sup>7</sup> Ibid., paras 6-8.

<sup>8</sup> Genocide Convention, Art. IX.

<sup>9</sup> REPUBLIQUE DEMOCRATIQUE DU CONGO: Requête introductive d'instance, para 2.

<sup>10</sup> [Communication of Rwanda](#). 15 December 2008 [online, 2026.07.13] At the same time, reservation to Art. 22 of the ICERD has also been withdrawn. [Communication of Rwanda](#). 15 December 2008. Also, Rwanda ratified the CAT and made no reservation.

<sup>11</sup> REPUBLIQUE DEMOCRATIQUE DU CONGO: Requête introductive d'instance, para 171.



As mentioned, this case was preceded by four others, that are still under examination by the ICJ. The earliest among these is the case launched by the Gambia against Myanmar for the treatment of the Rohingya population, which, according to the former constitutes genocide.<sup>12</sup> The ICJ in 2020 ordered provisional measures, and after 12 reports submitted by Myanmar the case is currently being deliberated.

When Russia decided to launch the "special military operation" against Ukraine in 2022, the state in the self-defence position activated every tool to fight back, including legal weapons. Ukraine submitted an application and request for provisional measures to the ICJ.<sup>13</sup> Ukraine asked about the "interpretation and application of the Genocide Convention, as Ukraine and Russia hold opposite views on whether genocide has been committed in Ukraine, and whether Article I of the Convention provides a basis for Russia to use military force against Ukraine to 'prevent and to punish' this alleged genocide"<sup>14</sup> The ICJ ordered Russia in a decision on provisional measures on 16 March 2022 to suspend the operation and not to aggravate the dispute.<sup>15</sup> Despite Russia refusing to participate in the procedure at first, it since has raised preliminary objections and submitted counter-claims. In its judgment of 2 February 2024, the ICJ rejected some of the objections in question and subsequently decided that it would examine the counterclaim.

In the third case, South Africa decided to institute proceedings and requested provisional measures against Israel<sup>16</sup> claiming that "Israel, since 7 October 2023 in particular, has failed to prevent genocide and has failed to prosecute the direct and public incitement to genocide. More gravely still, Israel has engaged in, is engaging in and risks further engaging in genocidal acts against the Palestinian people in Gaza."<sup>17</sup> In two orders of 2024 the ICJ ordered provisional measures.

In the fourth case of Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory<sup>18</sup> Nicaragua "argues that by providing political, financial and military support to Israel and by defunding the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Germany is facilitating the commission of genocide and, in any case has failed in its obligation to do everything possible to prevent the commission of genocide".<sup>19</sup>

However, we should very briefly mention the cases already decided by the ICJ. While the cases are not analysed in detail here, the lessons learned from them will be the part of the analysis of the next chapters. In reverse chronological order:

1. Application of Sudan against the United Arab Emirates.<sup>20</sup> Because of the reservation of the United Arab Emirates to Art. IX of the Genocide Convention, the ICJ removed the case from the list for lack of jurisdiction.

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<sup>12</sup> ICJ: [Case Overview: Application of the Convention on the Prevention and Punishment of the Crime of Genocide \(The Gambia v. Myanmar: 11 States intervening\)](#). 11 November 2019 [online, 2026.07.13]

<sup>13</sup> ICJ: [Case Overview: Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide \(Ukraine v. Russian Federation\)](#). 27 February 2022 [online, 2026.07.13]

<sup>14</sup> UKRAINE: [Application instituting proceedings](#). 27 February 2022 [online, 2026.07.13] para 11.

<sup>15</sup> ICJ: [Order of 16 March 2022: Request for the indication of provisional measures](#). [online, 2026.07.13] para 86.

<sup>16</sup> ICJ: [Case Overview: Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip \(South Africa v. Israel\)](#). 29 December 2023 [online, 2026.07.13]

<sup>17</sup> SOUTH AFRICA: [Application instituting proceedings and request for the indication of provisional measures](#). 29 December 2023 [online, 2026.07.13] para 4.

<sup>18</sup> ICJ: [Case Overview: Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory \(Nicaragua v. Germany\)](#). 1 March 2024 [online, 2026.07.13]

<sup>19</sup> ICJ REGISTRY: [Press Release: The Republic of Nicaragua institutes proceedings against the Federal Republic of Germany and requests the Court to indicate provisional measures](#). No. 2024/19 1 March 2024 [online, 2026.07.13]

<sup>20</sup> ICJ: [Case Overview: Application of the Convention on the Prevention and Punishment of the Crime of Genocide in Sudan \(Sudan v. United Arab Emirates\)](#). 5 March 2025 [online, 2026.07.14]

2. Case of Serbia submitted by Croatia.<sup>21</sup> While the ICJ identified serious human rights violations (*actus reus*), which could amount to genocide, it found no evidence of the intent (*dolus specialis*) necessary to actually commit genocide both on Croatia's<sup>22</sup> and Serbia's (counterclaim) side.<sup>23</sup>

3. Application of Bosnia and Herzegovina against Serbia and Montenegro.<sup>24</sup> The judgement on the merits was delivered in 2007 (often referred to in the literature as a "genocide judgement").<sup>25</sup> The ICJ has found that even if the actual genocide is not attributable to the Republic of Serbia, it still has violated two articles of the Genocide Convention, first, Art. I by not preventing the genocide committed in Srebrenica, and two, Art. VI by not punishing the perpetrators.<sup>26</sup> This case had a judgement preceding that of 2007, where the ICJ rejected preliminary objections.<sup>27</sup>

4. Finally, Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. The ICJ stated in this advisory opinion that a reservation which is not "compatible with the object and purpose of the Convention" is not permitted.<sup>28</sup>

### 3. Brief Case Analysis – Similarities and Differences

| The Gambia v. Myanmar (11 November 2019) |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Claims/Violated Arts.</b>             | <ul style="list-style-type: none"> <li>Genocidal acts (Arts. I, III, IV, V and VI)</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Provisional measures</b>              | <ul style="list-style-type: none"> <li>prevent the commission of all acts within the scope of Art. II</li> <li>prevent the destruction and ensure the preservation of evidence</li> <li>ensure that its military, as well as any irregular armed units which may be directed or supported by it and any organizations and persons which may be subject to its control, direction or influence, do not commit any acts related to genocide</li> <li>submit a reports to the ICJ on a regular basis<sup>29</sup></li> </ul> |
| <b>Preliminary objections</b>            | <ul style="list-style-type: none"> <li>Gambia acted as organ or proxy of Organisation of Islamic Cooperation (OIC), as is not the "real applicant"</li> <li>There was no dispute between the parties</li> <li>Myanmar's reservation to Art. VIII of the Convention</li> <li>The Gambia has no standing<sup>30</sup></li> </ul>                                                                                                                                                                                            |

<sup>21</sup> ICJ: [Case Overview: Application of the Convention on the Prevention and Punishment of the Crime of Genocide \(Croatia v. Serbia\)](#). 2 July 1999 [online, 2026.07.14]

<sup>22</sup> ICJ: [Application of the Convention on the Prevention and Punishment of the Crime of Genocide \(Croatia v. Serbia\), Judgement of 3 February 2015](#). [online, 2026.07.14] para 441.

<sup>23</sup> Ibid., para 522.

<sup>24</sup> ICJ: [Case Overview: Application of the Convention on the Prevention and Punishment of the Crime of Genocide \(Bosnia and Herzegovina v. Serbia and Montenegro\)](#). 20 March 1993 [online, 2026.07.14]

<sup>25</sup> ICJ: [Case Concerning Application of the Convention on the Prevention and Punishment of the Crime Of Genocide \(Bosnia and Herzegovina v. Serbia and Montenegro\) Judgment of 26 February 2007](#). [online, 2026.07.14]

<sup>26</sup> Ibid., para 471.

<sup>27</sup> ICJ: [Application of the Convention on the Prevention and Punishment of the Crime of Genocide \(Bosnia and Herzegovina v. Serbia and Montenegro\) Judgement of 11 July 1996](#). [online, 2026.07.14]

<sup>28</sup> ICJ: [Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide \(Advisory Opinion of 28 May 1951\)](#). [online, 2026.07.14] p. 18.

<sup>29</sup> ICJ: [Application of the Convention on the Prevention and Punishment of the Crime of Genocide \(The Gambia v. Myanmar: 11 States intervening\) Order of 23 January 2020](#). [online, 2026.07.14] para 86.

<sup>30</sup> ICJ: [Application of the Convention on the Prevention and Punishment of the Crime of Genocide \(The Gambia v. Myanmar: 11 States intervening\) Judgement of 22 July 2022](#). [online, 2026.07.14] p. 4–5.



| Ukraine v. Russia (27 February 2022)      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Claims/Violated Arts.</b>              | <ul style="list-style-type: none"><li>• Misinterpretation of Art. I</li><li>• Art. IV</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Provisional measures</b>               | <ul style="list-style-type: none"><li>• suspend the military operations</li><li>• ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations</li><li>• refrain from any action which might aggravate or extend the dispute<sup>31</sup></li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Preliminary objections</b>             | <ul style="list-style-type: none"><li>• no dispute between the parties</li><li>• the Applicant has inappropriately changed the substance of the claims in its Memorial as compared to the claims raised in its Application (NB: upheld)</li><li>• any potential judgment rendered by the ICJ based on the Convention would lack practical effect</li><li>• Ukraine's request for a declaration that it did not breach its obligations under the Convention is contrary to the juris prudence of the ICJ and detrimental to its judicial function</li><li>• Ukraine's Application constitutes an abuse of process (sixth preliminary objection).<sup>32</sup></li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| South Africa v. Israel (29 December 2023) |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Claims/Violated Arts.</b>              | <ul style="list-style-type: none"><li>• Failure of prevention</li><li>• Failure of prosecution</li><li>• Genocidal acts</li><li>• (Arts. I, III, IV, V and VI, read in conjunction with Art. II)</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Provisional measures</b>               | <ul style="list-style-type: none"><li>• take all measures to prevent the commission of all acts within the scope of Art. II.</li><li>• ensure with immediate effect that its military does not commit any acts</li><li>• prevent and punish the direct and public incitement to commit genocide</li><li>• enable the provision of urgently needed basic services and humanitarian assistance</li><li>• prevent the destruction and ensure the preservation of evidence</li><li>• submit a report to the ICJ on all measures taken</li><li>• take all necessary and effective measures to ensure, without delay, in full co-operation with the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance, including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care</li><li>• ensure with immediate effect that its military does not commit acts which constitute a violation of any of the rights of the Palestinians in Gaza as a protected group</li><li>• immediately halt its military offensive, and any other action in the Rafah Governorate</li></ul> |

<sup>31</sup> ICJ: [Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide \(Ukraine v. Russian Federation\) Order of 16 March 2022](#). [online, 2026.07.14] para 86.

<sup>32</sup> ICJ: [Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide \(Ukraine v. Russian Federation\) Judgement of 2 February 2024](#). [online, 2026.07.14] paras 41 & 59.

|                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                            | <ul style="list-style-type: none"> <li>maintain open the Rafah crossing for unhindered provision at scale of urgently needed basic services and humanitarian assistance</li> <li>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</li> <li>submit a report to the ICJ on all measures taken<sup>33</sup></li> </ul> |
| <b>Preliminary objections</b>              | Not available                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Nicaragua v. Germany (1 March 2024)</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Claims/Violated Arts.</b>               | <ul style="list-style-type: none"> <li>Failure of prevention (Art. III)</li> <li>Failure of prosecution (Art. III)</li> </ul>                                                                                                                                                                                                                                                                                                                                                             |
| <b>Provisional measures</b>                | <ul style="list-style-type: none"> <li>immediately suspend its aid to Israel</li> <li>immediately ensure that military equipment already delivered by Germany are not used to commit or to facilitate serious violations</li> <li>resume its support and financing of UNRWA<sup>34</sup></li> </ul> (none granted) <sup>35</sup>                                                                                                                                                          |
| <b>Preliminary objections</b>              | Not available                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>DRC v. Rwanda (26 June 2026)</b>        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Claims/Violated Arts.</b>               | <ul style="list-style-type: none"> <li>Failure of prevention</li> <li>Failure of prosecution</li> <li>Genocidal acts</li> </ul> (Art. I, III, IV, V and VI, read in conjunction with Art. II)                                                                                                                                                                                                                                                                                             |
| <b>Provisional measures</b>                | Not available                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Preliminary objections</b>              | Not available                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

In the very limited case law of the ICJ, the elements of the crime and the question of attribution are relatively stable. These concepts do not all come from the ICJ's practice, it has accepted and applied several of them from other international fora, including the International Criminal Tribunal for the Former Yugoslavia (ICTY).<sup>36</sup> The legal nature of the prohibition of genocide is clear: it is a jus cogens norm, binding for all members of the international community without exceptions. All of these concepts penetrate the cases currently pending before the ICJ, but there are specific features characterizing only some of them.

As mentioned, the legal nature of the prohibition of genocide is beyond doubt. As a jus cogens norm, it is not a norm owed to the other contracting parties of the Genocide Convention but is an erga omnes and erga omnes partes obligation. This means in practice that not only an individually identifiable "injured state" can invoke state responsibility (moreover, an "injured state" may not even be identifiable),

<sup>33</sup> Note that the listed provisional measures were issued in three different orders of the ICJ. ICJ: [Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip \(South Africa v. Israel\) Order of 24 May 2024](#). [online, 2026.07.14] paras 5, 11, 57.

<sup>34</sup> ICJ: [Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory \(Nicaragua v. Germany\) Order of 30 April 2024](#). [online, 2026.07.14] para 11.

<sup>35</sup> Ibid., para 26.

<sup>36</sup> KREß, Claus: The International Court of Justice and the Elements of the Crime of Genocide. *European Journal of International Law* 18:4 (2007) 619–629.

but any member of the international community. Accordingly, 3 out of the 5 pending cases have been submitted by States, which are by no means in the individually identifiable “injured state” position.<sup>37</sup> The Gambia, South Africa and Nicaragua are “concerned” members of the international community aiming to restore the international legal order by making sure that such a heinous crime does not go unpunished. The other two cases seem to be one legal tool in a fight against another country on many levels. Ukraine is fighting an all-encompassing war with the Russian Federation, and the DRC is attempting to keep Rwanda out of its territory by all possible means, including peace deals<sup>38</sup> and/or litigation.

The special feature of the newest application is that the DRC based the jurisdiction of the ICJ on more than one treaty. Besides the Genocide Convention they invoked three human rights treaties also containing a compromissory clause, which can provide jurisdiction for the ICJ. This is notable, because similarly to genocide, referring mass human rights violation to the ICJ has not been usual.<sup>39</sup> Other applications also claim the violation of treaties other than the Genocide Convention, for example the Geneva Conventions.<sup>40</sup>

In case of two applications the claim does not include genocidal acts, but other violations of the Convention. Interestingly, these “exceptions” seem to fit into the Convention’s framework better, which does not require states per se to refrain from committing genocide in its substantive articles.<sup>41</sup> But it gives jurisdiction for the ICJ in Art. IX to deal with “the responsibility of a State for genocide”. The overall standpoint of the ICJ after the 2007 Genocide judgement is that if a State commits genocide, that is the violation of the Convention.<sup>42</sup> For Russia the claim is the misinterpretation of the text to justify the violation of the prohibition of use of force, for Germany it is the violation of Art. II of the Convention, namely failing to prevent and to prosecute.

The respondent State submitted counterclaims in one case (yet): Russia claimed that Ukraine

- committed genocide (Arts. I & III (a)),
- attempted genocide (Arts. I & III (d)),
- complicit in violating Arts. I & III (e),
- conspiracy to violate Arts. I & III(b),
- directly and publicly incited to commit genocide (Arts. I & III (e)),
- failed to prevent (Art. I),
- failed to investigate and punish (Arts. IV and VI),
- failed to enact the necessary legislation to give effect to the Convention.<sup>43</sup>

<sup>37</sup> INTERNATIONAL LAW COMMISSION: Draft articles on Responsibility of States for Internationally Wrongful Acts, with comment, 2001, Yearbook of the International Law Commission, 2001, vol. II, Part Two, Commentary to Art. 42. point (2) and Commentary to Art. 48. points (6) and (8).

<sup>38</sup> See the background of the conflict and the recent developments concerning the peace deal in VÖRÖS, Zoltán – TARRÓSY, István: The New Paradigm of U.S. Foreign Policy in a Changing Global OrderThe DR Congo–Rwanda Agreement. *Nation and Security* 18:4 (2025) 98–114.

<sup>39</sup> Until 2026 only one universal human rights treaty was used to ground the jurisdiction of the ICJ, the ICERD. Thus, using the CEDAW and the CAT as basis for jurisdiction is also a first in the history of the ICJ. These treaties in the cases currently under scrutiny could not have been used as a legal base, since Myanmar is not contracting party to the ICERD and Israel made a reservation to its Art. 22, thus the ICJ has no jurisdiction over their related case. As for the CEDAW, the jurisdiction of the ICJ is excluded with reservations for Myanmar and Israel, while all states are contracting parties.

<sup>40</sup> For example Nicaragua mentioned the violation common Art. 1 of the four conventions. NICARAGUA: [Application instituting proceedings and request for the indication of provisional measures 1 March 2024](#). [online, 2026.07.14] para 11.

<sup>41</sup> QUIGLEY, John: International Court of Justice as a Forum for Genocide Cases. *Case Western Reserve Journal of International Law* 40 (2007) 243–263. p. 243.

<sup>42</sup> *Ibid.*, p. 257.

<sup>43</sup> ICJ: [Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide \(Ukraine v. Russian Federation\) Order of 5 december 2025](#). [online, 2026.07.14] para 21.

#### **4. Should the ICJ be the Enforcement Mechanism?**

At present, there are essentially two permanent judicial bodies that deal with genocide: the International Criminal Court (ICC) and the ICJ. In his 2007 study Kreß approved the ICJ's choice of division of tasks between international criminal law fora and the ICJ, as in the latter accepts the former's opinion on criminal law questions, while the latter vindicated the right to decide on general international law questions and expects the former to stick to those interpretations.<sup>44</sup> The criminal law fora improved and developed extensive case law, which is readily available for the ICJ to build on once again. While the ICTY and the International Criminal Tribunal for Rwanda concluded their mission, the ICC is working relentlessly. It is clear in theory that the ICJ is designed to adjudicate on state responsibility, while the criminal fora decide on individual responsibility, and that these can both happen related to the same situation. Both fora need jurisdiction for its action, in case of the ICJ, it all boils down to the compromissory clause in the Genocide Convention, for the ICC,<sup>45</sup> it depends on the ratification status of the Rome Statute. It is possible for both fora to examine the same situation, probably that is what we could call ideal scenario. Both the ICJ and the ICC procedures have drawbacks, it is impossible to say, which is more appropriate to solve legal issues around genocide.

The effectiveness, even the existence of international law has been called to question recently by States explicitly (notable example is the statement by the President of the United States in 2026)<sup>46</sup> or by non-compliance, the reputation of the ICJ is still mainly untouched. This connected to the fact that generally the judgements of the ICJ are respected and complied with, even if the enforcement mechanism described in the UN Charter is more than obscure.<sup>47</sup> Still, there are lingering doubts about the potential actions of enforcement of the UN mechanisms in case of a decision delivered by the ICJ. Also, there is a lot of doubt related to the efficiency of provisional measures. The ICJ has been extensively criticized throughout its operation for several further reasons. One of the main points of this criticism is the length of the procedures. In the most important Genocide case, it took 14 years for the ICJ (1993–2007) to come to a final conclusion. In 1993 the ICJ delivered two interim orders in the Bosnia case, but the Srebrenica killings still happened in 1995. As Deweese harshly put it: "[T]he Convention refers to both Prevention and Punishment, but while the ICJ ponders who should be punished, it has been utterly ineffective in the more immediate and more important work of preventing genocide."<sup>48</sup> Amongst the currently pending cases the Gambia v Myanmar is the oldest, submitted in 2019, and in mid-July 2026, 7 years later, it is still under deliberation. We have to mention thought that ordering provisional measures when requested, are done relatively quickly (approx. 1–2 months).

Would it be better to have an international judicial forum with a jurisdiction binding on the entire international community – in other words, one from whose proceedings it would be impossible to opt out? Would it be better to have a judicial forum capable of examining the responsibility of both the individual and the state simultaneously? Would it be better to have a judicial forum where compliance with its judgements does not depend on a state decision, but is backed by a precisely defined and effective enforcement mechanism? Of course, the answer to all three questions is 'yes'. However, no such forum

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<sup>44</sup> KREß, 2007, p. 620.

<sup>45</sup> Though it does not seem realistic at the moment, but we should not completely outrule the opportunity of a criminal tribunal either. Currently, the DRC is a non-permanent member of the UN Security Council, and therefore may have a bigger chance and inclination to push for the solution of the situation in Eastern Congo.

<sup>46</sup> SAngLER, David E. – PAGER, Tyler – ROGERS, Katie – KANNO-YOUNGS, Zolan: [Trump Lays Out a Vision of Power Restrained Only by 'My Own Morality'](#). The New York Times, 2026 January 8 [online, 2026.07.14]

<sup>47</sup> Charter of the United Nations, 1945, Art. 94.

<sup>48</sup> DEWEESE, Geoffrey S.: The Failure of the International Court of Justice to Effectively Enforce the Genocide Convention. *Denver Journal of International Law & Policy* 26:4 (1998) 625–654.

exists, and since international law only comes into being when states so wish, there is no prospect of such a judicial forum being established. therefore, the simple answer to the question is that it does not matter, as there is no other forum for determining state responsibility. So, whether or not the ICJ is the appropriate forum, that is the only one available.

However, this picture should be nuanced with a humble warning. If States realize that the Genocide Convention is "à la mode" as a ground for the ICJ's jurisdiction, is not there a slight danger that they will try to get out of it? Surely, reservations can be made only when giving the consent to be bound by a treaty; and at the moment the majority of the international community is a contracting party (154).<sup>49</sup> Thus, there are three potential problems: one, the rest of the international community may never accede to the Convention, or if they do, with reservation; two, those who still maintain their reservations to its Art. IX,<sup>50</sup> if the tendency continues, may never consider withdrawing them. Third, according to Art. XIV of the Convention, states can denounce the Convention by a written notification. Naturally, as a jus cogens norm, the prohibition of genocide would be still binding for all states, but with denunciation the ICJ would lose the opportunity to apply consequences to its violation. It may seem like a far-fetched idea, but we see a similar tendency with the Rome Statute of the ICC, where in 2025 four countries announced their intention to withdraw.<sup>51</sup>

## 5. What can the DRC expect?

After the extensively criticized judgement of the ICJ in 2007, the interest of academia for the topic diminished. One of the reasons was potentially the lack of cases. But currently, the ICJ is hearing 5 cases, which will probably build on the previous case-law of the ICJ itself, and the jurisprudence of the penal tribunals and the ICC. Here the following short analysis does not intend to fully assess the application, especially in such an early stage of the procedure, but to draw the attention to some of the key element, which may require deep analysis from the ICJ itself.

When the DRC submitted the application, they did not request *provisional measures*. If they do, this request would be considered before everything else, potentially within a relatively short time. The DRC could ask what the Gambia did; and more. Since Rwanda is assumed to support militias in the DRC, ensuring the end of such support seems to be a reasonable request.

First, Rwanda after it is officially informed by the ICJ on the institution of proceedings will have an opportunity to raise *preliminary objections*. While it could try to claim that the Convention does not create state obligation not to commit genocide, more or less ICJ's standpoint is solidified on that already the 2007 Genocide judgement.<sup>52</sup> Since this application is a chapter in a fight between the DRC and Rwanda, and the people being subjected to genocide (according to the DRC) are Congolese, questioning the standing of the DRC would probably not work either. From the currently available information, one preliminary objection was upheld by the ICJ, when Russia pointed out that Ukraine is trying to adjudicate

<sup>49</sup> [United Nations Treaty Collection](#). n.d. [online, 2026.07.14]

<sup>50</sup> It is clear in the ICJ's practice that a reservation to Art. IX renders the ICJ unable to adjudicate. See for example, ICJ: [Legality of Use of Force \(Yugoslavia. v. Spain\) Order of 2 June 1999](#). [online, 2026.07.15] para 33.

<sup>51</sup> CONFEDERATION OF SAHEL STATES: [Joint Communiqué of the States of the AES Confederation Relating to the Withdrawal from the Rome Statute of the International Criminal Court](#). 22 September 2025 [online, 2026.07.14]. The fourth country, Hungary already has withdrawn its notification of withdrawal on 1 June 2026 and remains a party. ICC Press Release: [The International Criminal Court welcomes the decision of Hungary to remain a State Party to the Rome Statute](#). 1 June 2026 [online, 2026.07.14]

<sup>52</sup> QUIGLEY, John: *The Genocide Convention, An International Law Analysis*. Routledge 2006, p. 224.

obligations, which are completely outside the scope of the Convention (violation of the prohibition of the use of force). All facts considered, it does not seem possible for Rwanda to get out of the procedure.

Besides the preliminary objections, Rwanda may also submit *counterclaims*, as the Russian Federation did in the case started by Ukraine. (Naturally, we would not expect counterclaims in the other three cases not started by individually identifiable "injured States" but concerned members of the international community.) One sign of that intention may be that in an interview on 29 June 2026, the foreign minister of Rwanda claimed that the government in Kinshasa supported the Democratic Forces for the Liberation of Rwanda (FDLR) and consistently called the militia „FDRL genocidal force”.<sup>53</sup>

According to the most concised definition of genocide, it has three necessary elements: "The acts (indicated through [Art. III, points] a-e in the Convention), the victimized (protected) group (membership of a national, ethnic, racial or religious group) and the intent (to destroy, in whole or in part the protected group)".<sup>54</sup> The easiest of these to assess is the *acts committed (actus reus)*. Though all kinds sources of information (official documents, testimonies, even press reports) has served as evidence before the ICJ,<sup>55</sup> and finding nonbiased evidence in a conflict situation is never simple, but the Human Rights Council (HRC) set up several missions in 2025 to find out the facts of the recently intensified, but not new conflict: a fact-finding mission and an independent commission of inquiry.<sup>56</sup> Based on interviews with victims, NGO reports and fieldwork, several reports have already been submitted to the HRC, which in turn keeps the UN General Assembly regularly informed of the situation. These reports are, of course, also used by other principal organs of the UN, such as the Security Council, in their decision-making. In the *Gambia v. Myanmar* case, for example, the reports of the UN monitoring bodies constituted important evidence.<sup>57</sup> Moreover, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO)<sup>58</sup>'s presence is continuous in the DRC since 1999, providing extensive information on the situation on the ground. While the documentation of atrocities committed in the Eastern DRC may not be equally detailed for the last 30 years, they certainly are for several periods (second Congo war, advancement of M23 in January 2025, etc.). While mass violation of human rights is evident, the report of the fact-finding mission has already mentioned that the atrocities committed in Eastern Congo during the first half of 2026 may constitute crimes against humanity.<sup>59</sup>

The ICJ will have a more difficult situation with the concept of the *protected group*. The currently pending cases all work with one protected group: the Rohingya, the Palestinians. In the application of the DRC 7 ethnic groups are mentioned. What we know of the protected group category is that it should consist of people who are distinguishable based on their nationality, ethnicity, race and/or religion<sup>60</sup> from the majority. In academic scholarship there are a lot of suggestions how to rethink this category, and how

<sup>53</sup> FRANCE24 ENGLISH: [DR Congo conflict: Rwandan FM 'disappointed by increasingly biased US mediation'](#). 29 June 2026 [online, 2026.07.14]

<sup>54</sup> AKSAR, Yusuf: The Specific Intent (Dolus Specialis) Requirement of the Crime of Genocide: Confluence or Conflict between the Practice of Ad Hoc Tribunals and the ICJ. *Uluslararası İlişkiler* 6:23 (2009) 113–126. p. 115. We should add that the means rea (guilty mind) is a characteristic of crimes against humanity. What makes genocide even more serious of a crime is the dolus specialis (the special intent to destroy).

<sup>55</sup> QUIGLEY, 2007, p. 246.

<sup>56</sup> HUMAN RIGHTS COUNCIL: S-37/1. Situation of human rights in eastern Democratic Republic of the Congo, A/HRC/RES/S-37/1 (12 February 2025), paras 17–18.

<sup>57</sup> [The Gambia: Institution of Proceedings and Request for Provisional Measures, 11 November 2019](#) [online, 2026.07.14], paras 7 & 10. ICJ: Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar: 11 States intervening) Judgement of 22 July 2022, para 66.

<sup>58</sup> UNITED NATIONS SECURITY COUNCIL: Resolution 1279 of 30 November 1999, S/RES/1279.

<sup>59</sup> HUMAN RIGHTS COUNCIL: *Report of the fact-finding mission on the situation in North Kivu and South Kivu Provinces of the Democratic Republic of Congo*, A/HRC/60/80 (21 November 2025), paras 76–78.

<sup>60</sup> Genocide Convention, Art. II.

to extend the original scope of the Convention.<sup>61</sup> In case of the DRC's application all groups are claimed to be ethnic minorities constituting protected groups, however, all should be examined separately whether they fit the category or not.<sup>62</sup> One more thing will presumably be assessed by the ICJ related to the targeted groups. One critic towards the Genocide judgement is that the ICJ accepted the events of Srebrenica as genocide but failed to do so related to the acts committed between 1992 and 1993. This may show that the ICJ believes "genocide is committed only when some level of substantiality is reached with respect to the population 'targeted.'"<sup>63</sup> This issue has already been addressed in the application of the DRC, when it pointed out that violations "affected a very large number of people".<sup>64</sup> Thus, the ICJ may engage in a math war when identifying the violation of the Convention. The final issue in the assessment may be that the ethnic landscape of the DRC is very complex, with more than 250 ethnic groups,<sup>65</sup> and they populate different parts of the vast country. The ICJ may take that into consideration as it seemingly has before that "members of a group living within a geographically limited area may form a part"<sup>66</sup> of a targeted group. Namely, if genocidal acts are committed against only a part of an ethnic minority located in Eastern Congo, that can still be a targeted group, despite that not the whole group is subjected to the acts.

The third element, the *genocidal intent (dolus specialis)* will surely be examined for each ethnic group separately. It will have to be examined whether there was an intent on the part of the perpetrator to physically destroy the group and that this intent is not of individual perpetrators, but part of a genocidal campaign of collective intent.<sup>67</sup> In practice, it is very difficult to obtain proof of this specific intent, and prove that there is *dolus specialis* involved, not only *dolus eventualis* (the perpetrator knows that the acts may result in destroying the targeted group).<sup>68</sup> Perpetrators of genocide never frame their actions as such, knowing that they are clearly violating a *jus cogens* norm, they rather justify their actions and hide its true nature. No State would launch a killing campaign calling it genocide. Aung San Suu Kyi the leader of Myanmar at that time argued before the ICJ that in "this complex situation and the challenge to sovereignty and security in our country when you are assessing the intent of those who attempted to deal with the rebellion surely under the circumstances genocidal intent cannot be the only hypothesis" and went on listing the steps taken by the government proving the lack of *dolus specialis*.<sup>69</sup> In September 2025 a memorable speech was delivered by Ambassador Urujeni Bakuramutsa of Rwanda in the HRC, where she unquestionably denied the accusation of genocide: "[I]t's a red line, Mr. President, for my country to be allegedly accused of genocide when we know that this is a criteria that international law guides".<sup>70</sup> In the process before the ICJ most probably one of the hardest jobs will be to establish the intent beyond doubt for all targeted groups. The DRC in the application already tried to foresee some of the arguments pointing

<sup>61</sup> POPE, Jordan: And Then They Came for Us Expanding the Definition of Protected Groups in Article II of the 1948 Genocide Convention. *Journal of International Criminal Justice* 00 (2026) 1–19.

<sup>62</sup> BEHRENS, Paul: Finding the right victim: the determination of groups protected under the genocide convention. *Georgetown Journal of International Law* 55:2 (2024), 161–211, p. 207.

<sup>63</sup> QUIGLEY, 2007, p. 253.

<sup>64</sup> ["ont affecté un très grand nombre de personnes"] REPUBLIQUE DEMOCRATIQUE DU CONGO: Requête introductive d'instance, para 2.

<sup>65</sup> MINORITY RIGHTS GROUP: [Democratic Republic of the Congo](#). n.d. [online, 2026.07.14]

<sup>66</sup> KREß, 2007, p. 627.

<sup>67</sup> Ibid., p. 622.

<sup>68</sup> GOLDSMITH, Katherine: The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge-Based Approach. *Genocide Studies and Prevention* 5:3 (2010): 238–257. p. 241.

<sup>69</sup> GLOBAL NEWS: [Aung San Suu Kyi addresses Myanmar genocide in speech at The Hague](#). 11 December 2019 [online, 2026.07.15]

<sup>70</sup> IGIHE ENGLISH: [Amb. Urujeni Bakuramutsa's fiery UN rebuttal to DRC genocide claims](#). 9 September 2025 [online, 2026.07.15]

out that „behind Rwanda’s official justification of ‘security’ or ‘self-defence’ lay other unacknowledged objectives, including the eradication of the Hutus”.<sup>71</sup>

The *question of attribution* of genocidal acts will be a hard nut to crack for the judges. The DRC claims that since 1996, Rwanda used „various groups of auxiliary forces to carry out their operations” in the DRC.<sup>72</sup> Until today the ICJ established the responsibility of one State for violating the Genocide Convention, not for committing genocidal acts, but for not preventing them from being committed.<sup>73</sup> It has also declared generally, that States may commit genocide violating the Genocide Convention and when that happens, general rules of state responsibility for internationally wrongful acts may apply.<sup>74</sup> In this particular case, the job for the ICJ is to establish the connection between the militias listed in the application and the government of Rwanda. According to the Draft on State Responsibility „[T]he conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.”<sup>75</sup> The interpretation of this article entails that all three elements listed, namely instruction, direction or control, are individually sufficient to establish the attribution, but at the same time „the instructions, direction or control must relate to the conduct which is said to have amounted to an internationally wrongful act”.<sup>76</sup> This relationship will probably be as hard to prove as the specific intent.

Finally, the DRC claimed not only the comittal of genocidal acts, but the failure to prevent and punish genocide. The difficulty with that claim is that the DRC expects Rwanda to prevent genocide and punish members of militias operating on the territory of another independent state, to which organisations, despite contradicting evidence, Rwanda claims no connection. Not preventing and punishing genocide being committed on the territory of another state is the central question of the procedure initiated by Nicaragua against Germany. The difference though is that according to the application, the genocide is being committed by another government, not militias. The decision on this case may influence the decision on Rwanda’s responsibility for the action of the militias, if the instruction, direction or control is proven.

## 6. Conclusion

To conclude, the DRC to succeed in this procedure needs to prove that *genocidal acts* were committed by militia members *on the instruction or under the direction or control of Rwanda* with the aim to *physically destroy* the *targeted groups* mentioned in the application. Even if the DRC manages to prove all this, it will most probably have to wait a very long time for a definitive judgement, and the execution of the judgement will remain uncertain. Solving the conflict between the DRC and Rwanda is not only important for them, but it is crucial for the region, for the continent and every power being interested in it from political or economic perspective.<sup>77</sup>

<sup>71</sup> [„Derrière la justification officielle de la « sécurité » ou de la « légitime défense » du Rwanda, se sont profilés d’autres objectifs inavoués, dont l’éradication des Hutus”] REPUBLIQUE DEMOCRATIQUE DU CONGO: Requête introductive d’instance, para 3.

<sup>72</sup> [„différents groupes de supplétifs pour mener leurs interventions”] République démocratique du Congo: Requête introductive d’instance, para 18.

<sup>73</sup> This status quo can change with the Gambia v. Myanmar judgement, but it is to be seen.

<sup>74</sup> ICJ, 2007, para 149.

<sup>75</sup> INTERNATIONAL LAW COMMISSION, 2001, Art. 8.

<sup>76</sup> Ibid., Commentary to Art. 8, point (7).

<sup>77</sup> TARRÓSY, István: Afrikai perspektívák egy új világrendben [African Perspectives in a New World Order] In: GRÜNHUT, Zoltán – VÖRÖS, Zoltán (eds.): Az átalakuló világrend küszöbén [On the Verge of a Changing World Order]. Pécs: Publikon Kiadó, 2013. pp. 275Pécs: Publikon Kiadó, 2013. pp. 275-298. 298.



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# Analyses on Global Affairs

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Despite the doubts and the failures of the past, states seem to rediscover the potential in the ICJ for such submissions. Of course, the question rightly arises as to how future court rulings in such cases will be able to prevent further genocide, given that a previous court ruling was unable to do so. On the one hand, there is at least one amongst the currently pending cases in which the state under procedure, Myanmar, has, in compliance with the ICJ's ruling, already submitted a series of reports, which is certainly a sign of its willingness to comply with the ICJ's decision. On the other hand, the mere fact that the number of cases is rising may in itself serve as a deterrent; in other words, it seems increasingly unlikely that a state guilty of genocide will be able to 'get away with' at least being the focus of public attention (unless the contracting parties rid themselves of the burden of the Genocide Convention). Thirdly, it is essential that we understand the crime of genocide, as the international community is only now beginning to grasp its various elements. As can be seen from the DRC v. Rwanda case, there are many unanswered questions and issues of interpretation. Thus, the more applications are received, the greater the chance that the ICJ will contribute to the interpretation of genocide.

By the time all pending cases are decided, we will know a lot more of the punishment of genocide and the appropriate interpretation of the Genocide Convention. But what is also sadly true, from the testimonies, evidence used in the procedures, we will know more about the horrendous face of genocide too.



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