

JOINT DECLARATION OF JUDGES XUE, BRANT, GÓMEZ ROBLEDO AND TLADI

1. In this Order, the measures indicated in subparagraph (2) are the key part of the *dispositif*. Although we all voted in favour of subparagraph (2) (b) of the *dispositif*, we deeply regret that this measure does not directly and explicitly order Israel to suspend its military operations for the purpose of addressing the current catastrophic humanitarian situation in Gaza.

2. Notwithstanding that disappointment, we wish to highlight, at the outset, that the current Order is an improvement on the Order of 26 January 2024 in at least one respect. Consistent with the standard under international law, in particular Articles 55 and 56 of the Fourth Geneva Convention, the current Order requires not only that Israel must take measures to “enable” the provision of humanitarian aid, but that it must take measures to “ensure” the provision of such aid.

3. The situation in Gaza is extremely grave and continues to deteriorate every single day. Impediments to the provision of humanitarian assistance have caused unprecedented levels of hunger and suffering among Palestinians, in particular, children and women. One step away from massive famine, living conditions of the 1.7 million people that were pushed to southern Gaza by the Israeli military operations have deteriorated drastically. The Court has at its disposal sufficient information that Israel’s military operations have resulted in unprecedented levels of starvation and the absolute collapse of essential civilian infrastructure in the region. The current circumstances could lead to further devastating consequences where the very existence of the Palestinian people in Gaza is at a high risk. As the Court notes in the Order, representatives of the United Nations and the various agencies and organizations with a mandate for the provision of humanitarian aid have unequivocally indicated that, at the present stage, “the catastrophic humanitarian situation *can only be addressed if the military operations in the Gaza Strip are suspended*” (para. 36, emphasis added).

4. In its observations on the Request of South Africa for the indication of additional or modification of provisional measures, Israel claims that it has taken and will continue to take various protective measures and humanitarian initiatives for the protection of the civilians. We, of course, attach importance to Israeli commitments in this regard. The question before the Court in the current circumstances, however, is not whether Israel has made substantial efforts to prevent deaths and injuries of civilians in Gaza but whether the civilians have received, and are able to receive, their desperately needed assistance while the military operations are still going on. In our view, the present scale of the humanitarian crisis in Gaza and the overwhelming consensus that, without the suspension of military operations, this catastrophe will even worsen, constitute circumstances that require the Court to *explicitly* order a suspension of military operations.

5. This matter gives rise to a core concern of elementary considerations of humanity, a core concern that ultimately led the international community of States to conclude the Genocide Convention. Referring to the character of the Genocide Convention in its *Reservations Advisory Opinion*, the Court pointed out the dual objects of the Convention: on the one hand, it 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*). Under contemporary international law, obligations under the Convention, even in time of war, cannot be derogated from. As a party to the Convention, Israel remains bound by its obligations under the Convention under all circumstances.

6. In its Order of 26 January 2024, the Court determined that “[t]he Palestinians appear to constitute a distinct ‘national, ethnical, racial or religious group’”, a protected group within the meaning of Article II of the Genocide Convention. Moreover, Palestinians in the Gaza Strip form a substantial part of that protected group (Order of 26 January 2024, para. 45). The Court further found that some of the rights claimed by South Africa and for which it is seeking protection are plausible. Such plausible rights, in essence, bear on the fundamental right of the Palestinian people to existence.

7. Israel is the occupying Power in the Gaza Strip. It controls Gaza’s land border and all its land crossing access as well as its air and maritime areas. Israel’s dominant control over Gaza explains why Israel has the primary responsibility to ensure unhindered and unimpeded access, in particular, the land crossing access, for the delivery of humanitarian assistance to the Palestinians in Gaza. For that purpose, suspension of military operations, including its planned military operation in Rafah, under the circumstances, appears indispensable for any meaningful implementation of the provisional measures indicated.

8. We agree with the factual finding of the Court. In our opinion, however, the Court’s factual finding should have led it to decide that Israel must suspend its military operations in a way so as to give full effect to its obligations under this Order. Much to our regret, the measure indicated in subparagraph (2) (b) does not extend far enough to make that point explicitly.

(Signed) XUE Hanqin.

(Signed) Leonardo NEMER CALDEIRA BRANT.

(Signed) Juan Manuel GÓMEZ ROBLEDO.

(Signed) Dire TLADI.
