

DECLARATION OF PRESIDENT SALAM

[Original English Text]

1. I voted in favour of each of the operative parts of the Court's Order in the present case and I agree with the entirety of the reasoning followed by the Court to reach its conclusions.

2. The context in which the Court has been requested again by South Africa to indicate provisional measures is particularly tragic. As highlighted in the Order, "the catastrophic humanitarian situation in the Gaza Strip that existed when it issued its Order of 26 January 2024 has deteriorated even further" (see paragraph 30 of the Order). Indeed, while on 21 February 2024, the Director-General of the World Health Organization (WHO) was already noting that "Gaza has become a death zone" ("WHO Director-General's opening remarks at the media briefing", 21 February 2024), the situation has worsened further, as the Secretary-General of the United Nations noted a few days ago at the gates of Rafah: "[i]t is monstrous that after so much suffering over so many months, Palestinians in Gaza are marking Ramadan with Israeli bombs still falling, bullets still flying, artillery still pounding, and humanitarian assistance still facing obstacle upon obstacle" (Secretary-General's press encounter at Rafah border crossing, 23 March 2024).

3. Moreover, whereas in January 2024, when it rendered its first Order on provisional measures, the Court referred to an immediate risk of famine, the risk has now materialized and many children have already died of starvation (see paragraph 21 of the Order).

4. As underlined by one of the front-line players on the ground, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), "Hunger has reached catastrophic levels, with over 90 per cent of the population facing acute food insecurity. In northern Gaza, parents are feeding their children animal fodder and native plants" (UNRWA, "UNRWA launches Ramadan campaign against backdrop of Gaza emergency", news release, 12 March 2024).

5. This already catastrophic situation is likely to deteriorate even further, as the representatives of the Office for the Coordination of Humanitarian Affairs (OCHA), the Food and Agriculture Organization of the United Nations (FAO) and the World Food Programme (WFP) emphasized in a briefing before the Security Council (see paragraph 31 of the Order). And in the words of the High Representative of the European Union for Foreign Affairs and Security Policy, "this is a humanitarian crisis which is not a natural disaster. It is not a flood. It is not an earthquake. It is man-made. And when we look for alternative ways of providing support — by sea or by air — we have to remind that we have to do it because the natural way of providing support through roads is being closed, artificially closed. And starvation is being used as a weapon of war." (United Nations, Speech by High Representative Josep Borrell at the annual United Nations Security Council session on EU-UN Cooperation, 12 March 2024.)

6. The scale of this deterioration in the area of health, for example, is well illustrated by the London School of Hygiene and Tropical Medicine and the John Hopkins Center for Humanitarian Health, which have predicted that "[o]ver the next six months, . . . in the absence of epidemics, 6,550 excess deaths would occur under the ceasefire scenario, climbing to 58,260 under the status quo scenario and 74,290 under the escalation scenario". In the event of one or more epidemics,

“[their] projections rise to 11,580, 66,720, and 85,750, respectively” (*Crisis in Gaza: scenario-based health impact projections. Report One: 7 February to 6 August 2024*, London School of Hygiene and Tropical Medicine, Johns Hopkins University, 19 February 2024, p. 9).

7. We are therefore faced with a situation in which the conditions of existence of the Palestinians in Gaza are such as to bring about the partial or total destruction of that group. It is important to remember that this conclusion is without prejudice to any decision on the merits of the case before the Court. As to the purpose of the provisional measures, it is to preserve the rights which the Court recognised as plausible in its Order of 26 January 2024, in particular the right of the Palestinians of Gaza to be protected against acts of genocide and related prohibited acts referred to in Article III of the Genocide Convention.

8. Points 2 (a) and 2 (b) of the operative part of this Order are, in my view, relevant modifications of the measures previously ordered by the Court. Hence, in view of the spread of famine and starvation, the Court considered it necessary to specify that it is fundamental and indispensable to ensure the unimpeded and large-scale provision of humanitarian aid to the population of the Gaza Strip.

9. Without such humanitarian aid, “the right of existence” of an entire human group, in the words of General Assembly resolution 96 (I) of 11 December 1946, would be jeopardized.

10. Yet the Palestinians in Gaza will only be truly protected if Israel, as ordered in point 2 (b), ensures with “immediate effect” that its army does not commit acts which constitute a violation of any of the rights of this group under the Genocide Convention, including, in this present case of spread of famine and starvation, that its army does not “in any way impede the delivery of urgently needed humanitarian aid”.

11. It remains that these new measures ordered by the Court can only take full effect if the “immediate ceasefire for the month of Ramadan” demanded by the Security Council in its resolution 2728 (2024) of 25 March 2024 prior to the issuance of this Order, and which the Court took note of (see paragraph 37), is duly and fully respected by all the parties “and leads to a lasting sustainable ceasefire”.

12. Finally, how not to recall the “purely humanitarian and civilizing purpose” pursued by the Genocide Convention, whose object “on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality” (*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951, p. 23*)?

(Signed) Nawaf SALAM.
