

DECLARATION OF JUDGE XUE

1. In the present case, I concur with my colleagues in upholding South Africa's standing, on a prima facie basis, in instituting proceedings against Israel for breach of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention"). I feel obliged to give a short explanation of my position at this stage.

2. The question of Palestine has been on the agenda of the United Nations since the inception of the Organization. The Palestinian territory is presently under Israel's occupation and control; the Gaza Strip constitutes an integral part of the occupied Palestinian territory. The people of Palestine, including the Palestinians in Gaza, are not yet able to exercise their right to self-determination. In the *Wall Advisory Opinion*, the Court recalled the statement in the General Assembly resolution 57/107 of 3 December 2002 that the United Nations has "a permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy" (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 159, para. 49). This responsibility requires that the United Nations, including its principal judicial organ, ensures that the Palestinian people are protected under international law, particularly protected from the gravest crime — genocide.

3. In the past 109 days, the world was shocked to watch what was unfolding in Gaza. According to United Nations reports, hostilities between Israeli military and Hamas have caused tremendous civilian casualties, unprecedented in history. Following the 7 October massacre and hostage-taking by Hamas, the Israeli military land operation in and air bombardment of Gaza, targeting civilian buildings, hospitals, schools and refugee camps, coupled with the cut-off of food, water, fuel, electricity and telecommunication, and the constant denial of humanitarian assistance from outside, have made Gaza a most dangerous and uninhabitable place. In such a short span of time, it is reported that at least 25,700 Palestinians have been killed, over 63,740 injured, with over 360,000 housing units destroyed or partially damaged and approximately 75 per cent of Gaza's population — 1.7 million people — internally displaced (United Nations Office for the Coordination of Humanitarian Affairs (OCHA), "Hostilities in the Gaza Strip and Israel — reported impact, Day 109" (24 January 2024)). Among the victims, most are children and women. The situation in Gaza remains horrendous, catastrophic

and devastating. No ceasefire is in sight. According to United Nations reports, the conditions of life in Gaza continue to deteriorate rapidly with catastrophic levels of hunger, a serious shortage of potable water and other essential necessities, a collapsing medical and health system, a looming outbreak of contagious diseases, etc. The gravity of the humanitarian disaster in Gaza threatens the very existence of the people in Gaza and challenges the most elementary principles of morality and humanity.

4. Over 60 years ago, when Ethiopia and Liberia instituted legal proceedings against South Africa for breach of its obligations as the Mandatory Power in South West Africa, the Court rejected the standing of those two applicants for lack of legal interest in the cases. This denial of justice gave rise to strong indignation of the Member States of the United Nations against the Court, severely tarnishing its reputation. The legal issue was further developed in the *Barcelona Traction* case, where the Court recognized that in international law there are certain international obligations owed to the international community as a whole; by the very nature of their importance all States have a legal interest in their protection. They are obligations *erga omnes*. The Court, however, did not touch on the question of standing in that Judgment (*Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain), Second Phase, Judgment, I.C.J. Reports 1970*, p. 32, para. 33). While the law and practice are still evolving, for a protected group such as the Palestinian people, it is least controversial that the international community has a common interest in its protection. In my view, this is the very type of case where the Court should recognize the legal standing of a State party to the Genocide Convention to institute proceedings on the basis of *erga omnes partes* to invoke the responsibility of another State party for the breach of its obligations under the Genocide Convention.

5. In light of the foregoing considerations and for the reasons contained in the Order of the Court, I agree that the provisional measures indicated in this Order are warranted under the circumstances.

(Signed) XUE Hanqin.
