**INTERNATIONAL COURT OF JUSTICE**

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**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 REPUBLIC OF COLOMBIA

**5 April 2024**

TABLE OF CONTENTS

# 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 REPUBLIC OF COLOMBIA

To the Registrar, International Court of Justice, the undersigned being duly authorized by the Government of the Republic of Colombia,

1. On behalf of the Government of the Republic of Colombia, I have 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. Such a declaration shall be filed as soon as possible, and not later than the date fixed for the opening of the oral proceedings. In exceptional circumstances a declaration submitted at a later stage may however be admitted."

3. For its part, Article 82, paragraph 2, of the Rules of Court provides that the declaration filed by a State wishing to avail itself of the right of intervention must specify the name of an 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 documents in support, which documents shall be attached.

4. This Declaration is filed as Colombia's exercise of its right of intervention conferred upon it by Article 63 of the Statute as a Contracting Party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (henceforth "the Genocide Convention" or "the Convention"), its sections address each of the requirements under Article 82, paragraph 2 of the Rules of Court, and is filed at the earliest opportunity reasonably available to the Government of Colombia, in accordance with Article 82, paragraph 1 of the Rules of Court. Moreover, in accordance with Article 82, paragraph 1, the Declaration is signed in the manner provided for in Article 38, paragraph 3, of the Rules, by the Agent of Colombia.

## I CASE AND CONVENTION TO WHICH THIS DECLARATION RELATES

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 the latter, in the Gaza Strip, of its obligations under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

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."[1]

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 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."[2]

(…)

[1] Application instituting proceedings submitted by South Africa on 29 December 2023 (hereinafter, 'Application'), para. 1.

[2] Application, para. 13.

> "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."[3]

8. The Application filed by South Africa contained a Request for the Indication of Provisional Measures, pursuant to Article 41 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court.

9. The Court convened and held oral proceedings on the Request for the Indication of Provisional Measures on 11 and 12 January 2024.

10. The Court rendered its decision on the request for the indication of provisional measures on 26 January 2024. In its decision, the Court ruled as follows:

> "For these reasons,
>
> THE COURT,
>
> *Indicates* the following provisional measures:
>
> (1) By fifteen votes to two, The State of Israel shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to Palestinians in Gaza, take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention, in particular:
>
> (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; and
> (d) imposing measures intended to prevent births within the group;
>
> (…)

[3] Application, para. 16.

(2) By fifteen votes to two, The State of Israel shall ensure with immediate effect that its military does not commit any acts described in point 1 above;

(…)

(3) By sixteen votes to one, The State of Israel shall take all measures within its power to prevent and punish the direct and public incitement to commit genocide in relation to members of the Palestinian group in the Gaza Strip;

(…)

(4) By sixteen votes to one, The State of Israel shall take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip;

(…)

(5) By fifteen votes to two, The State of Israel shall take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II and Article III of the Convention on the Prevention and Punishment of the Crime of Genocide against members of the Palestinian group in the Gaza Strip;

(…)

(6) By fifteen votes to two, The State of Israel shall submit a report to the Court on all measures taken to give effect to this Order within one month as from the date of this Order."[4]

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", due to the Israeli assault on Rafah, starting on 11 February 2024, considering that Rafah "currently houses – primarily in makeshift tents – more than half of Gaza's population estimated at approximately 1.4 million people, approximately half of them children."[5] The Court took a decision on the request on 16 February 2024, communicated by letter to the parties on that same date, indicating that,

[4] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024,* para. 86.

[5] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel),* South Africa's letter of 12 February 2024, titled Urgent Request of

"[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, and does not demand the indication of additional provisional measures.

The Court emphasizes that the State of Israel remains bound to fully comply with its obligations under the Genocide Convention and with the said Order, including by ensuring the safety and security of the Palestinians in the Gaza Strip."[6]

12. On 6 March 2024, South Africa submitted an urgent request for the indication of additional provisional measures and the modification of the Court's prior Order of 26 January 2024 and decision of 16 February 2024, "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 this Court on 26 January 2024."[7]

13. The Court rendered its decision on this request on 28 March 2024. In its Order, the Court took note of resolution 2728 (2024) adopted by the Security Council on 25 March, in which the Council "*[e]xpress[ed]* deep concern about the catastrophic humanitarian situation in the Gaza Strip," and "*[d]emand[ed]* an immediate ceasefire for the month of Ramadan respected by all parties leading to a lasting sustainable ceasefire".[8]

14. On the merits of the requests made by South Africa, the Court ruled as follows:

"For these reasons,

THE COURT,

By fourteen votes to two,

(1) *Reaffirms* the provisional measures indicated in its Order of 26 January 2024;

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Additional Measures Under Article 75(1) of the Rules of Court of the International Court of Justice, paras. 3, 4 and 10.

[6] I.C.J. Press Release No. 2024/16 dated 16 February 2024.

[7] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel),* South Africa's letter of 6 March 2024, titled Urgent Request and Application for the Indication of Additional Provisional Measures and the Modification of the Court's Prior Provisional Measures Decisions Pursuant to Article 41 of the Statute of the International Court of Justice and Articles 75 and 76 of the Rules of Court of the International Court of Justice, para. 1.

[8] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 28 March 2024,* para. 37.

(...)

(2) *Indicates* the following provisional measures:

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 Palestinians in Gaza, in particular the spread of famine and starvation:

(a) Unanimously,

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 to Palestinians throughout Gaza, including by increasing the capacity and number of land crossing points and maintaining them open for as long as necessary;

(b) By fifteen votes to one,

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 under the Convention on the Prevention and Punishment of the Crime of Genocide, including by preventing, through any action, the delivery of urgently needed humanitarian assistance;

(…)

(3) By fifteen votes to one,

*Decides* that the State of Israel shall submit a report to the Court on all measures taken to give effect to this Order, within one month as from the date of this Order."[9]

15. On 6 February 2024, as provided for in Article 63, paragraph 1, of the Statute of the Court, the Registrar duly notified the Government of the Republic of Colombia as a party to the Genocide Convention, that by South Africa's Application, the Genocide Convention is invoked both as a basis for the Court's jurisdiction as well as the substantive basis of the Applicant's claims on the merits. In its letter the Registrar stated:

"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

[9] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 28 March 2024,* para. 51.

> 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."[10]

16. The Government of the Republic of Colombia contends that the case at hand raises vital issues concerning the interpretation and application of several provisions of the Genocide Convention that reflect both *erga omnes* obligations,[11] owed to the international community as a whole, and *erga omnes partes* obligations, owed to all States parties to the treaty, in relation to not only the prohibition to commit genocide but also the obligation to prevent genocide.[12] Moreover, the Court has recognized that the Convention has a "purely humanitarian and civilizing purpose"[13] and in consequence, most of its provisions reflect norms of *jus cogens* character[14].

17. It goes without saying that the Genocide Convention is a cardinal instrument of international law and embodies a remarkable achievement of mankind. In its early Advisory Opinion concerning reservations to the Convention, the Court underlined that the Convention had its origins in a deliberate intention by the international community to outlaw genocide as a crime under international law.[15] This was done under the belief, clearly reflected in the terms of General Assembly Resolution 96 (I) of 1946 –which was evoked by the Court in its Order on provisional measures in the present case– that the denial of the right of existence of entire human groups shocked the conscience of mankind, resulted in great losses to humanity and was contrary to moral law and to the spirit and the aims of the United Nations. It was so in the aftermath of the horrible carnage of World War II, and it remains so now when "Gaza has

[10] Annex 1: Letter No. 161308 dated 6 February 2024 to States Parties to the Genocide Convention (except South Africa and Israel) from the Registrar of the International Court of Justice.

[11] *Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970*, p. 32, para. 33; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p. 47, para. 87.

[12] *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*, p.17, para. 41; *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*, pp. 515-518, pars. 107-113.

[13] *Reservations to the Convention on Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

[14] *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, at p. 222, para. 161; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p. 47, para. 87.

[15] *Reservations to the Convention on Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

become a place of death and despair. (…) Gaza has simply become uninhabitable. Its people are witnessing daily threats to their very existence – while the world watches on."[16]

18. The Court also underlined that a consequence of this notion is that "the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation".[17] A second consequence is the universal character of both the condemnation of genocide and the co-operation required in order to eradicate this practice.[18]

19. In light of this, it must be appreciated that Colombia's decision to intervene in this case was not taken lightly. It is endeavouring to act as a responsible member of the international community that participates in the universal condemnation of the crime of genocide and believes that cooperation among States is required 'in order to liberate mankind from such an odious scourge', as stated in the preamble to the Convention.

20. In this regard, it is apposite to recall that after the adoption of the Convention, it took the executive branch in Colombia nearly a decade to submit it to Congress. When it did so, in February 1959, the Justice Minister explained the *rationale* for this action as follows:

> "Through its delegates to the United Nations General Assembly and subsequently when it signed the Convention on 12 August 1949, the Government of the Republic of Colombia accepted its underlying principles, as well as its provisions and its obligations, convinced as it was that all the civilized peoples of the world should join efforts in order to combat those forms of crime that outrage the legal conscience of mankind."[19]

21. The current government of Colombia is committed to upholding these exalted words over six decades after they were uttered and much more resolutely than in the past. For that reason, Colombia is deploying efforts directed at fighting the scourge of genocide and, as a result, making sure Palestinians enjoy their right to exist as a people.

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[16] Statement by Martin Griffiths, Under Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, 5 January 2024, as recalled in the Court's Order in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024*, para. 47.

[17] *Reservations to the Convention on Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

[18] *Ibid.*

[19] Annex 2: Submission to Congress of the draft bill "whereby the *Convention on the Prevention and Punishment of the Crime of Genocide* is approved", Archives of the Ministry of Foreign Affairs of Colombia, February 1959.

22. In view of the Applicant's claims that the State of Israel has failed to prevent genocide, has failed to prosecute the direct and public incitement to genocide and, more egregiously, has itself committed genocide[20], Colombia considers that there are sufficient reasons to intervene in these proceedings on the basis of Article 63, paragraph 2 of the ICJ Statute, and that States Parties to the Genocide Convention are bound to support the work of the Court in interpreting the rules thereby ensuring the protection of the individuals and people at risk of extermination. Indeed, from the very start of the onslaught, the President of Colombia, Gustavo Petro, has publicly and repeatedly called out the genocidal nature of Israel's actions against Palestinians in Gaza.[21] Colombia's ultimate goal in this endeavour is to ensure

[20] Application, para. 4.

[21] With regard to President Petro's statements, see, e.g.:

15 Oct. 2023:

"Indiscriminate attacks on civilians are prohibited. Genocides are prohibited. Health and hospital workers must be protected. Minimum living conditions must be protected."
At: https://twitter.com/petrogustavo/status/1713580872572551400

"If we need to suspend diplomatic relations with Israel, we will suspend them. We do not support genocides." At: https://twitter.com/petrogustavo/status/1713651638039117872

22 Oct. 2023, referring to a massive demonstration in London on 21 Oct. 2023, in solidarity with Palestine: "They said that in defending a population against genocide, I would be isolated. As if fighting for justice was a solitary endeavour. I was merely one of the first voices to rise; later, hundreds of millions of human beings did also. The isolated ones are the unjust and genocidal."
At: https://twitter.com/petrogustavo/status/1716091826019737631?s=20

27 Oct. 2023, reposting a call from UN Secretary-General for a humanitarian ceasefire: "With the full electricity and internet blackout the massacre in Gaza is unleashed. A hundred planes bombarding, while thousands of Israeli soldiers penetrate Gaza. Today, humanity stands before a genocide."
At: https://twitter.com/petrogustavo/status/1718040083528314885?s=20

28 Oct. 2023, referring to a massive demonstration in London on 28 Oct. 2023, demanding the United Kingdom protest Israel's bombings in Gaza: "Half a million people have marched in London to protest against genocide. The democratic reserve that made it possible for an island [referring to the United Kingdom] to stop Nazism today rises anew against another State killing a people."
At: https://twitter.com/petrogustavo/status/1718434688304349684?s=20

Referring to images depicting the death toll in Gaza following Israel's bombings on 27 Oct. 2023: "This is genocide. When our children study this someday, read on it, they will know that Colombia did not stand on the side of those committing genocide; that their government stood up to denounce, that it sent food and stood by the side of the humble, the child passing away, that it stood beside the fathers and mothers who cried. That we were not intimidated by the banker, by the owner of the funds that is friends with the perpetrator of genocide, but that we lent a hand to the one with ragged clothes, to he who barely survived, to the girl who wept, to life." At: https://twitter.com/petrogustavo/status/1718458521061072973?s=20

31 Oct. 2023, referring to an image depicting a row of covered dead bodies in Gaza: "It's called Genocide. They do it to get the Palestinian people out of Gaza and take over. The Head of State who commits this genocide is a criminal against mankind."
At: https://twitter.com/petrogustavo/status/1719565081371935150?s=20

the urgent and fullest possible protection for Palestinians in Gaza, in particular such vulnerable populations as women, children, persons with disabilities and the elderly.[22]

23. As recognized by Article 63 of the Statute, by virtue of Colombia's status as a Party to the Genocide Convention, the legal interest of Colombia as a declarant State in the construction of the Convention is presumed to exist.[23]

24. To clarify, Colombia is not seeking to become a party in the proceedings brought by South Africa against Israel. Colombia's intervention is aimed at assisting the Court in construing the provisions of the Convention that are in question in this case. Colombia recognises that once its Declaration of Intervention under Article 63 of the Statute is admitted, the construction of the Genocide Convention to be rendered in the Court's judgment will be equally binding upon it.

## II BASIS UPON WHICH COLOMBIA IS A PARTY TO THE CONVENTION

25. Colombia signed the Genocide Convention on 12 August 1949 and, in accordance with Article XI, deposited its instrument of ratification on 27 October 1959.[24] Colombia has not made any reservation or declaration to the Convention, nor has it objected to a reservation made by any other party. Accordingly, the requirement stipulated in Article 82, paragraph 2(a) of the Rules is met.

## III PROVISIONS OF THE CONVENTION IN QUESTION IN THE CASE

26. South Africa claims that,

> "[T]he 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

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13 Dec. 2023: "They said I was in the 'axis of evil', that I was on the wrong side of history for opposing the genocide of the Palestinian people. What lies in the hearts of those who remain silent when 8,000 children have been crushed by the bombs of a Herod?"
At: https://twitter.com/petrogustavo/status/1735154532248662168

(All links above and below last visited on 1 April 2024).

[22] Application, para. 4.

[23] *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. 27.

[24] Annex 3: United Nations Depository Notification confirming Colombia's ratification of the Genocide Convention dated 9 Nov. 1959.

under the Genocide Convention, including Articles I, III, IV, V and VI, read in conjunction with Article II. Those violations of the Genocide Convention include, but are not limited to:

(a) failing to prevent genocide in violation of Article I;

(b) committing genocide in violation of Article III (a);

(c) conspiring to commit genocide in violation of Article III (b);

(d) direct and public incitement to commit genocide in violation of Article III (c);

(e) attempting to commit genocide in violation of Article III (d);

(f) complicity in genocide in violation of Article III (e);

(g) failing to punish genocide, conspiracy to commit genocide, direct and public incitement to genocide, attempted genocide and complicity in genocide, in violation of Articles I, III, IV and VI;

(h) failing to enact the necessary legislation to give effect to the provisions of the Genocide Convention and to provide effective penalties for persons guilty of genocide, conspiracy to commit genocide, incitement to genocide, attempted genocide, and complicity in genocide, in violation of Article V; and

(i) failing to allow and/or directly or indirectly impeding the investigation by competent international bodies or fact-finding missions of genocidal acts committed against Palestinians in Gaza, including those Palestinians removed by Israeli State agents or forces to Israel, as a necessary and corollary obligation pursuant to Articles I, III, IV, V and VI.;"[25]

27. Colombia identifies the following provisions of the Genocide Convention the construction of which is in question in the present case, as required under Article 82, paragraph 2(b) of the Rules of Court:

- Article I – General obligations
- Article II – Definition of the crime of genocide
- Article III – Acts punishable under the Convention
- Article IV – Duty to punish persons committing genocide
- Article V – Obligation to enact legislation
- Article VI – Trial of persons charged with genocide

[25] Application, para. 110.

28. In addition, Colombia identifies the construction of Article IX of the Convention to be in question inasmuch as the jurisdiction of the Court is involved. It will be discussed in Section IV, B below.

## IV CONSTRUCTION OF THE PROVISIONS FOR WHICH COLOMBIA CONTENDS

### A. General criteria for interpretation

29. In its landmark decision on the merits in the *Genocide Convention (Bosnia)* case, the Court 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"[26], in order to assess eventual violations of specific obligations contained in the Convention, the Law of Treaties and the Law of State Responsibility come into play:

> "In order to determine whether the Respondent breached its obligation under the Convention, as claimed by the Applicant, and, if a breach was committed, to determine its legal consequences, the Court will have recourse not only to the Convention itself, but also to the rules of general international law on treaty interpretation and on responsibility of States for internationally wrongful acts."[27]

30. Secondly, Articles 31 and 32 of the Vienna Convention on the Law of Treaties lay down the rules governing the interpretation of international instruments such as the Genocide Convention. These rules are, moreover, norms of customary international law.

> "The Court observes that what obligations the Convention imposes upon the parties to it depends on the ordinary meaning of the terms of the Convention read in their context and in the light of its object and purpose. To confirm the meaning resulting from that process or to remove ambiguity or obscurity or a manifestly absurd or unreasonable result, the supplementary means of interpretation to which recourse may be had include the preparatory work of the Convention and the circumstances of its conclusion. Those propositions, reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, are well recognized as part of customary international law."[28]

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[26] *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.

[27] *Ibid.*

[28] *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. 109-110, para. 160.* Quoting as

31. Thirdly, Colombia submits that in the special case of the interpretation of the Genocide Convention, the general context is of paramount importance.

32. It is a truism to say that most of the difficulties encountered by courts and tribunals when dealing with the crime of genocide refer to proving the existence of intent, which is, after all, the differentiating element of genocide, as compared with other serious international crimes. In Colombia's view a key element here is that of the general context, a notion that goes considerably beyond what the Court, in its Order of 26 January, called "the immediate context in which the present case came before it" [29].

33. In this regard, in its Application South Africa contends that.

> "… acts of genocide inevitably form part of a continuum […] For this reason it is important to place the acts of genocide in the broader context of Israel's conduct towards Palestinians during its 75-year-long apartheid, its 56-yearlong belligerent occupation of Palestinian territory and its 16-year-long blockade of Gaza, including the serious and ongoing violations of international law associated therewith.[30]

34. As recalled by the Court in its Order of 26 January, while determining the plausibility of the rights asserted by the Applicant, the determination of the "facts and circumstances" related to the occurrence of acts amounting to genocide, stands as a fundamental task for the ultimate objective of deciding whether the Respondent state is responsible for breaching obligations embedded in the Convention.[31]

35. The above remains applicable to the merits of the case. It follows that the "facts and circumstances" evidenced in the numerous relevant reports and statements by several United Nations agencies and officials, including Special Rapporteurs, Independent Experts and

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authority *Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 174, para. 94; *Avena and Other Mexican Nationals (Mexico v. United States of America), Judgment, I.C.J. Reports 2004,* p. 48, para. 83; *LaGrand (Germany v. United States of America), Judgment, I.C.J. Reports 2001,* p. 501, para. 99; and *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, p. 645, para. 37. See also, *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. 84.

[29] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel), Provisional Measures, Order of 26 January 2024*, para. 13.

[30] Application, para. 2.

[31] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel), Provisional Measures, Order of 26 January 2024*, paras. 46-54.

members of Working Groups, ought to be taken into account in the Court's determination of breaches of the Convention by the Respondent.

36. The most apposite example of this is perhaps the latest report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese[32], which will be mentioned in other sections below. Colombia submits that this report in relation to actions and omissions of the relevant State organs and agents of Israel, will assist the Court in assessing the substantive basis of the legal elements of genocidal conduct, as well as in attributing the required knowledge and intent.

37. Colombia therefore respectfully requests that this element of general context is taken into account when interpreting the provisions of the Convention.

## B. Construction of the Provisions of the Convention regarding the Jurisdiction of the Court

38. South Africa invokes Article IX of the Convention as the sole basis for the Court's jurisdiction in this case. While it has refrained from openly challenging the existence of jurisdiction thus far, at the provisional measures stage Israel advanced the view that the Court lacked prima facie jurisdiction to entertain the case, as one of the grounds for its submission that the request for provisional measures submitted by South Africa was to be rejected.

39. Some of these allegations by the Respondent, in particular, the contention that there was no dispute in existence between the parties, were already addressed by the Court in its order on provisional measures. On the point of prima facie jurisdiction, the Court ruled:

> "In light of the above, the Court considers 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.
>
> As to whether the acts and omissions complained of by the Applicant appear to be capable of falling within the provisions of the Genocide Convention (…) In

[32] UN Doc. A/HRC/55/73, 25 March 2024 (Advance unedited version).

> the Court's view, at least some of the acts and omissions alleged by South Africa to have been committed by Israel in Gaza appear to be capable of falling within the provisions of the Convention.
>
> (…)
>
> In light of the foregoing, the Court concludes that, prima facie, it has jurisdiction pursuant to Article IX of the Genocide Convention to entertain the case."[33]

40. This, of course, embodies an entirely provisional assessment on the part of the Court. But going beyond the question of *prima facie* jurisdiction, it is the contention of Colombia that the Applicant in the case has demonstrated that there is a genuine dispute in existence between South Africa and Israel concerning the interpretation, application or fulfilment of the Genocide Convention. Under Article IX of the Convention the Court has jurisdiction to entertain that dispute.

41. In any event, with regard to the admissibility of declarations of intervention, the Court held in its Order of 5 June 2023 in the *Ukraine v. Russia Genocide* case that:

> "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 which it considers to be in question'." [34]

42. Since Colombia does not intend to become a party to the proceedings[35], the question of standing does not arise in reference to its Declaration of Intervention. In the case of South Africa, however, standing can be perceived as an aspect of the jurisdiction of the Court and as such, merits a mention in this section.

43. Colombia is of the view that the Court's settled jurisprudence concerning treaties that contain obligations *erga omnes partes*, first advanced in the *Habré* case[36] and

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[33] *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.

[34] *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.

[35] *Supra*, para. 19.

[36] *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 449, para. 68.

reaffirmed twice, in the *Gambia v. Myanmar* and *Canada and The Netherlands v. Syria* cases[37] suffices to grant standing to South Africa or, for that matter, to any other State party to the Genocide Convention, to submit to adjudication by the Court any dispute with another State party falling within the purview of Article IX thereof.

44. The Court confirmed as much in its 26 January Order on provisional measures. After registering that Israel does not challenge the standing of the Applicant in the present proceedings, the Court referred to the *Gambia v. Myanmar* precedent and recalled that in that case,

> "…the Court found that any State party to the Genocide Convention may invoke the responsibility of another State party, including through the institution of proceedings before the Court, with a view to determining the alleged failure to comply with its obligations *erga omnes partes* under the Convention and to bringing that failure to an end (…)."[38]

45. The Court then concluded that "prima facie, … South Africa has standing to submit to it the dispute with Israel concerning alleged violations of obligations under the Genocide Convention".[39]

46. On the other hand, as in previous cases in which this provision was invoked, under Article IX of the Genocide Convention the Court's jurisdiction is confined to disputes regarding violations of the provisions of the Convention and it therefore confers upon the Court no jurisdiction to rule on alleged breaches of other obligations under international law not amounting to genocide, particularly those protecting basic rights in armed conflict.[40] However, this does not detract from the fact that the Court can factor in the relevance of such rules and such breaches when dealing with the case at hand. In the Court's own words, it is not prevented

> "…from considering, in its reasoning, whether a violation of international humanitarian law or international human rights law has occurred to the extent that

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[37] *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*, p.17, paras. 41-42; *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*, pp. 515-518, pars. 106-114; *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic), Provisional Measures, Order of 16 November 2023*, pars. 50-51.

[38] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel), Provisional Measures, Order of 26 January 2024*, para. 33.

[39] *Ibid.*, para. 34.

[40] *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.

this is relevant for the Court's determination of whether or not there has been a breach of an obligation under the Genocide Convention."[41]

47. Colombia submits that, considering the context in which the situation in Gaza is developing, this is an aspect worth highlighting. A particularly good and current example of this is the report by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 [42]. One of the key findings of this report refers to the way in which the Israeli authorities are distorting basic tenets of International Humanitarian Law in an attempt to legitimize genocidal violence against the Palestinian people. Special Rapporteur Albanese calls this "Humanitarian camouflage" and goes on to explain its meaning as follows:

> "56. Official statements have translated into military conduct that repudiates the very notion of civilian protection. Israel has thus radically altered the balance struck by IHL between civilian protection and military necessity, as well as the customary rules of distinction, proportionality and precaution. This has obscured one cardinal tenet of IHL: indiscriminate attacks, which do not distinguish military targets from protected persons and objects, cannot be proportionate and are always unlawful.
>
> 57. On the ground, this distortion of IHL articulated by Israel as a state policy in its official documents, has transformed an entire national group and its inhabited space into a destroyable target, revealing an eliminationist conduct of hostilities. This has had devastating effects, costing the lives of tens of thousands of Palestinian civilians, destroying the structural fabric of life in Gaza and causing irreparable harm. This illustrates a clear pattern of conduct from which the requisite genocidal intent is the only reasonable inference to be drawn."[43]

48. Also of interest is the fact, underlined repeatedly in the jurisprudence, that even if the Court is without jurisdiction to pronounce on certain aspects of a case that has been submitted to it, this has no effect whatsoever on the illegality of a given situation nor on the legal consequences ensuing therefrom. To quote the Court:

> "The Court must, however, recall — as it has done on previous occasions — that the absence of a court or tribunal with jurisdiction to resolve disputes about

[41] *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.
[42] UN Doc. A/HRC/55/73, 25 March 2024 (Advance unedited version).
[43] *Ibid*, pp. 14-15, paras. 56-57 (all notes omitted).

compliance with a particular obligation under international law does not affect the existence and binding force of that obligation..."[44]

49. Moreover, in its latest Judgment on preliminary objections in the *Ukraine v. Russia Genocide* case, the Court again observed that,

> "there is a fundamental distinction between the question of the acceptance by States of the Court's jurisdiction and the conformity of their acts with international law. States are always required to fulfil their obligations under the Charter of the United Nations and other rules of international law. Whether or not they have consented to the jurisdiction of the Court, States remain responsible for acts attributable to them that are contrary to international law". [45]

50. Finally, it is to be recalled that a special feature of Article IX is that in granting the Court jurisdiction to deal with disputes concerning the interpretation, application or fulfilment of the Convention, it carefully singles out those disputes "relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III.". The Court's caselaw is definite on the point that this provision confirms a construction of Article I of the Convention according to which States themselves are capable of committing genocide, and under international law they can and should be found responsible by the Court for this conduct, if the case merits so. The point will be highlighted in the context of the interpretation of Article I, in Section C, below.

## C. Construction of the Provisions of the Convention regarding the Merits of the Case

51. As explained in Section III *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 that provided by other substantive provisions of the Convention.

[44] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p. 46, para. 86.

[45] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Preliminary Objections, Judgment of 2 February 2024,* para. 150.

*(1) Article I – General obligations*

52. In its Application, South Africa considers 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."[46]

53. Specifically with regard to Article I of the Convention, South Africa's Application, contends that the violations of that Article include:

> "(a) failing to prevent genocide in violation of Article I;
> (…)
> (g) failing to punish genocide, in violation of Articles I, III, IV and VI."[47]

54. South Africa is also charging the State of Israel with committing genocide, conspiring to commit genocide, inciting to commit genocide, attempting to commit genocide and complicity in genocide, all of this in violation of Article III of the Convention.[48] This warrants a mention here because, as it will be seen, in the *Genocide Convention (Bosnia)* case the Court derived the negative obligation to not commit genocide from Article I, read of course in conjunction with other provisions like Article III and Article IX.

55. Article I of the Genocide Convention 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."

56. Relevant jurisprudence of this Court has explained the different elements included in this provision. In *Genocide Convention (Bosnia),* the Court went on to analyze the two propositions of the Article:

> "The first is 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)"

[46] Application, para. 110.
[47] Application, para. 110.
[48] Application, para. 110.

57. As the Court explained back in 1951, 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."[49]

58. Israel itself acknowledged the severity of this category of crimes under international law. As characterized by Counsel for Israel during the oral pleadings concerning provisional measures, quoting Professor Schabas[50], genocide is 'the crimes of crimes', "a uniquely malicious manifestation… stand[ing] alone amongst the violations of international law as the epitome and zenith of evil."[51]

59. Colombia agrees with this characterization of this heinous crime. However, it disagrees with the subsequent affirmations of Counsel for Israel, when he attempted to suggest an expansive characterization of the crime of genocide taking place in the territory of Palestine, as presented by South Africa. He explained:

> "To put it another way, if claims of genocide were to become the common currency of armed conflict, whenever and wherever that occurred, the essence of this crime would be diluted and lost." [52]

As it will be set out further below, South Africa's timely Application contains sufficient evidence of the commission of acts of genocide as well as "other acts enumerated in Article III" in Palestine.

60. The second proposition stated in Article I, in the Court's view, relates to the undertaking by Contracting Parties to prevent and punish the crime of genocide, to which we will refer further below. As for the context within which the genocide could take place, also referenced in Article 1, the fact that a conflict situation is currently unfolding in the territory where the genocide has taken or is taking place, cannot be considered as a bar for a finding that a State is committing genocide.

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[49] *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

[50] W. Schabas, *Genocide: The Crime of Crimes*, 2nd ed. (Cambridge University Press, 2009).

[51] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, *Public sitting 12 January 2024, CR 2024/2*, p. 24, para. 7.

[52] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, *Public sitting 12 January 2024, CR 2024/2*, p. 24, para. 9.

61. As stated in Article I, it is possible that a genocidal act be committed just as equally in times of peace or of war. This has been reaffirmed by this Court:

> "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."[53]

62. Article I also specifies the type of general obligations that Contracting Parties consent to when ratifying the convention. Contracting Parties commit to three sets of obligations: a) Not to commit genocide; b) To prevent genocide; and c) To punish genocide. Although Article I "does not specify the kinds of measures that a Contracting Party may take to fulfil" these obligations", it is clear that the Contracting Parties "must implement [them] in good faith"[54].

63. The obligation *not to commit genocide* is not to be found in the text of Article I. This Court had the opportunity to refer to this lack of direct language in the *Genocide Convention (Bosnia)* case when the Respondent appositely claimed that the Convention did not envisage a State obligation to refrain from committing genocide. In that case, the Court explained how the inference is made:

> "The Article does not *expressis verbis* require States to refrain from themselves committing genocide. However, in the view of the Court, taking into account the established purpose of the Convention, the effect of Article I is to prohibit States from themselves committing genocide.
>
> Such a prohibition follows, first, from the fact that the Article categorizes genocide as "a crime under international law": by agreeing to such a categorization, the States parties must logically be undertaking not to commit the act so described. Secondly, it follows from the expressly stated obligation to prevent the commission of acts of genocide. […] In short, the obligation to

[53] *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.

[54] *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.

prevent genocide necessarily implies the prohibition of the commission of genocide."[55]

64. Consequently, Contracting Parties are forbidden to commit genocidal acts "through their own organs, or persons over whom they have such firm control that their conduct is attributable to the State concerned under international law."[56] Failure to comply with this negative obligation entails the international responsibility of the State, as expressly provided for in Article IX of the Convention.

65. As for the "direct obligation *to prevent genocide*" [57] and to punish its perpetrators, they are interconnected obligations[58]. This notwithstanding, the Court has underlined in peremptory terms the autonomous nature of the duty to prevent:

> "…it is not the case that the obligation to prevent has no separate legal existence of its own; that it is, as it were, absorbed by the obligation to punish, which is therefore the only duty the performance of which may be subject to review by the Court. 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 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."[59]

66. In this regard, the Court's discussion in the *Bosnia* case concerning the nature of the duty to prevent in Article I of the Convention is apposite. After remarking that the characterizations of the prohibition on genocide as a norm of *jus cogens* and the "purely humanitarian and civilizing" purpose of the Convention are significant factors for the interpretation of the second proposition stated in Article I, particularly the undertaking to prevent, the Court went on to declare:

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[55] *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 113, para. 166.

[56] *Ibid.*

[57] *Ibid.*, para. 165.

[58] *Ibid.*, p. 219, para. 425.

[59] *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.

> "The ordinary meaning of the word "undertake" is to give a formal promise, to bind or engage oneself, to give a pledge or promise, to agree, to accept an obligation. It is a word regularly used in treaties setting out the obligations of the Contracting Parties (…). It is not merely hortatory or purposive. The undertaking is unqualified (…); and it is not to be read merely as an introduction to later express references to legislation, prosecution and extradition. Those features support the conclusion that Article I, in particular its undertaking to prevent, creates obligations distinct from those which appear in the subsequent Articles. That conclusion is also supported by the purely humanitarian and civilizing purpose of the Convention."[60]

And later on, in the same vein:

> "For the Court [the preparatory work on the Convention] confirm that Article I does impose distinct obligations over and above those imposed by other Articles of the Convention. In particular, the Contracting Parties have a direct obligation to prevent genocide."[61]

67. Another aspect of interest underlined by the Court in the *Bosnia* case is that the duty to prevent genocide is an obligation of conduct, not of result. The Court explained:

> "…it is clear that the obligation [to prevent genocide] is one of conduct and not one of result, in the sense that a State cannot be under an obligation to succeed, whatever the circumstances, in preventing the commission of genocide: the obligation of States parties is rather to employ all means reasonably available to them, so as to prevent genocide so far as possible. A State does not incur responsibility simply because the desired result is not achieved; responsibility is however incurred if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide. In this area the notion of 'due diligence', which calls for an assessment *in concreto*, is of critical importance."[62]

68. This means that in the field of prevention, States parties to the Convention are bound to do a number of things in order to prevent genocide and that, in a case where genocide is determined to have been committed because of a failure to prevent it – such as the circumstances of the present case seem to indicate, with disastrous consequences for the Palestinian people– the State in question would, in consequence, be found to have failed to meet the threshold set by the Court in the *Bosnia* case. Furthermore, in the present proceedings

[60] *Ibid.*, p. 111, para. 162.
[61] *Ibid.*, p. 113, para. 165.
[62] *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. 221, para. 430.

the Court has had opportunity to lay this out in no uncertain terms with regard to Israel, in its Orders on Provisional Measures dated 26 January and 28 March 2024.[63]

69. Finally, the obligation *to punish the crime of genocide* is directly related with the obligation to investigate and prosecute those responsible for the commission of genocidal acts, as Articles IV to VI of the Convention provide.[64] For Colombia, pursuing the *erga omnes* obligations that States parties have under the Convention to seek the punishment of those involved in genocidal acts equates with ensuring an effective protection of the Palestinian people. Moreover, Colombia might be seen as pursuing its *erga omnes partes* rights as a party to the Convention by intervening in these proceedings, under the conviction that, as the Court pointed out in its Order on provisional measures, "there is a correlation between the rights of members of groups protected under the Genocide Convention, the obligations incumbent on States parties thereto, and the right of any State party to seek compliance therewith by another State party."[65] Ultimately what it seeks is to promote compliance by Israel with its obligations under the Convention of not committing or inciting genocide and to punish it when it has occurred.

70. By doing so, Colombia joins other efforts to condemn this heinous crime. Only by a joint and coordinated action of the international community, can the world be set free of these atrocities. As this Court has stated, not only condemnation but cooperation of a universal character is required "in order to liberate mankind from such an odious scourge (Preamble of the Convention)"[66].

71. This universal cooperation is materialized not only through the committed action of States, but also in legal precedents, as well as in decisions and reports of international organizations and independent experts that contribute to clarifying the context of the cases and provide elements that may assist the Court in its task. In fact, several UN reports have stated clearly that the horrific situation in Palestine could amount to a genocide. In a joint press release issued in mid-January 2024 UN human rights experts declared:

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[63] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024,* para. 86, and *Provisional Measures, Order of 28 March 2024,* para. 51.

[64] *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. 226 and ff., paras. 439 and ff.

[65] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024,* para. 43.

[66] *Reservations to the Convention on Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

> "We have raised the alarm of the risk of genocide several times reminding all governments they have a duty to prevent genocide. Not only is Israel killing and causing irreparable harm against Palestinian civilians with its indiscriminate bombardments, it is also knowingly and intentionally imposing a high rate of disease, prolonged malnutrition, dehydration, and starvation by destroying civilian infrastructure".[67]

72. More to the point, in January the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, was recorded by the Spanish press as stating "I believe that it is very likely that genocide is being committed in Gaza".[68] By 25 March 2024, Special Rapporteur Albanese's well-grounded belief had become certainty, as borne out by a report she presented to the Human Rights Council, unequivocally entitled "Anatomy of Genocide". After extensive research and the review of numerous, authoritative sources, Ms Albanese was able to conclude that:

> "93. The overwhelming nature and scale of Israel's assault on Gaza and the destructive conditions of life it has inflicted reveal an intent to physically destroy Palestinians as a group. This report finds that there are reasonable grounds to believe that the threshold indicating the commission of the following acts of genocide against Palestinians in Gaza has been met: killing members of the group; causing serious bodily or mental harm to groups' members; and deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part. Genocidal acts were approved and given effect following statements of genocidal intent issued by senior military and government officials."[69]

73. The Court should give special probative status to these reports, given their provenance, i.e., from objective and uniquely expert sources. The Court has characterized these as "disinterested witness," namely "one who is not a party to the proceedings and stands to gain or lose nothing from its outcome."[70]

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[67] Press Release, "Over one hundred days into the war, Israel destroying Gaza's food system and weaponizing food, say UN human rights experts", 16 Jan. 2024. https://www.ohchr.org/en/press-releases/2024/01/over-one-hundred-days-war-israel-destroying-gazas-food-system-and (Last visited: 29 Jan. 2024)

[68] "UN Rapporteur on Palestine – 'it is very likely that genocide is being committed in Gaza", press article in *El País*, Spain, 19 Jan. 2024. At: https://elpais.com/internacional/2024-01-19/la-relatora-de-la-onu-sobre-palestina-es-muy-probable-que-en-gaza-se-este-cometiendo-genocidio.html (unofficial translation).

[69] UN Doc. A/HRC/55/73, 25 March 2024 (Advance unedited version), p. 24, para. 93.

[70] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment I.C.J. Reports 1986*, p. 14, para. 69.

74. As this Declaration will further explain, Colombia shares South Africa's interpretation of articles II, III, IV and VI of the Genocide Convention as they relate to the facts and circumstances of the present case.

*(2) Article II – Acts of genocide*

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

"Article II

> 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."

76. The heart of the Convention is to be found in this Article. As the Court has had the opportunity to explain, Article II above 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*. Indeed, the Court has said:

> "According to that Article, genocide contains two constituent elements: the physical element, namely the act perpetrated or *actus reus*, and the mental element, or *mens rea*. Although analytically distinct, the two elements are linked. The determination of *actus reus* can require an inquiry into intent. In addition, the characterization of the acts and their mutual relationship can contribute to an inference of intent. The offence may be either an act of commission or an act of omission."[71]

[71] *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.

77. Colombia will share its interpretation of both elements contained in Article II, in turn, as follows.

(i) The *Actus Reus* of Genocide

78. The acts listed in Article II of the Convention constitute the *actus reus* of genocide. In Colombia'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.

79. Furthermore, Article I of the Convention seeks to prevent and punish genocide as a crime under international law "whether committed in time of peace or in time of war". While the Court has jurisdiction to rule only on violations of the Genocide Convention, as explained in Section II above, and not on breaches of international humanitarian law, the rules of the latter body of law might be relevant in order to ascertain the correct interpretation of Article II of the Convention and to determine whether the acts alleged by the Applicant constitute genocide. The Court itself has had the opportunity to elaborate on this point.[72]

80. Against this background, Colombia will now analyze subparagraphs (a) to (d) of Article II, listing the acts which constitute the *actus reus* of genocide, one by one. At the outset, however, it is important to point out that the commission of any one of the categories of acts identified in the Convention will amount to genocide, where accompanied by the requisite mental element, as will be further elaborated below.

(a) Killing members of the group

81. The first act listed in Article II is "killing members of the group". This formulation is quite straight-forward and was therefore agreed by the Sixth Committee without a great deal of discussion and without a vote.

82. It is apparent from the *travaux préparatoires* to the Convention that the term "killing" means intentional killing. Subsequent developments, particularly in the context of the Rome Statute of the International Criminal Court, indicate that the term "members of the group" means "one or more members of the group". In this regard, the International Criminal

[72] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p. 68, para. 153. See also *supra* para. 39.

Tribunal for Rwanda ("ICTR"), in *Prosecutor v. Akayesu* ("Akayesu") further elaborated that "the crime of genocide does not imply the actual extermination of a group in its entirety."[73]

83. The construction that the actual destruction of the protected group, be it in whole or in part, is not necessary is confirmed by the drafting of Article II itself. Genocide does not require, furthermore, that the individual act be part of a genocidal campaign or a systematic or widespread attack on a protected group.[74]

84. South Africa's Application and, more recently, the latest report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, document large-scale killings of Palestinians in Gaza targeted as such by Israel's military[75]. As of this filing, different UN agencies report over 30,000 Palestinians killed in Gaza including, chillingly, more than 13,000 children, "through lethal weapons and deliberate imposition of life-threatening conditions"[76], indiscriminately targeting "members of the protected group, assimilating them to active fighter status by default"[77], and blocking Gaza which is causing death by starvation by impeding access to vital supplies[78]. Hence, there are factual elements as well as the required mental element which will be discussed below, that would allow the Court to undertake its assessment as to the occurrence of "killings" of members of the group in the context of Article II (a), and whether these killings, in their various circumstances and contexts, were carried out with the intent to destroy the protected group.

(b) <u>Causing serious bodily or mental harm to members of the group</u>

85. Article II (a) of the Convention stipulates that one of the underlying acts of genocide is "[k]illing members of the group." The other underlying acts of genocide in Article II (b) - (e) refer to egregious acts other than killing.

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[73] *Prosecutor v. Akayesu, (Case No. ICTR-96-4-T), Judgment, 2 September 1998,* para. 731.

[74] *Prosecutor v. Kayishema and Ruzindana, (Case No. ICTR-95-1), Trial Judgment, 1 June 2001*, para. 163.

[75] UN Doc. A/HRC/55/73, 25 March 2024, pp. 6-7, paras. 22-26 (all notes omitted).

[76] *Ibid*., p. 6, para. 23. See also, UNRWA Situation Report #86 on the Situation in the Gaza Strip and the West Bank, including East Jerusalem (6 March 2024). At: https://www.unrwa.org/resources/reports/unrwa-situation-report-86-situation-gaza-strip-and-west-bank-including-east-Jerusalem.

[77] UN Doc. A/HRC/55/73, 25 March 2024, p. 7, para. 25.

[78] WFP, *Preventing famine and deadly disease outbreaks in Gaza requires faster, safer aid access and more supply routes* (15 January 2024). At: https://www.wfp.org/news/preventing-famine-and-deadly-disease-outbreaks-gaza-requires-faster-safer-aid-access-and-more .

86. Therefore, the fact that "killing" is identified in Article II (a) as but one in a list of several types of acts by which genocide may be perpetrated makes it clear that other acts are also susceptible of amounting to genocide, *i.e.,* those acts falling within one of the other subparagraphs of Article II. There is, thus, no hierarchy amongst the underlying acts of genocide. A coordinated strategy aimed at destroying a protected group, in whole or in part, demonstrates that killings and other underlying acts can be waged together in the context of a genocidal campaign.

87. When it comes to Article II(b), it is required that the perpetrator has intentionally caused serious bodily or mental harm to at least one member of the group. The construction of the elements of this act of genocide has been further clarified by international tribunals and even by domestic courts including Israel's own.

88. Indeed, in the *Eichmann* case, the District Court of Jerusalem elaborated on the meaning of "serious bodily or mental harm" as follows:

> "…serious bodily or mental harm of members of the group can be caused 'by the enslavement, starvation, deportation and persecution [...] and by their detention in ghettos, transit camps and concentration camps in conditions which were designed to cause their degradation, deprivation of their rights as human beings, and to suppress them and cause them inhumane suffering and torture'"[79].

89. For its part, in the *Akayesu* judgment, the ICTR expanded on the content of such act, in these terms:

> "…the Chamber takes serious bodily or mental harm, without limiting itself thereto, to mean acts of torture, be they bodily or mental, inhumane or degrading treatment, persecution."

90. In addition, in *Kayishema and Ruzindana* the ICTR further explained that:

> "It is the view of the Trial Chamber that, to large extent, 'causing serious bodily harm' is self-explanatory. This phrase could be construed to mean harm that seriously injures the health, causes disfigurement or causes any serious injury to the external, internal organs or senses."

[79] *Attorney General of the Government of Israel vs. Adolph Eichmann, District Court of Jerusalem, 12 December 1961*, p.192.

91. Moreover, Colombia considers that rape and other crimes of sexual violence may fall within the scope of paragraph (b), as confirmed by the ICTR Trial Chamber in *Akayesu*, in the following terms:

> "With regard, particularly, to the acts described in paragraphs 12(A) and 12(B) of the Indictment, that is, rape and sexual violence, the Chamber wishes to underscore the fact that in its opinion, they constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such. Indeed, rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways of inflicting harm on the victim as he or she suffers both bodily and mental harm."[80]

92. The intent of the Convention is, therefore, to punish serious acts of physical and mental violence even if they fall short of actual killing. In this vein, Colombia considers that inhumane and degrading treatment, as well as deportation, could amount to genocidal acts within the meaning of Article II(b), if the individual threshold of seriousness of the harm is met.

93. Colombia further interprets that non-physical aggressions such as the infliction of strong fear or strong terror, intimidation or threat are also acts constituting serious mental harm under the terms of this article. For its part, Colombia's construction of this paragraph is that physical harm need not be permanent,[81] while mental harm is understood to mean more than the minor or temporary impairment of mental faculties, in line with what the ICTR and other Tribunals have held.

94. Under the construction of this article that Colombia considers to be correct, serious physical and psychological harm against a protected people, may take various forms, including that of being subjected to violence and deprivation including severe hunger,[82] indiscriminate and lasting physical injuries inflicted specifically on it. In the instant case, this may be demonstrated, *inter alia*, by publicly available sources including wide media coverage and experts' reports such as that of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.[83] The Report's findings are particularly

[80] *Prosecutor v. Akayesu, (Case No. ICTR-96-4-T), Judgment, 2 September 1998,* para. 731.

[81] *Prosecutor v. Akayesu, (Case No. ICTR-96-4-T), Judgment, 2 September 1998,* para.501. See also *Prosecutor v. Rutaganda, ICTR-96-3, Judgment, 6 December 1999.*

[82] UN Doc. A/HRC/55/73, 25 March 2024, p. 8, para. 28.

[83] *Ibid*. p. 8, paras. 29-33 (all notes omitted).

poignant with regard to mental harm inflicted on this population, and what this portends for its future given the overwhelming adverse effects on children:

> "32. The survivors will carry an indelible trauma, having witnessed so much death, and experienced destruction, homelessness, emotional and material loss, endless humiliation and fear. Such experiences include fleeing amidst the chaos of war without telecommunications and electricity; witnessing the systematic destruction of entire neighbourhoods, homes, universities, religious and cultural landmarks; digging through the rubble, often with bare hands, searching for loved ones; seeing bodies desecrated; being rounded up, stripped naked, blindfolded and subjected to torture and other cruel, inhuman and degrading treatment; and ultimately, being starved, adults and children alike.
>
> 33. The savagery of Israel's latest assault is best illustrated by the torment inflicted upon children of all ages, killed or rescued from under the rubble, maimed, orphaned, many without surviving family. Considering the significance of children to the future development of a society, inflicting serious bodily or mental harm to them can be reasonably 'interpreted as a means to destroy the group in whole or in part'." [84]

95. The moral and physical harm that constitutes this specific act of genocide must be carried out with the intent to destroy the protected group, targeted as such. In light of the jurisprudence, it is possible to conclude that the nature and the sheer scope and magnitude of the physical injuries and mental harm inflicted upon Palestinians as a protected people, as well as the particularly heinous harms caused to children of the group, are demonstrably capable of achieving a genocidal outcome and, as such, can be held as strong evidence of intent.[85] Moreover, dehumanizing rhetoric, such as that employed by Israel's State officials and military personnel characterizing the entire protected group as an enemy to be eliminated or removed, can also, in the circumstances of the case where words have regrettably been very much accompanied by horrific deeds, configure a clear basis from which genocidal intent can be inferred.[86]

(c) Deliberately inflicting conditions of life calculated to destroy the group

96. Article II (c) of the Convention refers to the infliction of conditions of life on a group that are calculated to bring about its physical destruction, in whole or in part. The provision refers to measures that do not immediately or directly kill the members of the group,

[84] *Ibid.*, p. 8, paras. 32-33 (all notes omitted).
[85] UN Doc. A/HRC/55/73, 25 March 2024, p. 8, para. 33.
[86] UN Doc. A/HRC/55/73, 25 March 2024, pp. 11-13, paras. 48-50.

but which are, ultimately, aimed at their physical destruction. In addition, the deliberate imposition of conditions of life calculated to bring about the destruction of the group does not require that the destruction actually occurs; what is necessary is that the conditions were "calculated" to bring about such destruction, as clarified by the District Court of Jerusalem in the *Eichmann* case.[87]

97. The ICTR in *Akayesu* defines the means used to inflict such conditions as including "subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirements."[88]

98. In *Kayishema and Ruzindana*, the Tribunal further added that such means also include:

> "…rape, the starving of a group of people, reducing required medical services below a minimum, and withholding sufficient living accommodation for a reasonable period, provided the above would lead to the destruction of the group in whole or in part."[89]

99. At the time, in the explanation to the Draft Convention, the U.N. Secretariat interpreted this concept to include circumstances which will lead to a slow death, for example, lack of proper housing, clothing, hygiene and medical care or excessive work or physical exertion.[90]

100. For its part, the Elements of Crimes of the International Criminal Court provide:

> "The term 'conditions of life' may include, but is not necessarily restricted to, deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes."[91]

[87] *Attorney General v. Adolph Eichmann, District Court of Jerusalem, 12 December 1961*, para. 196.
[88] *Prosecutor v. Akayesu, (Case No. ICTR-96-4-T), Judgment, 2 September 1998,* para. 505.
[89] *Prosecutor v. Kayishema and Ruzindana, (Case No. ICTR-95-1), Trial Judgment, 1 June 2001*, para. 116.
[90] N. Robinson*, The Genocide Convention: A Commentary* (Institute of Jewish Affairs, World Jewish Congress, 1960)*,* p. 123.
[91] International Criminal Court, Elements of Crimes, Article 6 (c).

101. Colombia shares the interpretations made by the U.N. Secretariat and the one contained in the Elements of Crimes of the ICC. This act of genocide indeed involves the creation of circumstances leading to a slow death,[92] as explained by the ICTY in the *Brdanin* case.

102. Colombia further construes this provision as to mean that the conditions of life inflicted need to be calculated to physically exterminate part of the group and understands that there is an additional subjective requirement added by the word 'deliberately' in this provision, making it clear that it must be established that the perpetrator employs the conduct as a means to physically exterminate the group.

103. With regard to deportations and ethnic cleansing, Colombia considers that these acts could be covered under paragraphs (b) or (c) of Article II. Indeed, the International Law Commission, in its deliberations on the Draft Code of Crimes Against the Peace and Security of Mankind, concluded that deportation fell within the scope of Article II (c), to the extent that it occurred with the intent to destroy the group in whole or in part.[93]

104. Colombia is cognizant of the fact that the International Criminal Tribunal for the Former Yugoslavia ("ICTY") has indicated that "the forcible transfer does not constitute in and of itself a genocidal act" and that "the mere dissolution [of a group] does not suffice". [94]

105. Furthermore, in its February 2007 judgment in the *Genocide Convention (Bosnia)* case, the Court has clarified that:

> "…deportation or displacement of the members of a group, even if effected by force, is not necessarily equivalent to destruction of that group, nor is such destruction an automatic consequence of the displacement. This is not to say that acts described as 'ethnic cleansing' may never constitute genocide, if they are such as to be characterized as, for example, 'deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part', contrary to Article II, paragraph (c), of the Convention, provided such action is carried out with the necessary specific intent (*dolus specialis*), that is to

[92] *Prosecutor v. Brdanin (Case No. IT-99-36-T), Judgment, 1 September 2004,* para. 691.
[93] Draft Code of Crimes Against the Peace and Security of Mankind, UN Doc. A/51/332 (1996), p. 126.
[94] *Prosecutor v. Stakić, (Case No. IT-97-24-T), Judgment, 31 July 2003,* para. 519.

say with a view to the destruction of the group, as distinct from its removal from the region."[95]

106. In line with the *dicta* above, Colombia construes this provision to imply that, when the deportation of members of the group – whether it takes the form of forced displacement or forcible transfer of population – is combined with the withholding of essentials of life such as food, medical care, shelter, etc., it is thus calculated to physically exterminate group members and can therefore amount to a genocidal act.

107. The Court has at its disposal and is bound to receive in the course of these proceedings further abundant evidence of systematic and massive perpetration of acts imposing on the Palestinian population conditions of life which have been designed to bring about their physical destruction, inter alia, siege, starvation, widespread destruction of civilian and medical infrastructure, deprivation of food and medical supplies and treatment, and forcible displacement by means of systematic and widespread deportation. Colombia considers that the Court, being presented with such evidence, accompanied by manifestations of the Respondent State's officials about their intention to carry out massive deportations in order to wipe out entire towns in what could be construed as ethnic cleansing,[96] could conclude that such acts amount to genocidal acts.

(d) Imposing measures intended to prevent births within the group

108. Article II (d) of the Convention refers to the prevention of births within the group. In the case at hand, Israel's actions have imposed a particularly acute burden on pregnant women and newborn babies, which have been subject to increasingly dire, and often fatal, situations. Notably, in its Order of 26 January, the Court recalled the assessment by the WHO in relation to the dire situation of Palestinian women giving birth amidst the chaos prevailing in the Gaza Strip, to the effect that "15 per cent of the women giving birth in the Gaza Strip are likely to experience complications, and… maternal and newborn death rates are expected to increase due to the lack of access to medical care."[97]

[95] *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. 123, para. 190.

[96] See e.g. the statement of Israel's Minister of Finance, Bezalel Smotrich. Available at: https://www.theguardian.com/us-news/2023/mar/07/israel-finance-minister-visit-biden-pressure-block-bezalel-smotrich?ref=upstract.com .

[97] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024*, para. 71.

109. On this basis, the Court concluded in late January, in a general sense, that "the catastrophic humanitarian situation in the Gaza Strip is at serious risk of deteriorating further before the Court renders its final judgment"[98]. It further decided that Israel must take all measures to prevent the commission of all acts falling within the scope of Article II of the Convention, including, "imposing measures to prevent births within the group" found in paragraph (d).[99]

110. According to South Africa's Application[100] and subsequent reports by several agencies[101], the strikes and blockades in Gaza leading to extreme conditions of life, lack of essential supplies, inadequate or inexistant healthcare, maternity or emergency assistance, undernourishment, among others, have entailed a dramatic increase of miscarriages, stillbirths, and premature births, as well as deaths from preventable causes in both women and babies. For Colombia, were the Court to conclude that a causal relation exists between the strikes and blockades and the harm inflicted as described above, under the construction of this article that Colombia considers to be correct, it would also have before it sufficient elements from which genocidal intent can be inferred.[102]

(ii) The mens rea of genocide

111. As explained above, to prove genocide it is necessary to show that one or more of the acts listed in Article II of the Convention – and further analyzed before – were carried out with an "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." This is the essential characteristic of genocide, which distinguishes it from other

[98] *Ibid.*, para. 72.
[99] *Ibid.*, paras. 78 and 86.
[100] Application, paras. 95-100.
[101] WHO, *Women and newborns bearing the brunt of the conflict in Gaza, UN agencies warn* (3 Nov. 2023), at: https://www.who.int/news/item/03-11-2023-women-and-newborns-bearing-the-brunt-of-the-conflict-in-gaza-un-agencieswarn ; UNICEF, *Born into hell* (19 Jan. 2024), at: https://www.unicef.org/press-releases/born-hell ; UN News, *Gaza crisis: Babies being born 'into hell' amid desperate aid shortages* (19 Jan. 2024), at: https://news.un.org/en/story/2024/01/1145677 ; UN Press Release, Women bearing the brunt of Israel-Gaza conflict: UN expert (20 Nov. 2023), at: https://www.ohchr.org/en/press-releases/2023/11/women-bearing-brunt-israel-gaza-conflict-un-expert ; CARE, *GAZA: Collapsing medical conditions exacerbate risks of maternal, newborn mortality* (30 Oct. 2023), at: https://care.ca/2023/10/30/gaza-collapsing-medical-conditions-exacerbate-risks-of-maternal-newborn-mortality/ ; CARE, *100 days of darkness in Gaza: Urgent focus on maternal and reproductive health needed* (12 Jan. 2024), at: https://www.care-international.org/news/gaza-100-days-urgent-focus-maternal-and-reproductive-health-needed-4 .
[102] UN Doc. A/HRC/55/73, 25 March 2024, p. 6, para. 19.

serious crimes under international law. In other words, in order to prove genocide it should be established that the above-mentioned acts were targeted at a particular group as such.[103]

112. With regard to the specific intent in Article II, the *chapeau* to this provision of the Convention refers to the intent "to destroy", "in whole or in part", "a national, ethnical, racial or religious group", "as such." This Court has further clarified that *dolus specialis*, that is to say a specific intent in each of the terms set apart above, must be present, in addition to the intent required for each of the individual acts involved – when they have a specific intent as in letters (c) and (d) – in order for genocide to be established.[104]

113. In the correct construction of this provision, therefore, "intent" is not limited to the intent to physically destroy the group but also includes the intent to stop it from functioning as a unit. Thus, genocide as defined in Article II of the Convention needs not take the form of physical destruction of the group as some of the acts of genocide listed in Article II of the Convention do not entail the physical destruction of the group. By way of example, "causing serious mental harm to members of the group" (subparagraph (b) of Article II), and "deliberately inflicting conditions of life calculated to destroy the group" (subparagraph (c) of that Article) do not necessarily involve the extermination of the group, in whole or in part.

114. For its part, in the *Genocide Convention (Croatia)* case, the Court explained that:

> "Since it is the group, in whole or in part, which is the object of the genocidal intent, the Court is of the view that it is difficult to establish such intent on the basis of isolated acts. It considers that, in the absence of direct proof, there must be evidence of acts on a scale that establishes an intent not only to target certain individuals because of their membership to a particular group, but also to destroy the group itself in whole or in part."[105]

115. In the same decision, the Court further added:

> "The Court recalls that the destruction of the group 'in part' within the meaning of Article II of the Convention must be assessed by reference to a number of criteria. In this regard, it held in 2007 that 'the intent must be to destroy at least a

[103] *Prosecutor v. Akayesu, (Case No. ICTR-96-4-T), Judgment, 2 September 1998,* para. 122.

[104] *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. 132.

[105] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p. 64, para. 138.

substantial part of the particular group' (…), and that this is a 'critical' criterion (…). The Court further noted that 'it is widely accepted that genocide may be found to have been committed where the intent is to destroy the group within a geographically limited area' (…) and that, accordingly, '[t]he area of the perpetrator's activity and control are to be considered' (…). Account must also be taken of the prominence of the allegedly targeted part within the group as a whole. With respect to this criterion, the Appeals Chamber of the ICTY specified in its Judgment rendered in the *Krstić* case that

> '[i]f a specific part of the group is emblematic of the overall group, or is essential to its survival, that may support a finding that the part qualifies as substantial within the meaning of Article 4 [of the ICTY Statute, paragraph 2 of which essentially reproduces Article II of the Convention]'…"[106]

116. In 2007, the Court held that these factors would have to be assessed in any particular case.[107] It follows that, in evaluating whether the allegedly targeted part of a protected group is substantial in relation to the overall group, the Court will take into account the quantitative element as well as evidence regarding the geographic location and prominence of the allegedly targeted part of the group.

117. Colombia fully agrees with the interpretations made by the Court in the *Bosnia* and *Croatia* judgments. Indeed, in the correct construction of Article II of the Convention, the genocidal intent shall be evidenced by acts on a significant scale; the intent must be to destroy at least a substantial part of the particular group; genocide may be found to have been committed where the intent is to destroy the group within a geographically limited area; the area of the perpetrator's activity and control are to be considered; and account must also be taken of the prominence of the allegedly targeted part within the group as a whole. In the instant case, all of these thresholds have been clearly surpassed, as the Application of South Africa showed.

118. Furthermore, as stated by the ICTR in the *Akayesu* judgment:

> "In concrete terms, for any of the acts charged under Article 2 (2) of the Statute to be a constitutive element of genocide, the act must have been committed against one or several individuals, because such individual or individuals were

[106] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p. 65, para. 142.

[107] *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. 127, para. 201.

> members of a specific group, and specifically because they belonged to this group. Thus, the victim is chosen not because of his individual identity, but rather on account of his membership of a national, ethnical, racial or religious group. The victim of the act is therefore a member of a group, chosen as such, which, hence, means that the victim of the crime of genocide is the group itself and not only the individual."[108]

119. There is clear evidence that the acts committed by the IDF against Palestinians in Gaza have been perpetrated by reason of their membership to the group, as demonstrated in South Africa's Application, and as explicitly stated by several Israeli officials.

120. While the Genocide Convention is silent as to the manner in which genocide is to be proved, in *Croatia v. Serbia*, the parties agreed that the *dolus specialis* was to be sought, first, in the State's policy, while at the same time accepting that such intent will seldom be expressly stated. They further agreed that, alternatively, the *dolus specialis* may be established by indirect evidence, *i.e.,* deduced or inferred from certain types of conduct.

121. In *Akayesu* the Trial Chamber of the ICTR concluded that genocidal acts could be inferred from the physical acts, and specifically "their massive and/or systematic nature or their atrocity". The Chamber also added:

> "This is the reason why, in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact. The Chamber considers that it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent."[109]

122. Similarly, in *Kayeshima and Ruzindana*, the ICTR Trial Chamber ruled that:

> "…intent could be inferred from words of deeds and may be demonstrated by a pattern of purposeful action. In particular, the Chamber considers evidence such as the physical targeting of the group or their property; the use of derogatory language toward members of the targeted group; the weapons employed and the extent of bodily injury; the methodical way of planning, the systematic manner

[108] *Prosecutor v. Akayesu, (Case No. ICTR-96-4-T), Judgment, 2 September 1998,* para. 521.
[109] *Prosecutor v. Akayesu, (Case No. ICTR-96-4-T), Judgment, 2 September 1998,* para. 523.

of killing. Furthermore, the number of victims from the group is also important."[110]

123. In the opinion of Colombia, facts of the scale and systematicity as those presented in the Application and the evidence appended thereto, would establish that members of a group protected under the Convention are being targeted because of their being part of that group, whose destruction "as such" is deliberately intended by the authorities of a State Party.[111]

124. Thus, from the pattern of conduct of a State Party to the Convention against the members of a protected group – such as that which the Applicant attributes to Israel against Palestinians in Gaza – it can be reasonably inferred that the intent is to destroy the group, in whole or in part. Also, importantly, when – as in the present case – such behaviour has been significantly accompanied by the constant utterance of statements by that State Party's highest officials which, taken both individually and as a whole, constitute clear, direct and public incitement to genocide.

125. Israel's highest authorities have expressly stated that their intent is to clear the Gaza Strip of all or part of the Palestinian inhabitants[112] either by direct killing or causing serious bodily and even mental harm to them, and by deliberately inflicting on the group conditions of life calculated to bring about their physical destruction, by way of physically eliminating most of their living spaces, health facilities and means of subsistence, and even hindering the charitable efforts of bringing food and medicine to the area, as described below.

126. Further, a decision by a State Party to the Convention entailing deportation of such scale as that undertaken by the Israeli Government with respect to all Palestinians in the Northern Gaza Strip, especially as it concerns children, must be characterized as showing genocidal intent, insofar as it imposes adverse conditions of life that are aimed at, and are

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[110] *Prosecutor v. Kayishema and Ruzindana, (Case No. ICTR-95-1), Trial Judgment, 1 June 2001*, para. 93.

[111] Application, paras. 101-107.

[112] See for example the statement made by the President of Israel, where he said*: "It's an entire nation out there that is responsible. It's not true this rhetoric about civilians not aware not involved. It's absolutely not true (...) and we will fight until we break their backbone."* available at https://www.itv.com/news/2023-10-13/israeli-president-says-gazans-could-have-risen-up-to-fight-hamas. The Minister of Defense also said "*I have ordered a complete siege on the Gaza Strip. There will be no electricity, no food, no fuel, everything is closed (...). We are fighting human animals and we are acting accordingly",* available at https://www.timesofisrael.com/liveblog_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/.

objectively capable of, exterminating a prominent and substantial part of such group. Colombia has clarified above that under its interpretation of paragraphs (b) and (c) or Article II, deportation can constitute a genocidal act when the intention is to destroy the targeted group in whole or in part. Colombia interprets that this is what a State Party to the Convention would intend to do, according to its own manifestations, such as those quoted above and compiled in South Africa's comprehensive Application. Moreover, the aforementioned report by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, in referencing the Court's and other tribunals' previous dicta,[113] recalls that if displacement or mass deportation are perpetrated with the requisite intent to destroy the protected group as such, this may amount to genocide.[114]

127. Subsequent statements by officials of a State Party to the Convention, such as those made by Israeli officials to the effect that the acts of the IDF and other measures adopted were intended only against Hamas or to prevent further attacks from that group, appear to have been disproven by the scale of indiscriminate suffering and widespread destruction wrought by the acts of the IDF as well other measures enforced against *all* the members of the Palestinian population group, continuing as of the date of this filing.

128. In Colombia's interpretation of the Convention, actions carried out under such circumstances as described above by a State Party to the Convention would imply that acts constituting the *actus reus* of genocide within the meaning of Article II of the Convention were committed with the specific intent required for them to be characterized as acts of genocide.

*(3) Article III – Acts punishable under the Convention*

129. In addition to genocide itself, which is defined in article II of the Convention, Article III describes other four forms of participation in such crime: (i) conspiracy, (ii) direct and public incitement, (iii) attempt and (iv) complicity. These are referred to as "other acts" in Articles IV, V, VI, VII, VIII and IX of the Convention. As the first paragraph of Article III refers

[113] UN Doc. A/HRC/55/73, 25 March 2024, p. 6, para. 19, footnote 47:
"ICJ, *Gambia v. Myanmar*, Joint Declaration of Intervention of Canada, Denmark, France, Germany, the Netherlands, and the United Kingdom (2023), paras. 44-47; ICJ, *Bosnia v. Serbia*, Provisional Measures Order, 1993, Judge Lauterpacht, para. 123; and Judgment (2007), para. 190; *Prosecutor v. Karadžić and Mladić*, IT-95-5-R61 ICTY, Review-of-Indictments, 16 July 1996, para. 94; *Prosecutor v. Krstić*, IT-98-33-A ICTY, Appeal Judgement, 19 April 2004, para. 31-33."

[114] UN Doc. A/HRC/55/73, 25 March 2024, p. 6, para. 19.

to "genocide", the Convention establishes that the four subsequent acts are not genocide as such, but independent crimes which are also punishable.

130. In Colombia's interpretation of this provision, the act of genocide is clearly punishable and the States parties to the Convention have undertaken a positive obligation to do everything at their disposal in order to bring about such punishment. At the same time, the acts of conspiracy, incitement, and attempt are inchoate or incomplete crimes, and can be committed even if the principal offence itself – a genocide – never takes place. In this vein, for example, direct and public incitement to commit genocide may be perpetrated even if nobody actually acts upon this incitement.

131. Colombia is of the view that inchoate offences as those referred to in paragraphs (b) to (e) of Article III are particularly important for the fulfilment of the Convention because of their preventive role. In a manner consistent with the object and purpose of the Convention and its concurrent obligation to prevent genocide the law should apply even before the crime actually takes place, given the seriousness of the crime of genocide and its dire consequences for humanity.

132. In the *Genocide Convention (Bosnia)* case, the Court had the opportunity to elaborate on the interplay between genocide and the "other acts" in the following terms:

> "Thus, if [it is concluded] that some acts of genocide are attributable to the Respondent, it would be unnecessary to determine whether it may also have incurred responsibility under Article III, paragraphs (b) to (e), of the Convention for the same acts. Even though it is theoretically possible for the same acts to result in the attribution to a State of acts of genocide (contemplated by Art. III, para. (a)), conspiracy to commit genocide (Art. III, para. (b)), and direct and public incitement to commit genocide (Art. III, para. (c)), there would be little point, where the requirements for attribution are fulfilled under (a), in making a judicial finding that they are also satisfied under (b) and (c), since responsibility under (a) absorbs that under the other two. The idea of holding the same State responsible by attributing to it acts of 'genocide' (Art. III, para. (a)), 'attempt to commit genocide' (Art. III, para. (d)), and 'complicity in genocide' (Art. III, para. (e)), in relation to the same actions, must be rejected as untenable both logically and legally."[115]

[115] *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. 200, para. 380.

133. Colombia shares this interpretation of Article III, since it understands that the same action cannot, logically and legally, be deemed to be, at the same time, an act of genocide, an attempt to commit genocide or complicity in genocide. However, were the Court to find that a State did not commit genocide in the sense of paragraph (a) of Article III, it would still be bound to enquire whether such State committed any of the other acts referred to in paragraphs (b) to (e) of the same provision. As the Court itself continued to state in the *Bosnia* case:

> "…there is no doubt that a finding by the Court that no acts that constitute genocide, within the meaning of Article II and Article III, paragraph (a), of the Convention, can be attributed to the Respondent will not free the Court from the obligation to determine whether the Respondent's responsibility may nevertheless have been incurred through the attribution to it of the acts, or some of the acts, referred to in Article III, paragraphs (b) to (e). In particular, it is clear that acts of complicity in genocide can be attributed to a State to which no act of genocide could be attributed under the rules of State responsibility (…)
>
> Furthermore, the question whether the Respondent has complied with its obligations to prevent and punish genocide arises in different terms, depending on the replies to the two preceding questions. It is only if the Court answers the first two questions in the negative that it will have to consider whether the Respondent fulfilled its obligation of prevention, in relation to the whole accumulation of facts constituting genocide. If a State is held responsible for an act of genocide (because it was committed by a person or organ whose conduct is attributable to the State), or for one of the other acts referred to in Article III of the Convention (for the same reason), then there is no point in asking whether it complied with its obligation of prevention in respect of the same acts, because logic dictates that a State cannot have satisfied an obligation to prevent genocide in which it actively participated. On the other hand, it is self-evident, as the Parties recognize, that if a State is not responsible for any of the acts referred to in Article III, paragraphs (a) to (e), of the Convention, this does not mean that its responsibility cannot be sought for a violation of the obligation to prevent genocide and the other acts referred to in Article III."[116]

134. It is therefore necessary to analyse the entire contents of Article III as, in the instant case, the question of whether Israel incurred in "other acts", beyond committing genocide, is at play.

[116] *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. 200-201, paras. 381-382.

135. With regard to Article III (b), in Colombia's interpretation of the Convention, "conspiracy" comprises the situation where two or more persons have agreed upon a common plan to commit genocide. Such act shall also reflect the same specific intent required for genocide itself.

136. Colombia's construction of the Convention, and of this paragraph in particular, is that conspiracy is an inchoate offence, committed when two or more people agree to carry out a crime, regardless of whether or not the crime itself is committed.

137. This position is shared by the ICTR Trial Chamber on the *Prosecutor v. Musema case*, where it said:

> "Such a definition is in keeping with the intention of the Genocide Convention. Indeed, the '*Travaux Préparatoires*' show that the crime of conspiracy was included to punish acts which, in and of themselves, did not constitute genocide."[117]

138. As for the mental element, or *mens rea* of the crime, it must be established that the accused intended to destroy, in whole or in part, a protected group as such, or, in other words, the conspirators must share the genocidal intent.

139. In order to demonstrate the material element of the crime of conspiracy, documents or statements from the conspirators would be the easier means of proof. However, where this is not available, indirect evidence of a common plan or conspiracy may be deemed sufficient, as was the case for the Trial Chamber of ICTR in *Prosecutor v. Niyitegeka*.[118]

140. In the present case, as disclosed by the facts set out in South Africa's Application, genocide was actually committed against the Palestinian population in Gaza. This does not exclude the possibility that individual Israeli leaders who did not themselves commit or personally direct the commission of the acts in question may be guilty of conspiracy in terms of their overall responsibility for planning the crime.

141. For its part, with regard to the act of "Direct and public incitement to commit genocide", contained in Article III (c), as stated *supra*, Colombia is of the opinion that

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[117] *Prosecutor v. Alfred Musema, (Case No. ICTR-96-13-T), Judgement and Sentence, 27 January 2000,* para. 198.

[118] *Prosecutor v. Eliézer Niyitegeka, (Case No. ICTR-96-14-T), Judgement and Sentence, 16 May 2003.*

incitement is an inchoate crime, and can be committed even if the principal offence itself – a genocide – never takes place.

142. The ICTR has defined incitement as a class of inchoate offences, which

> "are in themselves particularly dangerous because of the high risk they carry for society, even if they fail to produce results, warrants that they be punished as an exceptional measure. The Chamber holds that genocide clearly falls within the category of crimes so serious that direct and public incitement to commit such a crime must be punished as such, even where such incitement failed to produce the result expected by the perpetrator."[119]

143. Colombia fully agrees with such characterization, considering that punishing incitement is entirely in line with the obligation of States Parties to the Genocide Convention to prevent genocide, first of the two core goals of the Convention.

144. Furthermore, Article III (c) mentions that incitement has to be direct and public. With regard to the direct element of incitement, in *Akayesu*, the Trial Chamber of the ICTR stated that "the direct element of incitement should be viewed in the light of its cultural and linguistic content. A particular speech may be perceived as 'direct' in one country, and not so in another, depending on the audience."[120] This is a ruling that Colombia shares. This precedent also clarified that "public" refers to words that are spoken aloud in a place that is public by definition.[121]

145. In the present case, as disclosed by the facts set out in South Africa's Application, individual Israeli officials who did not themselves commit or personally direct the commission of acts of genocide, may nonetheless be guilty of incitement to commit genocide.

146. For its part, Article III (d) includes "attempt to commit genocide" as another action punishable under the Convention. The offence of attempt to commit genocide appeared in the earliest draft of the Convention and was adopted by the Sixth Committee without debate.

147. The Rome Statute of the ICC, to which Colombia and Palestine are Parties, provides in Article 25 (3) (f) certain clarity as to the threshold to demonstrate attempt to commit

[119] *Prosecutor v. Akayesu, (Case No. ICTR-96-4-T), Judgment, 2 September 1998,* para. 562.
[120] *Prosecutor v. Akayesu, (Case No. ICTR-96-4-T), Judgment, 2 September 1998,* para. 556.
[121] *Prosecutor v. Akayesu, (Case No. ICTR-96-4-T), Judgment, 2 September 1998,* para. 555.

genocide, when it states that an attempt occurs when the offender "commences its execution by means of a substantial step". Colombia endorses this definition.

148. Colombia further considers that, in order to establish when a preparatory act becomes a criminal one, the attempt must involve actions or steps going beyond mere preparation and showing a beginning of execution of the crime, in line with the threshold defined in many domestic criminal systems.

149. Finally, Article III (e) refers to "Complicity" as another punishable act under the Convention. Complicity can involve planning, ordering or otherwise aiding and abetting in the planning, preparation, or execution of genocide.

150. The principle that accomplices to the commission of a genocide should be punished is one that clearly emanates from the seminal importance of the crime of genocide itself. The Appeals Chamber of the ICTY said it best:

> "Although only some members of the group may physically perpetrate the criminal act (murder, extermination, wanton destruction of cities, towns or villages, etc.), the participation and contribution of the other members of the group is often vital in facilitating the commission of the offence in question. It follows that the moral gravity of such participation is often no less – or indeed no different – from that of those actually carrying out the acts in question."[122]

151. While aware of the fact that there is no clear consensus among the international criminal tribunals on where to draw the line between an accomplice and the perpetrator, Colombia is of the opinion that complicity is a grave crime, and one clearly intended to be punished by the Convention. For example, in the *Karadžić and Mladić* case, the ICTY made clear how important complicity can be in establishing the criminal liability of leaders, organisers and planners.[123]

152. For its part, Colombia considers that complicity can take place both after the crime, as well as prior to commission, as confirmed by the jurisprudence of the ICTY.[124]

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[122] *Prosecutor v. Tadic (Case No. IT-94-1-A), Judgment, 15 July 1999,* para. 191.

[123] *Prosecutor v. Karadžić and Mladić, (Cases No, IT-95-5-R61, IT-95-18-R61), Consideration of the Indictment Within the Framework of Rule 61 of the Rules of Procedure and Evidence, 11 July 1996,* para. 84.

[124] See for example, *Prosecutor v. Tadic (Case No. IT-94-1-A), Judgment, 15 July 1999,* para. 692.

153. Furthermore, the ICTY has ruled that an accomplice need not "meet all the requirements of *mens rea* for a principal offender";[125] and that what needs to be demonstrated is whether the accused had knowledge of the principal offender's intent.

154. Colombia shares this interpretation which has been followed by the ICTR as well. Indeed, in *Akayesu* the Tribunal ruled that:

> "an accomplice to genocide need not necessarily possess the *dolus specialis* of genocide (…) an accused is liable as an accomplice to genocide if he knowingly aided or abetted or instigated one or more persons in the commission of genocide, while knowing that such person or persons were committing genocide, even though the accused himself did not have the specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such."[126]

155. In sum, in the opinion of Colombia – in line with its construction of Article III, which it considers to be the only one consistent with the object and purpose of the Convention – the facts and evidence in South Africa's Application, would demonstrate that in the case of the situation in Gaza, the authorities of a State Party to the Convention have committed all of the acts punishable under Article III of the Convention and, in doing so, they have engaged the international responsibility of that State[127].

156. It is, therefore, for the Court to establish whether genocide was committed by Israel *and* whether the State of Israel has engaged in "conspiracy to commit genocide", in "direct and public incitement to commit genocide", in an "attempt to commit genocide" or in "complicity in genocide". Such analysis demands that the Court study whether the acts in question were accompanied by their specific intent, which – in the terms described by Colombia in this section – need not meet all the requirements of *mens rea* for the principal offense.

*(4) Article IV – Duty to punish persons committing genocide*

157. In addition to its contentions regarding the commission of acts of genocide by Israel's State organs, South Africa further contends that Israel is responsible for breaches of

[125] *Prosecutor v. Anto Furundzija (Trial Judgement), IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998,* para. 243.

[126] *Prosecutor v. Akayesu, (Case No. ICTR-96-4-T), Judgment, 2 September 1998,* para. 544.

[127] *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. 80-81, para. 181-182.

Articles IV to VI of the Genocide Convention. In its Application, South Africa argues that Israel is to be found responsible for breaching its duty to punish genocide as a result of:

- failing to punish genocide, conspiracy to commit genocide, direct and public incitement to genocide, attempted genocide and complicity in genocide, in violation of Articles I, III, IV and VI of the Convention;

- failing to enact the necessary legislation to give effect to the provisions of the Genocide Convention and to provide effective penalties for persons guilty of genocide, conspiracy to commit genocide, incitement to genocide, attempted genocide, and complicity in genocide, in violation of Article V; and

- failing to allow and/or directly or indirectly impeding the investigation by competent international bodies or fact-finding missions of genocidal acts committed against Palestinians in Gaza, including those Palestinians removed by Israeli State agents or forces to Israel, as a necessary and corollary obligation pursuant to Articles I, III, IV, V and VI.[128]

158. In its judgment in the *Genocide Convention (Bosnia)* case, the Court described these provisions of the Convention in the following manner:

> "According to Article IV, persons committing any of those acts shall be punished whether they are constitutionally responsible rulers, public officials or private individuals. Article V requires the parties to enact the necessary legislation to give effect to the Convention, and, in particular, to provide effective penalties for persons guilty of genocide or other acts enumerated in Article III. Article VI provides that '[p]ersons 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'".[129]

159. The Court also grouped Articles V and VI –along with Article VII– in another passage of the same decision, when it made the important point that their breach entails the responsibility of the State, as provided for in Article IX. The Court added that compliance with these provisions may also encompass a way for a State party to discharge its duty to prevent:

> "…provisions of the Convention do impose obligations on States in respect of which they may, in the event of breach, incur responsibility. Articles V, VI and

[128] Application para. 110.

[129] *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. 103, para. 144.

> VII requiring legislation, in particular providing effective penalties for persons guilty of genocide and the other acts enumerated in Article III, and for the prosecution and extradition of alleged offenders are plainly among them. Because those provisions regulating punishment also have a deterrent and therefore a preventive effect or purpose, they could be regarded as meeting and indeed exhausting the undertaking to prevent the crime of genocide stated in Article I and mentioned in the title."[130]

160. 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.[131]

161. Article IV is where the principal duty to punish is found. It reads 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."

162. Article IV concretizes the positive obligation to "punish" described in article I of the Convention. This provision essentially includes a primary procedural obligation found in the treaty, as it describes how States Party are to discharge their obligation to punish. According to this provision, Parties to the Convention are to discipline any person who has undertaken an act that can be qualified under Article III as an act of genocide. Subsequently, Article IV explains that this duty is to be discharged without consideration of the position of the person responsible.

163. At least two essential issues arise from the foregoing. First, Article IV indicates that the object of the obligation to punish are any and all persons that have committed acts described in Article III. Second, that the status of the person concerned may not bar prosecution if that person is responsible for any of the acts of genocide listed in Article III of the Convention.

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[130] *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. 109, para. 159. See also the same decision at p. 219, para. 426.

[131] C.J. Tams *et al, Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary* (C.H. Beck / Hart Publishing / Nomos, 2014), p. 192.

164. The term "persons" as it is used in Article IV is not explicitly defined in the Convention. Nevertheless, a good faith interpretation of said provision indicates that it is meant to signify any individual who committed an act of genocide as described in Article III[132]. Accordingly, any public official or private individual can fall under the scope of application of Article IV. Therefore, all States parties should actively seek to punish all individuals that either engage in genocide or promote it.[133]

165. It is worth highlighting that the Convention does not limit punishment to those most responsible, as other instruments of International Criminal Law provide. Rather, the obligation contained in Article IV will apply to anyone whose actions may fall within the purview of Article III. Moreover, the obligation described in this provision should not be read as to be limited by considerations of State responsibility and attribution thereto. The well-known criteria of "duality of responsibilities", as articulated by the Court in the *Bosnia* case, is fully applicable here.[134]

166. On the other hand, Article IV also explains that punishment should be carried out whatever the position of the person responsible. This language is of the utmost importance at it clarifies that the only condition for the obligation to punish to arise is that a person has committed an act of genocide. Once a person falls under the scope of application of the Convention, nothing should bar prosecution. This language should be read to denote that States may not invoke internal provisions to shield a perpetrator from punishment, or to justify inaction against a person responsible for acts of genocide as described in Article III[135]. In the same vein, official capacity, be that of heads of government, heads of State, or political or military leaders, cannot prevent punishment from being imposed upon a person if it is found that the person committed acts genocide.[136]

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[132] C.J. Tams *et al, Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary* (C.H. Beck / Hart Publishing / Nomos, 2014), p. 195.

[133] *Ibid.*

[134] *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. 111-112, para. 163; pp. 116-117, paras. 173-174.

[135] P. Gaeta (ed.), *The UN Genocide Convention: A Commentary* (Oxford University Press, 2009), p. 320.

[136] W. Schabas, *Genocide in International Law,* 2nd ed (Cambridge University Press, 2009), p. 83.

*(5) Article V – Obligation to enact legislation*

167. Furthermore, article V indicates that:

"Article V

> 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."

168. Article V imposes an obligation on the contracting parties of the Genocide Convention to incorporate its provisions into domestic law. This incorporation is to be accomplished through the enactment of legislation, in conformity with their respective constitutions. It is noteworthy that the contracting parties are, particularly, directed to establish effective penalties for individuals found guilty of genocide or any other acts enumerated in Article III.

169. As articulated by the Court, Article V represents one of the provisions of the Genocide Convention that imposes obligations on States in respect of which they may, in the event of breach, incur in responsibility under international law.[137]

170. Considering that the Convention lacks provisions for international supervision, implementation or enforcement mechanisms, the obligation under Article V to enact the necessary legislation is crucial for giving effect to the Convention and its aspiration to prevent and punish genocide.[138] Indeed, the primary responsibility of States in this regard is not diluted by the subsequent creation of special international tribunals in the cases that have so required and even the International Criminal Court, the cornerstone of which is the notion of complementarity.

[137] *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. 70, para. 159.

[138] B. Saul, "Article 5: Giving domestic effect to the Genocide Convention" (October 2009), *Sydney Law School Research Paper No. 09/105*, p. 1.

171. Moreover, as the Convention was designed as an international multilateral treaty to safeguard national, ethnical, racial, and religious groups, Article V is the provision emphasizing the necessity to incorporate specific measures into domestic law aimed at preventing and punishing genocidal practices against this sort of groups.[139]

172. In interpreting the meaning of Article V, it becomes apparent that the concept "necessary legislation", as stipulated in this article, is not explicitly defined in the Convention. Nevertheless, it should be understood in conjunction with the phrase "to give effect to the provisions of the Convention". In its entirety, this denotes that such legislation must encompass provisions related to the prevention and punishment of genocide (Article I); the definition of the crime and its extended forms (Articles II and III); the punishment of any perpetrator regardless of official status (Article IV); and the establishment of a trial by a competent tribunal 'of the State in the territory of which the act was committed', or by an international tribunal (Article VI).[140]

173. On the other hand, Article V particularizes its obligation to give domestic effect to the Convention by mandating that States 'provide effective penalties' for genocide. Nevertheless, the Convention does not specify or set out any guidelines as to penalties in any of its provisions. Consequently, penalties that States have prescribed for genocide in their domestic law vary widely.[141] Given this considerable variation in penalties for genocide, reference to the penalty scheme of the International Criminal Court may be illustrative.[142]

174. The obligation under Article V of the Convention therefore compels States to promulgate domestic legislation in conformity with the objective and purpose, and the terms of the Genocide Convention. In particular, it prescribes that those found guilty of genocide must face effective penalties. In this regard, the failure to promulgate such legislation or to provide effective penalties is construed as a breach of the provisions of Article V. Moreover, as will be shown below, this obligation is closely related to that in Article VI of the Convention.

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[139] W. Schabas, *Genocide in International Law,* 2nd ed. (Cambridge University Press, 2009), p. 401.

[140] B. Saul, "Article 5: Giving domestic effect to the Genocide Convention" (October 2009), in *Sydney Law School Research Paper No. 09/105*, p. 3.

[141] *Ibid.*, p. 11.

[142] *Ibid.,* p. 13.

*(6) Article VI – Trial of persons charged with genocide*

175. Lastly, Article VI provides that:

"Article VI

> 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."

176. Amongst the procedural obligations to be found in the Genocide Convention that in Article VI is prominent. This provision contains an obligation which requires from States Party to prosecute persons for acts committed in their territory, or to cooperate with international penal tribunals that may be competent in the matter. As such, Article VI is squarely based on the territorial sovereignty of the State on whose territory the acts were committed.

177. The duty provided for in Article VI of the Convention is to be read in reference to the obligation contained in Article IV. This means that States should act against all persons who may be charged with having committed genocidal acts. Accordingly, a State party to the Convention cannot excuse inaction against mid- and lower-level perpetrators responsible under the pretense that the obligation only exists vis-à-vis the highest echelons of responsibility, as would be the case before the ICC.

178. Colombia considers necessary to recall that questions of territorial jurisdiction over liable individuals in no way precludes the international responsibility of the State. Further, the territorial scope of article VI is to be read without prejudice to Article I of the Convention. Regarding this duality, in the *Genocide Convention (Bosnia)* case the Court indicated:

> "The substantive obligations arising from Articles I and III are not on their face limited by territory. They apply to a State wherever it may be acting or may be able to act in ways appropriate to meeting the obligations in question.
>
> The obligation to prosecute imposed by Article VI is by contrast subject to an express territorial limit. The trial of persons charged with genocide is to be in a

> competent tribunal of the State in the territory of which the act was committed (…), or by an international penal tribunal with jurisdiction "[143]

179. Therefore, there is no doubt that the territorial scope described in Article VI is limited to said article. Accordingly, the obligation contained in Article VI in no way precludes the capacity of a State to bring a claim against another State for acts that may amount to a breach of Article I and therefore give rise to the international responsibility of the latter State.

180. Under Article VI this obligation also requires States to cooperate with international penal tribunals that may have jurisdiction upon a State on whose territory acts amounting to genocide may have been committed.

181. Additionally, Colombia is of the position that the Convention, by requiring prosecution by competent tribunals of the territorial State, imposes upon that State a duty to ensure that persons falling within the scope of Article IV are tried before impartial competent tribunals. As the Human Rights Committee pointed out in its General Comment No. 32, trials should be carried out by independent and impartial tribunals:

> "[P]rotecting judges from any form of political influence in their decision-making (…). A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of independent tribunal. It is necessary to protect judges from against conflicts of interest and intimidation (…)"[144]

182. This obligation, designed to protect individuals against States, should be read also to entail that tribunals in the State where the offense was committed are acting independent and impartially of political considerations. Accepting otherwise would render the obligation contained in Article VI meaningless as territorial States unwilling to actively prosecute their nationals could use this Article as a shield against meting punishment to perpetrators. Therefore, if a State is unable or unwilling to undertake the actions necessary to punish a person falling within the scope of Article IV, it would necessarily have to be found in breach of Article VI.

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[143] *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. 183.

[144] United Nations Human Rights Committee, General comment no. 32, Article 14, *Right to equality before courts and tribunals and to fair trial,* CCPR/C/GC/32, 2007, para 19.

183. For the foregoing reasons, the requirement under Article 82, paragraph 2 (c) of the Rules of Court, is met.

## V DOCUMENTS IN SUPPORT OF THE DECLARATION OF INTERVENTION

184. In addition to the readily available documents referred to above, the following documents are 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: Submission to Congress of the draft bill "whereby the *Convention on the Prevention and Punishment of the Crime of Genocide* is approved", Archives of the Ministry of Foreign Affairs of Colombia, February 1959.

Annex 3: United Nations Depository Notification confirming Colombia's ratification of the Genocide Convention, dated 9 November 1959.

## VI CONCLUSION

185. On the basis of the information set out above, Colombia avails itself of the right conferred upon it by Article 63, paragraph 2, of the Statute 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)*. The present Declaration meets the requirements set out in Article 63 of the Statute and Article 82 of the Rules and is, thus, admissible.

186. The Government of Colombia 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.

187. In so doing, Colombia is also acting under Article VIII of the Convention, which authorizes any contracting party to call upon the competent organs of the United Nations to take "such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any other acts enumerated in Article III."

188. Thus, Colombia respectfully calls upon the International Court of Justice, the principal judicial organ of the Organization, to execute this mandate with a view to ensuring the safety and, indeed, the very existence of the Palestinian people, a distinct group protected under the Genocide Convention, bearing in mind the real and imminent risk of irreparable prejudice to its rights, as recently recognized by the Court itself.[145] As Judge Xue aptly reminded us in her Declaration appended to the Order of 26 January,

> "… '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."[146]

189. Colombia acknowledges that in dealing with this case the Court has a daunting task before it, and that the Court's ruling on the merits of the case is bound to have a profound and lasting impact. Colombia ventures to expect that the construction of the provisions of the Convention advanced in the present Declaration will be of assistance for the Court in the performance of said task.

[145] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024,* paras. 54, 59 and 74, and *Provisional Measures, Order of 28 March 2024,* paras. 27, and 30-40.

[146] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel), Provisional Measures, Order of 26 January 2024, Declaration of Judge Xue,* para. 2.

190. Colombia reserves the right to supplement or amend this Declaration, and any Written Observations submitted with respect to it, as it considers necessary in response to subsequent developments in these proceedings.

191. Colombia 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 Colombia, Groot Hertoginnelaan 14, 2517 EG, The Hague, The Netherlands.

**JUAN JOSÉ QUINTANA, AMBASSADOR**

**Agent of the Republic of Colombia**

April 5, 2024

## LIST OF ANNEXES

# 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

INTERNATIONAL COURT OF JUSTICE

FEBRUARY 6, 2024

English version

COUR INTERNATIONALE DE JUSTICE | INTERNATIONAL COURT OF JUSTICE

**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).

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)]

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Annex 1



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 prejudges 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.

Philippe Gautier
Registrar

# ANNEX 2

## SUBMISSION TO CONGRESS OF THE DRAFT BILL "WHEREBY THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE IS APPROVED"

ARCHIVES OF THE MINISTRY OF FOREIGN AFFAIRS OF COLOMBIA

FEBRUARY 1959

Unofficial English Translation

STATEMENT OF PURPOSE

of the bill "approving the Convention for the Prevention and Punishment of the Crime of Genocide."

HONOURABLE SENATORS AND REPRESENTATIVES:

The practices and customs of war, whose changes we witnessed during the last world conflict, have given rise to new modalities of *ius gentium* regarding the concepts of crime and punishment.

International Agreements on the repression of certain crimes against Christian morality and the civilized customs of peoples, signed in the 19th century to combat piracy and the slave trade, as well as in the early 20th century regarding human trafficking and the circulation of obscene publications, had introduced, in theory, a notion of criminality beyond the exclusive jurisdiction ("forum delicti") of States.

Authoritative public law scholars and eminent jurists such as Lapradelle, Donnedieu de Vavres, Garófalo, and Quintiliano Saldaña, in recent years, have endeavoured to translate the notion of "assault on international justice" into norms. Abundant information on this can be found in the work carried out by the Committee of Jurists that drafted, in 1920, the Statute of the Permanent Court of International Justice, and in the Records of several Conferences of experts in International Criminal Law, held between 1926 and 1935. However, the true novelty of the doctrines I am now referring to lies in admitting the individual's criminal responsibility under International Law.

Alongside the individual's responsibility before the State, these trends recognize another category of crimes and penalties called "Juris Gentium" or International Public Order with regard to which, the existence of rules and punishments promulgated by the community of nations is acknowledged. Such are war crimes and offences against the peace and security of mankind, addressed in the important Resolution number 95 (I) adopted by the United Nations General Assembly on December 11, 1946, entrusting a special Commission with the codification of the principles set out in the charter and judgment rendered by the International Military Tribunal in Nuremberg.

To illustrate your views on the matter, I will transcribe below the definitions of those crimes given in the Charter of the International Military Tribunal, according to document A/CN. 4/5 of March 3, 1949[1], drafted by the United Nations Secretariat to serve as a working document for the International Law Commission of the United Nations:

> "(a) Crimes against peace: Namely, planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements

[1] [Handwritten: "…titled Affirmation of the Principles of International Law recognized by the Charter of the Nürnberg Tribunal".]

> or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
>
> (b) War crimes: Namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment, or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity;
>
> (c) Crimes against humanity: Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecution on political, racial or religious grounds in execution of or in connexion with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated."

Genocide constitutes a particular category of those crimes, and the novelty of this term has been accepted by public law scholars to mean any act aimed at the destruction of a human group, whether for religious, racial, or political reasons.

Coercive systems and biological procedures were employed in the Second World War to carry out such an enterprise: the former involved the collective murder or extermination of entire peoples, as well as the reduction of a racial group to servitude or the deprivation of their human rights, their internment in concentration camps, or their forced migration to places other than their natural residence; the latter refers to methods to sterilize the human person in their reproductive function, to any degenerative process, or collective violence exerted against a defenceless population, such as separating children from their parents and taking them to another country, as happened it not long ago in Central Europe.

In order to prevent and punish similar methods of conducting war between States in the future, the United Nations General Assembly, through Resolution number 96 (I) of December 11, 1946, defined this crime and ordered the following:

> "Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations.
>
> Many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part.
>
> The punishment of the crime of genocide is a matter of international concern.

The General Assembly, therefore,

Affirms that genocide is a crime under international law that civilized world condemns, and for the commission of which principals and accomplices – whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds – are punishable;

Invites the Member States to enact the necessary legislation for the prevention and punishment of this crime.

Recommends that international cooperation be organized between States with a view to facilitating the speedy prevention and punishment of the crime of genocide, and, to this end,

Requests the Economic and Social Council to undertake the necessary studies, with a view to drawing up a draft convention on the crime of genocide to be submitted to the next regular session of the General Assembly."

The result of this work is the Convention that I now submit for your study, and its clauses can be summarized as follows:

(a) Article I establishes the general principle that "genocide, whether committed in time of peace or in time of war, is a crime under international law" that Contracting Parties undertake to prevent and punish.

(b) Article II specifies the acts that shall be included within the definition of genocide.

(c) Article III stipulates the penalty for genocide, as well as for incitement, whether direct or indirect, conspiracy, attempt, or complicity in the commission of this crime.

(d) Article IV expresses the concept of responsibility for individuals guilty of committing genocide, "whether they are [constitutionally responsible] rulers, public officials, or private individuals."

(e) Article V conceptualizes the obligation that Contracting Parties undertake to "give effect to the provisions of the present Convention."

(f) Article VI sets out how individuals accused of genocide or any of the acts listed in Article III shall be judged.

(g) Article VII states that genocide shall not be considered a political crime for purposes of extradition.

(h) Articles VIII and IX establish the recourse of the parties to the competent organs of the United Nations so that they take appropriate measures for the prevention and repression of genocide and, also, the manner of resolving disputes between the Contracting Parties.

Through its delegates to the United Nations General Assembly and subsequently when it signed this Convention on August 12, 1949, the Government of the Republic of Colombia, accepted its underlying principles, as well as its provisions and its obligations, convinced as it was that all the civilized peoples of the world should join forces to combat those forms of crime that outrage the legal conscience of mankind.

It goes without saying, Honourable Senators and Representatives, that if the goal is to eliminate war in the world, Colombia must, all the more so, advocate the elimination of all methods to conduct it, using barbaric coercion against the entirety or even a part of the non-combatant population.

In light of the foregoing considerations, I respectfully request the Honourable National Congress to approve the bill to which I have referred.

Honourable Senators and Representatives,

GERMAN ZEA HERNANDEZ
Minister of Justice, Acting Minister of Foreign Affairs

Bogotá, February 1959

# ANNEX 3

## UNITED NATIONS DEPOSITORY NOTIFICATION CONFIRMING COLOMBIA'S RATIFICATION OF THE GENOCIDE CONVENTION

NOVEMBER 9, 1959

English version

UNITED NATIONS NATIONS UNIES

NEW YORK

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FILE NO.:

C.N.178.1959.TREATIES-3

9 November 1959

CONVENTION OF 9 DECEMBER 1948 ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

RATIFICATION BY COLOMBIA

Sir,

I am directed by the Secretary-General to inform you that, on 27 October 1959, the instrument of ratification by the Government of Colombia of the Convention of 9 December 1948 on the Prevention and Punishment of the Crime of Genocide was deposited with the Secretary-General, in accordance with article XI of the Convention.

In accordance with the provisions of article XIII of the Convention, the ratification of Colombia will become effective on the ninetieth day following the deposit of the instrument of ratification with the Secretary-General, that is to say, on 25 January 1960.

The present notification is made in accordance with article XVII of the Convention.

Accept, Sir, the assurances of my highest consideration.



Constantin A. Stavropoulos
Legal Counsel