

INTERNATIONAL COURT OF JUSTICE

APPLICATION OF THE CONVENTION ON THE PREVENTION AND  
PUNISHMENT OF THE CRIME OF GENOCIDE IN THE GAZA STRIP  
(SOUTH AFRICA v. ISRAEL)



**DECLARATION OF INTERVENTION BY THE  
PLURINATIONAL STATE OF BOLIVIA**

8 OCTOBER 2024

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## I. INTRODUCTION

1. The Government of the Plurinational State of Bolivia has the honour to submit to the Court a declaration of intervention (henceforth “Declaration”) pursuant to Article 63, paragraph 2, of the Statute of the Court, in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*.
2. Article 82, paragraph 1 of the Rules of Court, provides that:

“[a] State which desires to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall file a declaration to that effect, signed in the manner provided for in Article 38, paragraph 3, of these Rules [...].”
3. Article 82 of the Rules of Court also provides that the declaration filed by a State wishing to avail itself of the right of intervention must specify the name of the agent, the case and the convention to which the declaration relates, and contain:
  - (a) particulars of the basis on which the declarant State considers itself a party to the convention;
  - (b) identification of the particular provisions of the convention the construction of which it considers to be in question;
  - (c) a statement of the construction of those provisions for which it contends;
  - (d) a list of the documents in support, which documents shall be attached.
4. This Declaration is consistent with Article 63 of the Statute of the Court and Article 82 of the Rules of Court. This Declaration will address each of these requirements in turn, including the particulars required by sub-paragraphs (a) to (d) of paragraph 5.

## II. PROCEDURAL BACKGROUND AND CONTEXT FOR THE PRESENT INTERVENTION

5. On 29 December 2023, South Africa filed in the Registry of the Court an Application instituting Proceedings against the State of Israel alleging violations by Israel of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide (the “Genocide Convention”)<sup>1</sup> in relation to Palestinians in the Gaza Strip.

6. In its Application, South Africa submits that,

“...the conduct of Israel — through its State organs, State agents, and other persons and entities acting on its instructions or under its direction, control or influence — in relation to Palestinians in Gaza, is in violation of its obligations under the Genocide Convention.”<sup>2</sup>

“The acts and omissions by Israel complained of by South Africa are genocidal in character because they are intended to bring about the destruction of a substantial part of the Palestinian national, racial and ethnical group, that being the part of the Palestinian group in the Gaza Strip [...]. The acts in question include killing Palestinians in Gaza, causing them serious bodily and mental harm, and inflicting on them conditions of life calculated to bring about their physical destruction. The acts are all attributable to Israel, which has failed to prevent genocide and is committing genocide in manifest violation of the Genocide Convention, and which has also violated and is continuing to violate its other fundamental obligations under the Genocide Convention, including by failing to prevent or punish the direct and public incitement to genocide by senior Israeli officials and others.”<sup>3</sup>

7. As to the existence of a dispute, South Africa submits, *inter alia*, that:

“Having regard to the fact that the prohibition of genocide has the character of a peremptory norm and that the obligations under the Convention are owed *erga omnes* and *erga omnes partes*, Israel has been made fully aware of the grave concerns expressed by the

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<sup>1</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.

<sup>2</sup> See Application instituting proceedings submitted by South Africa on 29 December 2023 (hereinafter “South Africa’s Application”), para. 110, p. 70.

<sup>3</sup> *Ibid.*, para. 1, p. 1.

international community, by States Parties to the Genocide Convention, and by South Africa in particular, as to Israel's failure to cease, prevent and punish the commission of genocide.”<sup>4</sup>

“There is plainly a dispute between Israel and South Africa relating to the interpretation and application of the Genocide Convention, going both to South Africa's compliance with its own obligation to prevent genocide, and to Israel's compliance with its obligations not to commit genocide and to prevent and punish genocide — including the direct and public incitement to genocide — and to make reparations to its victims and offer assurances and guarantees of non- repetition.”<sup>5</sup>

8. It should also be recalled that, in its Provisional Measure Order of 26 January 2024,<sup>6</sup> the Court rejected “Israel's request that the case be removed from the General List”,<sup>7</sup> and concluded that:

“the Parties appear to hold clearly opposite views as to whether certain acts or omissions allegedly committed by Israel in Gaza amount to violations by the latter of its obligations under the Genocide Convention. The Court finds that the above-mentioned elements are sufficient at this stage to establish *prima facie* the existence of a dispute between the Parties relating to the interpretation, application or fulfilment of the Genocide Convention”<sup>8</sup>

and that,

“*prima facie*, [the Court] has jurisdiction pursuant to Article IX of the Genocide Convention to entertain the case.”<sup>9</sup>

9. In the same Order the Court, among other relevant statements, recalled that “[...] the civilian population in the Gaza Strip remains extremely vulnerable [and] that the military operation conducted by Israel after 7 October 2023 has resulted, *inter alia*, in tens of thousands of deaths and injuries and the destruction of homes, schools, medical facilities and other vital infrastructure, as well as displacement on

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<sup>4</sup> *Ibid.*, para.13, p.6.

<sup>5</sup> *Ibid.*, para.16, p.9.

<sup>6</sup> In its Order, the Court concluded that the conditions required by its Statute for it to indicate provisional measures were met, and ordered 6 provisional measures. See the Order for Provisional Measures, 26 January 2024, para.86, pp.24-26.

<sup>7</sup> Order for Provisional Measures, 26 January 2024, para.32, p.12.

<sup>8</sup> *Ibid.*, para.28, p.11.

<sup>9</sup> *Ibid.*, para.31, p.12.

a massive scale [...]”.<sup>10</sup> Furthermore, the Court acknowledged that “many Palestinians in the Gaza Strip have no access to the most basic foodstuffs, potable water, electricity, essential medicines or heating.”<sup>11</sup>

10. Ultimately, the Court concluded that the conditions required by its Statute for it to indicate provisional measures were met, including “urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights found by the Court to be plausible, before it gives its final decision“.<sup>12</sup> The Court proceeded to order six provisional measures.
11. On 12 February 2024, South Africa submitted an urgent request for additional measures under Article 75, paragraph 1, of the Rules of Court, “to prevent further imminent breach of the rights of Palestinians in Gaza”<sup>3</sup>, due to the Israeli assault on Rafah, starting on 11 February 2024. This request by South Africa revealed and confirmed, among others, the gravity of the situation and the intention of Israel to continue its campaign of “large-scale killing, harm and destruction in serious and irreparable breach both of the Genocide Convention and of the Court’s Order of 26 January 2024”.<sup>14</sup>
12. The Court took a decision on the aforementioned request on 16 February 2024 indicating that “[t]his perilous situation demands immediate and effective implementation of the provisional measures indicated by the Court in its Order of 26 January 2024, which are applicable throughout the Gaza Strip, including in Rafah [...]. [It] also emphasized that the State of Israel remains bound to fully comply with its obligations under the Genocide Convention and with the [Order of 26 January 2024], including by ensuring the safety and security of the Palestinians in the Gaza Strip.”

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<sup>10</sup> *Ibid.*, para.70, p.22.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*, para.74, p.22

<sup>13</sup> See the “Urgent Request for Additional Measures under Article 75 (1) of the Rules of Court of the International Court of Justice”, submitted by South Africa on the 12<sup>th</sup> of February 2024.

<sup>14</sup> *Ibid.*, para.7, p.2.

13. On 6 March 2024 and 10 May 2024, South Africa requested the Court to indicate additional provisional measures and to modify the measures previously ordered by the Court.
14. The South African requests of March and May were in response of the urgency “in light of the new facts and changes in the situation in Gaza – particularly the situation of widespread starvation – brought about by the continuing egregious breaches of the Convention [...] by the State of Israel [...] and its ongoing manifest violations of the provisional measures indicated by [the] Court on 26 January 2024” and “from grave and irreparable violations of [the rights of the Palestinian people in Gaza], and of South Africa’s rights, under the Convention on the Prevention and Punishment of the Crime of Genocide [...], as a result of Israel’s ongoing military assault on Rafah.” As clearly stated by South Africa:

“[t]he situation brought about by the Israeli assault on Rafah, and the extreme risk it poses to humanitarian supplies and basic services into Gaza, to the survival of the Palestinian medical system, and to the very survival of Palestinians in Gaza as a group, is not only an escalation of the prevailing situation, but gives rise to new facts that are causing irreparable harm to the rights of the Palestinian people in Gaza’.<sup>15</sup>

15. On May 24, 2024, the Court issued its Order, reaffirming the provisional measures indicated in its Orders of 26 January 2024 and 28 March 2024. Additionally, the Court concluded that the “State of Israel shall, in conformity with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, and in view of the worsening conditions of life faced by civilians in the Rafah Governorate: immediately halt its military offensive, and any other action in the Rafah Governorate, which may inflict on the Palestinian group in Gaza conditions of life that could bring about its physical destruction in whole or in part; maintain

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<sup>15</sup> See the “Urgent Request for the Modification and Indication of Provisional Measures Pursuant to Article 41 of the Statute of the International Court of Justice and Article 75 and 76 of the Rules of Court of the International Court of Justice”, submitted by South Africa on the 10<sup>th</sup> of May 2024.

open the Rafah crossing for unhindered provision at scale of urgently needed basic services and humanitarian assistance; and take effective measures to ensure the unimpeded access to the Gaza Strip of any commission of inquiry, fact-finding mission or other investigative body mandated by competent organs of the United Nations to investigate allegations of genocide.<sup>16</sup>

16. Bolivia presents this brief account of the various requests for provisional measures and the various Orders of the Court in order to underline the tragic nature of this case, which has required increasing measures intended to protect the Palestinian people against Israel's continuous violations of its obligations under the Genocide Convention, and against the incalculable suffering inflicted by Israel on the Palestinian people in the Gaza Strip. And yet, despite the various Orders of provisional measures issued by the Court, Israel's genocidal war continues, and the Court's Orders remain dead letters to Israel.
17. Indeed, it is estimated that Israel has killed over 36,000 Palestinians, at least 15,000 of them children, in addition to wounding approximately 81,000 since its onslaught against Gaza began in October 2023.<sup>17</sup> As the Court is aware, the humanitarian situation in the Gaza Strip is “disastrous” and continues to deteriorate.<sup>18</sup>
18. Numerous reports by experts, international bodies, NGOs, civil society and the United Nations confirm the catastrophic humanitarian situation in the Gaza Strip. As reflected in the record of the proceedings:
  - the Secretary-General of the United Nations has stated that “[t]he health-care system in Gaza is collapsing . . . Nowhere is safe in Gaza.[...] We are facing a severe risk of collapse of the humanitarian system. The situation is

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<sup>16</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order, Provisional Measures, 24 May 2024.

<sup>17</sup> Hostilities in the Gaza Strip and Israel - reported impact, Day 236, 29 May 2024: <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-236>. For a continuous updating, see OCHA, Reported Impact since 7 October 2023, available at: <https://www.ochaopt.org>

<sup>18</sup> See Order of 24 May 2024, para.28.



fast deteriorating into a catastrophe with potentially irreversible implications for Palestinians as a whole and for peace and security in the region. Such an outcome must be avoided at all costs.”<sup>19</sup> [...] “Palestinians in Gaza are enduring horrifying levels of hunger and suffering. This is the highest number of people facing catastrophic hunger ever recorded by the Integrated Food Security Classification system, anywhere, anytime. This is an entirely manmade disaster [...]”<sup>20</sup> On 6 April 2024, the Secretary-General noted that in its “speed, scale and inhumane ferocity, the war in Gaza is the deadliest of conflicts”. He called for the “delivery of life-saving aid under a UN mechanism”<sup>21</sup>

- the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) Commissioner-General, upon returning from his fourth visit to the Gaza Strip since the beginning of the current conflict, stated that “[e]very time I visit Gaza, I witness how people have sunk further into despair, with the struggle for survival consuming every hour”<sup>22</sup>
- the World Health Organization (WHO) has estimated that 15 per cent of the women giving birth in the Gaza Strip are likely to experience complications, and has indicated that maternal and newborn death rates are expected to increase due to the lack of access to medical care;
- the Integrated Food Security Phase Classification (IPC) has reported that “[...] [f]amine is imminent in the northern governorates and projected to occur anytime”<sup>23</sup>;

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<sup>19</sup> United Nations Security Council, doc. S/2023/962, 6 Dec. 2023.

<sup>20</sup> United Nations, Secretary-General’s press encounter on Gaza food insecurity report Statement, 18 March 2024.

<sup>21</sup> UN, Secretary-General’s Press Encounter on Gaza, press release, 5 April 2024, available at: <https://www.un.org/sg/en/content/sg/press-encounter/2024-04-05/secretary-generals-press-encounter-gazascroll-down-for-arabic>

<sup>22</sup> UNRWA, “The Gaza Strip: a struggle for daily survival amid death, exhaustion and despair”, Statement by Philippe Lazzarini, Commissioner-General of UNRWA, 17 Jan. 2024.

<sup>23</sup> IPC Global Initiative, “Special Brief: the Gaza Strip”, 18 March 2024. The concerns of imminent

- the United Nations Children’s Fund (UNICEF) has reported that 31 per cent of children under 2 years of age in the northern Gaza Strip suffer from acute malnutrition, and it has warned that malnutrition among children is spreading fast and reaching devastating and unprecedented levels in the Gaza Strip due to the wide-reaching impacts of the war and ongoing restrictions on aid delivery;<sup>24</sup>
- the United Nations High Commissioner for Human Rights (UNHCHR) has stressed that “[t]he situation of hunger, starvation and famine is a result of Israel’s extensive restrictions on the entry and distribution of humanitarian aid and commercial goods, displacement of most of the population, as well as the destruction of crucial civilian infrastructure“.<sup>25</sup>

19. The above is only part of the evidence of Israel’s violations of its obligations under the Genocide Convention. The truth is that the evidence continues to accumulate, and all of it irrefutably and consistently confirms the catastrophic humanitarian situation resulted from the acts committed by Israel, which are intended to bring about the destruction of a substantial part of the Palestinian national, racial and ethnical group, i.e., the part of this group in the Gaza Strip. This is the context in which the Plurinational State of Bolivia is compelled to intervene in these proceedings. As unequivocally stated in the latest report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967:<sup>26</sup>

“By analysing the patterns of violence and Israel’s policies in its onslaught on Gaza, this report concludes that there are reasonable

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famine were also noted by the Court in its Order of 28 March 2024, in which the Court observed that Palestinians in Gaza are no longer facing only a risk of famine, as noted in its previous Order, but “*that famine is setting in*”. See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip*, (*South Africa v. Israel*), Order by the ICJ, 28 March 2024, p. 7 para.21(emphasis added).

<sup>24</sup>“Acute malnutrition has doubled in one month in the north of Gaza strip: UNICEF”, press release, 15 March 2024.

<sup>25</sup> “Comment by UN High Commissioner for Human Rights Volker Türk on the risk of famine in Gaza”, press release, 19 March 2024.

<sup>26</sup>UN Doc. A/HRC/55/73, 25 March 2024 (advanced unedited version).

grounds to believe that the threshold indicating *Israel's commission of genocide is met*. One of the key findings is that Israel's executive and military leadership and soldiers have intentionally distorted *jus in bello* principles, subverting their protective functions, in an attempt to legitimize genocidal violence against the Palestinian people.”<sup>27</sup>

20. From all of the above, it is clear that Israel's continuous actions and insidious crimes have resulted in an increase in the number of dead and wounded, massive destruction of homes, mass graves, forced displacement of the vast majority of the population and extensive damage to civilian infrastructure, exponentially increasing the humanitarian nightmare and catastrophic living conditions of Palestinians in the Gaza Strip, compounded by the prolonged and widespread deprivation of food and other basic necessities to which Israel is subjecting Palestinians in the Gaza Strip. A genocide is taking place.

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<sup>27</sup> The Report of Special Rapporteur Francesca Albanese also indicates that “After five months of military operations, Israel has destroyed Gaza. Over 30,000 Palestinians have been killed, including more than 13,000 children. Over 12,000 are presumed dead and 71,000 injured, many with life-changing mutilations. Seventy percent of residential areas have been destroyed. Eighty percent of the whole population has been forcibly displaced. Thousands of families have lost loved ones or have been wiped out. Many could not bury and mourn their relatives, forced instead to leave their bodies decomposing in homes, in the street or under the rubble. Thousands have been detained and systematically subjected to inhuman and degrading treatment. The incalculable collective trauma will be experienced for generations to come.”*Ibid*, summary (emphasis added).

### III. THE PLURINATIONAL STATE OF BOLIVIA AS A PARTY TO THE CONVENTION

21. On 6 February 2024, the Registrar of the Court notified States Parties to the Convention, including the Plurinational State of Bolivia, that the construction of the Genocide Convention would be in question in the case filed by South Africa against Israel. The Registrar confirmed that the Convention was invoked both as a basis for the Court's jurisdiction pursuant to Article IX, and as a substantive basis of the Applicant's claims on the merits, with specific reference to Articles I, III, IV, V and VI.
22. The Plurinational State of Bolivia signed the Genocide Convention on 11 December 1948 and ratified it, in accordance with Article XI, on 14 June 2005.<sup>28</sup> Bolivia has not made any reservation or declaration to the Convention, nor has it objected to any reservation made by another State party.
23. Furthermore, Bolivia understands that, by exercising its right to intervene under Article 63 of the Statute of the Court, the construction of the Genocide Convention given by the Judgment in this case will be equally binding upon it.
24. At present, the case may raise issues concerning the construction of Articles I, II, III, IV, V, and VI as well as of the Preamble to the Convention. As evidenced by this Declaration, the Plurinational State of Bolivia has views on the interpretation of each of these provisions.
25. The Court has observed that “all the States parties to the [Genocide] Convention have a common interest to ensure the prevention, suppression and punishment of genocide, by committing themselves to fulfilling the obligations contained in the Convention”.<sup>29</sup> As such, and as a Party to the Genocide Convention, Bolivia

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<sup>28</sup> See Annex 2, United Nations Depository Notification confirming Bolivia's ratification of the Genocide Convention, dated 15 June 2005.

<sup>29</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, I.C.J. Reports 2022, p. 477, para. 107.

considers that the case instituted by South Africa raises vital issues concerning the rights and obligations of States Parties to the Convention, as well as the interpretation and application of several articles of the Convention –which reflect both *erga omnes* obligations owed to the international community as a whole, and *erga omnes partes* obligations owed to all States Parties to the Convention –in relation not only to the prohibition of genocide, but also to the obligation to prevent genocide.

26. Due to the gravity of the crimes and atrocities committed so far by Israel, the President of Bolivia, Mr. Luis Arce Catacora, took the decision to cut diplomatic relations with Israel “in repudiation and condemnation of Israel’s aggressive and disproportionate offensive in the Gaza Strip”,<sup>30</sup> demanding “an end to the attacks that have so far resulted in thousands of civilian deaths and the forced displacement of Palestinians”, and “an end to the blockade that prevents the entry of food and water”<sup>31</sup> into the Gaza Strip. The Bolivian government’s condemnation of the genocidal nature of Israel’s actions against the Palestinians in Gaza has been made public and repeated.
27. Bolivia seeks to intervene since it considers that it has a responsibility to condemn the crime of genocide and to provide its interpretation of the obligations set forth in the Convention, in order to cooperate in the goal of “liberat[ing] mankind from such an odious scourge”.<sup>32</sup> For this reason, the Plurinational State of Bolivia is committed to combating the manifest threat of cumulative acts of genocide, and to ensuring that the Palestinian people enjoy their inalienable right to existence and self-determination.

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<sup>30</sup> See Communication from the Ministry of Foreign Affairs of the Plurinational State of Bolivia “Bolivia breaks diplomatic relations with Israel and calls for an end to attacks on the Gaza Strip,” dated 31 October 2023, available at <https://cancilleria.gob.bo/mre/2023/10/31/11891/>. See also, Luis Alberto Arce Catacora (Lucho Arce), Presidente Constitucional del Estado Plurinacional de Bolivia, @LuchoXBolivia, Tweet (November, 16 2023), <https://twitter.com/LuchoXBolivia/status/1724981446001967283>

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

28. In view of the Applicant's claims that the State of Israel has failed to prevent genocide, failed to prosecute direct and public incitement to genocide, and itself continues to commit genocide, the Plurinational State of Bolivia, as a Party to the Genocide Convention, submits this Declaration of Intervention on the basis of Article 63 (2) of the ICJ Statute.

#### **IV. PARTICULAR PROVISIONS OF THE CONVENTION IN QUESTION IN THE CASE**

29. In its Application, South Africa claims that,

“the conduct of Israel — through its State organs, State agents, and other persons and entities acting on its instructions or under its direction, control or influence — in relation to Palestinians in Gaza, is in violation of its obligations under the Genocide Convention, including Articles I, III, IV, V and VI, read in conjunction with Article II.”

30. The Plurinational State of Bolivia identifies the following provisions of the Genocide Convention the construction of which is presently in question in this case, as required under Article 82 of the Rules of Court: Article I (General obligations); Article II (Definition of genocide); Article III (Acts punishable under the Convention); Article IV (Obligation to punish the commission of genocide); Article V (Obligation to enact legislation); and Article VI (Trial of persons charged with genocide).

## V. CONSTRUCTION OF THE PROVISIONS FOR WHICH THE PLURINATIONAL STATE OF BOLIVIA CONTENDS

31. The Court has laid down certain general criteria to be used as guidance when interpreting the provisions of the Genocide Convention. Firstly, as to the applicable legal framework, since the Convention does not “stand alone”,<sup>33</sup> the Law of Treaties and the Law of State Responsibility come into play. It must be recalled that Articles 31 and 32 of the Vienna Convention on the Law of Treaties establish the rules governing the interpretation of international instruments such as the Genocide Convention<sup>34</sup>. These rules are, moreover, norms of customary international law.
32. As explained in Section IV *supra*, the construction of several provisions of the Genocide Convention are at issue in this case. These Articles must be interpreted in their context, including in regard to other substantive provisions of the Convention.

### *Article I—General obligations*

33. As the Court has observed, the origins of the Convention are rooted in the intention “to condemn and punish genocide as ‘a crime under international law’ involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity.”<sup>35</sup> Article I thus states:

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

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<sup>33</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 105, para. 149.

<sup>34</sup> See Order of 3 July 2024 on the Admissibility of the declarations of intervention in the case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, para. 45, p.10, where the Court stated that “references to other rules and principles of international law outside the Genocide Convention will only be taken into account by the Court in so far as they may be relevant for the construction of the Convention’s provisions[...].”

<sup>35</sup> *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, I.C.J. Reports 1951, p. 23.



34. The Court has considered the two propositions stated in this Article, characterizing the first proposition as:

“[...] the affirmation that genocide is a crime under international law. That affirmation is to be read in conjunction with the declaration that genocide is a crime under international law, unanimously adopted by the General Assembly two years earlier in its resolution 96 (I), and referred to in the Preamble to the Convention[...].”<sup>36</sup>

35. The Court has observed that the second proposition in Article I relates to the undertaking by Contracting Parties to prevent and punish the crime of genocide. As stated in Article I, it is equally possible for a genocidal act to be committed in times of peace and times of war:

“States parties to the Convention have ‘expressly confirmed their willingness to consider genocide as a crime under international law which they must prevent and punish independently of the context ‘of peace’ or ‘of war’ in which it takes place.’”<sup>37</sup>

36. Although Article I “does not specify the kinds of measures that a Contracting Party may take to fulfil” these obligations to prevent and punish genocide, it is clear that the Contracting Parties “must implement [them] in good faith”.<sup>38</sup> When interpreting Article I’s obligation to prevent genocide, the Court has particularly emphasized the autonomous nature of this duty:

“The obligation on each contracting State to prevent genocide is both normative and compelling. It is not merged in the duty to punish, nor can it be regarded as simply a component of that duty. It has its own scope, which extends beyond the particular case envisaged in Article

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<sup>36</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, para. 161.

<sup>37</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, (The Gambia v. Myanmar)*, Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, pp. 27-28, para. 74, citing *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Preliminary Objections, Judgment, I.C.J. Reports 1996, p. 615, para. 31.

<sup>38</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022, p. 224, para. 56.

VIII, namely reference to the competent organs of the United Nations, for them to take such action as they deem appropriate. Even if and when these organs have been called upon, this does not mean that the States parties to the Convention are relieved of the obligation to take such action as they can to prevent genocide from occurring, while respecting the United Nations Charter and any decisions that may have been taken by its competent organs.”<sup>39</sup>

37. In its Application, South Africa rightly considers that specifically with regard to Article I of the Convention, Israel has failed both to prevent and to punish genocide.<sup>40</sup> As the Court addresses these heinous crimes, the Plurinational State of Bolivia seeks to exercise its right to intervene to elaborate its construction of these obligations under Article I.

*Article II– Definition of genocide*

38. Article II of the Genocide Convention reads as follows:

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

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

39. As the Court has explained, Article II contains an exhaustive list of acts constituting the crime of genocide, while defining the two constituent elements of the crime: the physical element or *actus reus*, and the mental element or *mens rea*.<sup>41</sup> The chapeau of Article II concerns the latter element of genocidal intent, which differentiates

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<sup>39</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, pp. 219-220, para. 427.

<sup>40</sup> Application, para. 110.

<sup>41</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 62, para. 130.

this from other international crimes. Article II thus states that genocide involves specific acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group.

40. The acts subsequently enumerated in Article II of the Convention constitute the *actus reus* of genocide. In Bolivia's view, such acts cannot be taken in isolation and must be assessed in the context of the prevention and punishment of genocide, which is the object of the Convention.
41. While Bolivia seeks to intervene in respect of the construction of all provisions of Article II, it wishes to emphasize in particular that rape and other crimes of sexual violence, deportation or inhuman and degrading treatment, deprivation including starvation, indiscriminate attacks, and the infliction of collective fear or strong terror, intimidation, or threat may amount to genocidal acts within the meaning of Article II (b) if the individual threshold of seriousness of the harm is met.
42. Similarly, Bolivia wishes to underscore that siege, starvation, widespread destruction of civilian and medical infrastructure, deprivation of food and medical supplies and treatment, forcible displacement by means of systematic deportation, and denial of access to humanitarian aid may amount to genocidal acts within the meaning of Article II (c).
43. Additionally, Bolivia maintains that strikes and blockades leading to extreme conditions of life, lack of essential supplies, inadequate or inexistant healthcare, maternity or emergency assistance, and undernourishment may amount to genocidal acts within the meaning of Article II (d) through a serious increase in miscarriages, stillbirths, premature births, and deaths from preventable causes in both women and infants.
44. In order to prove genocide, it is necessary to show that one or more of the acts listed in Article II of the Convention were carried out with an "intent to destroy, in whole

or in part, a national, ethnical, racial or religious group, as such”. In Bolivia’s interpretation of the Convention, actions carried out under the circumstances of this case –where high-level authorities in Israel have expressly stated their intent to clear the Gaza Strip of Palestinian inhabitants by killing them, causing serious harm to them, physically eliminating their living spaces, health facilities, and means of subsistence, and hindering charitable efforts to bring food and medicine to the area – imply that acts constituting the *actus reus* of genocide within the meaning of Article II were committed with the required *mens rea* to be characterized as such. Bolivia thus seeks to exercise its right to intervene to elaborate its construction of Article II.

*Article III – Acts punishable under the Convention*

45. Article III of the Genocide Convention states that “[t]he following acts shall be punishable: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide“. The latter four categories of offenses are referred to as “other acts” in Articles IV through IX of the Convention, as crimes which are also punishable. Therefore, Israeli leaders who did not themselves commit or personally direct the commission of the acts in question may nonetheless be guilty of crimes set out in Article III.
46. Bolivia considers that these “other acts“ serve a preventive function which is critical to the fulfilment of the Convention, consistent with its object and purpose and concurrent obligation to prevent genocide. The *mens rea* required for these crimes is the specific intent to destroy, in whole or in part, a protected group as such.
47. While Bolivia seeks to intervene in respect of the construction of all provisions of Article III, it wishes to emphasize in particular that the *actus reus* of “conspiracy” within the meaning of Article III (b) comprises the situation where two or more persons have agreed upon a common plan to commit genocide.

48. Similarly, Bolivia wishes to underscore that the crime of “direct and public incitement to commit genocide“ under Article III (c) may be perpetrated even if nobody actually acts upon this incitement. It considers that punishing incitement is entirely consistent with the obligation of States Parties to the Genocide Convention to prevent genocide – the first of the two core goals of the Convention.
49. Additionally, Bolivia maintains that Article III (e) must be interpreted in light of the gravity that the crime of “complicity“ was intended to comprise during the drafting of the Convention. Bolivia thus seeks to exercise its right to intervene to elaborate its construction of Article III.

*Article IV– Obligation to punish the commission of genocide*

50. Article IV refers to the principal duty to punish, and states as follows:

“Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.“

51. In Bolivia’s view, Articles IV to VI are the cornerstones of and give substance to the obligation to punish genocide, as enunciated in Article I. These articles include provisions that give practical dimensions to the substantive obligations found in the first three articles of the Convention. As such, they should be read jointly as each, in turn, builds upon the other, ensuring that States Party fulfil the object and purpose of the Convention. Bolivia thus seeks to exercise its right to intervene to elaborate its construction of Article IV.

*Article V– Obligation to enact legislation*

52. Article V imposes an obligation on the contracting parties of the Genocide Convention to incorporate its provisions into domestic law through the enactment

of legislation. It states:

“The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.”

53. In Bolivia’s view, Article V particularizes the obligation to give domestic effect to the Convention by mandating that States ‘provide effective penalties’ for genocide. The failure to promulgate such legislation or to provide effective penalties thus comprises a breach of Article V. Bolivia thus seeks to exercise its right to intervene to elaborate its construction of Article V.

*Article VI – Trial of persons charged with genocide*

54. Article VI sets forth the obligation of States Parties to prosecute persons for acts committed in their territory, or to cooperate with international penal tribunals that may be competent in the matter. It states:

“Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.”

55. In Bolivia’s view, this obligation must be read in tandem with the obligation contained in Article IV, such that States must act against all persons who may be charged with having committed genocidal acts. Bolivia also considers that the territorial scope of Article VI should be read without prejudice to Article I of the Convention. Like Articles IV and V, Article VI must be read in light of the deterrent and preventive functions of punishment. In this manner, the failure to abide by Articles IV through VI gives rise as well to a violation of Article I. As with these preceding provisions, Bolivia thus seeks to exercise its right to intervene to

elaborate its construction of Article VI.

*Article IX – Settlement of disputes*

56. Finally, Bolivia recalls that South Africa invokes Article IX of the Convention as the sole basis for the Court’s jurisdiction in this case. Article IX states:

“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.”

57. Earlier in this case, Israel advanced the view that the Court lacks *prima facie* jurisdiction to entertain the case, as one of the grounds for its submission that a request for provisional measures submitted by South Africa was to be rejected.<sup>42</sup> As such, Bolivia considers that the construction of Article IX of the Convention may come into question in this case. It therefore submits the present declaration in relation to the merits phase and, if necessary, also in relation to a preliminary objection phase.

58. Bolivia recalls that, with regard to the admissibility of declarations of intervention, the Court has held:

”The Court does not consider that it must decide on the existence and scope of the dispute between the Parties before ruling on the admissibility of the declarations of intervention. Article 63 of the Statute gives States a right to intervene whenever the construction of a multilateral convention is in question, and Article 82, subparagraph 2 (b) of the Rules of Court provides that a State seeking to intervene must identify ‘the particular provisions of the convention the construction of

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<sup>42</sup> See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)*, Order of 26 January 2024, paras. 28-29 and 31.

which it considers to be in question’.”<sup>43</sup>

59. In Bolivia’s view, the present case concerns a dispute relating to the interpretation, application or fulfilment of the Convention. While the Convention does not confer jurisdiction upon the Court to rule on alleged breaches of other obligations under international law, such as those protecting basic rights in armed conflict,<sup>44</sup> the Court can nevertheless factor in the relevance of such rules and breaches when addressing the case at hand.<sup>45</sup> To the extent that the Court addresses its jurisdiction in this regard, Bolivia thus seeks to exercise its right to intervene to elaborate its construction of Article IX.

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<sup>43</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Admissibility of the Declarations of Intervention, Order of 5 June 2023, para. 68.

<sup>44</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 104, para. 147.

<sup>45</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, pp. 45-46, para. 85.



## **VI. DOCUMENTS IN SUPPORT OF THE DECLARATION OF INTERVENTION**

60. The Plurinational State of Bolivia submits the following documents appended hereto in support of this Declaration of Intervention:

Annex 1: Letter No. 161308 from the Registrar to States Parties to the Genocide Convention, sent pursuant to Article 63, paragraph 1, of the Statute of the Court, dated 6 February 2024.

Annex 2: United Nations Depository Notification confirming Bolivia's ratification of the Genocide Convention, dated 15 June 2005

## VII. CONCLUSION

61. The Government of the Plurinational State of Bolivia submits the present Declaration of Intervention in the genuine belief that the States Parties to the Genocide Convention should do everything in their power to contribute to ensure the prevention, suppression, and punishment of genocide, and therefore to assist the Court in finding the responsibility of any State Party to the Convention for its failure to comply with the obligations contained therein, especially in the context of such a dramatic situation as that unfolding in the Gaza Strip.
62. The Plurinational State of Bolivia avails itself of the right conferred upon it by Article 63, paragraph 2, of the Statute of the Court to intervene in the proceedings in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*. On the basis of the information set out above, the present Declaration meets the requirements set out in Article 63 of the Statute and Article 82 of the Rules and is, thus, admissible.
63. The Plurinational State of Bolivia reserves the right to supplement or amend this Declaration, and any Written Observations submitted with respect to it, as it considers necessary and in response to subsequent developments in these proceedings.
64. The Plurinational State of Bolivia has appointed the undersigned as Agent for the purposes of the present Declaration. It is requested that all communications in this case be sent to the following address: Embassy of the Plurinational State of Bolivia, Nassauplein 2 2585EA, The Hague, The Netherlands.

  
Roberto Calzadilla Sarmiento  
Agent of the Plurinational State of Bolivia

## CERTIFICATION

I certify that the documents attached by way of Annexes to this Declaration are true copies of the originals thereof.



Roberto Calzadilla Sarmiento  
Agent of the Plurinational State of Bolivia  
8 October 2024

## **LIST OF ANNEXES**

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## Annex 1

Letter No. 161308 from the Registrar to States Parties to the Genocide Convention, sent pursuant to Article 63, paragraph 1, of the Statute of the Court, dated 6 February 2024.



By email only

161308

6 February 2024

Excellency,

I have the honour to refer to my letter (No. 161010) dated 3 January 2024 informing your Government that, on 29 December 2023, South Africa filed in the Registry of the Court an Application instituting proceedings against the State of Israel in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*. A copy of the Application was appended to that letter. The text of the Application is also available on the website of the Court ([www.icj-cij.org](http://www.icj-cij.org)).

Article 63, paragraph 1, of the Statute of the Court provides that:

[w]henever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith”.

Further, under Article 43, paragraph 1, of the Rules of Court:

“Whenever the construction of a convention to which States other than those concerned in the case are parties may be in question within the meaning of Article 63, paragraph 1, of the Statute, the Court shall consider what directions shall be given to the Registrar in the matter.”

On the instructions of the Court, given in accordance with the said provision of the Rules of Court, I have the honour to notify your Government of the following.

In the above-mentioned Application, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the “Genocide Convention”) is invoked both as a basis of the Court’s jurisdiction and as a substantive basis of the Applicant’s claims on the merits. In particular, the Applicant seeks to found the Court’s jurisdiction on the compromissory clause contained in Article IX of the Genocide Convention and alleges violations of Articles I, III, IV, V and VI of the Convention. It therefore appears that the construction of this instrument will be in question in the case.

./.

[Letter to the States parties to the Genocide Convention  
(except South Africa and Israel)]

Your country is included in the list of parties to the Genocide Convention. The present letter should accordingly be regarded as the notification contemplated by Article 63, paragraph 1, of the Statute. I would add that this notification in no way prejudices any question of the possible application of Article 63, paragraph 2, of the Statute, which the Court may later be called upon to determine in this case.

Accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Gautier', with a stylized flourish at the end.

Philippe Gautier  
Registrar

## Annex 2

United Nations Depository Notification confirming Bolivia's ratification of the Genocide Convention,  
dated 15 June 2005



(IV.1)

UNITED NATIONS  NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017  
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

Reference: C.N.458.2005.TREATIES-1 (Depositary Notification)

CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME  
OF GENOCIDE

NEW YORK, 9 DECEMBER 1948

BOLIVIA: RATIFICATION

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The above action was effected on 14 June 2005.

The Convention will enter into force for Bolivia on 12 September 2005 in accordance with its article XIII (3) which reads as follows:

"Any ratification or accession effected subsequent to the latter date [... the date of deposit of the twentieth instrument of ratification or accession] shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession."

14 June 2005



Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned.  
Depositary notifications are made available to the Permanent Missions to the United Nations at the following e-mail address: [missions@un.int](mailto:missions@un.int). Such notifications are also available in the United Nations Treaty Collection on the Internet at <http://untreaty.un.org>.