

**DECLARATION OF INTERVENTION OF
THE STATE OF LIBYA**

**Intervention pursuant to Article 63 of the Statute of the
International Court of Justice**

In the case of

**APPLICATION OF THE CONVENTION
ON THE PREVENTION AND PUNISHMENT
OF THE CRIME OF GENOCIDE**

South Africa v Israel

To the Registrar, International Court of Justice (the “Court”), the undersigned being duly authorized by the Government of the State of Libya:

1. On behalf of the Government of the State of Libya, I have the honor of submitting to the Court a declaration of intervention pursuant to Article 63(2) of the Statute of the Court in the case of the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The South Africa v. Israel)*.

2. Article 82(2) of the Rules of the Court provides that a declaration of a state’s desire to avail itself of the right of intervention conferred upon it by Article 63(2) of the Statute of the Court shall specify the case and the convention to which it relates, and shall 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; however, a full statement of the construction to be submitted latter well before the deadline).

d. a list of documents in support, which documents shall be attached.

3. This Declaration will address each of these requirements in turn.



Preliminary observations

A. State of Libya intervention

4. The Republic of South Africa has instituted proceedings against Israel.

South Africa alleges that acts committed by Israel's military against members of the Palestinian people distinct national, racial and ethnical group in Gaza Strip from October 2023 onwards violated the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the “Genocide Convention”).

5. By filing this Declaration, the State of Libya avails itself of the right under Article 63(2) of the Statute of the Court to intervene as a party to the Genocide Convention.

6. Libya does so because it believes that acts and omissions by Israel are of genocidal character, as they are committed with the requisite specific intent to destroy Palestinians in Gaza as a part of the broader Palestinian national, racial and ethnical group” and 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”.

Libya believes that “Israel, since 7 October 2023 in particular, has been engaged in the commission of genocide, has failed to prevent genocide and has failed to prosecute the direct and public incitement to genocide” and that “Israel has engaged in, is engaging in and risks further engaging in genocidal acts against the Palestinian people in Gaza.

The State of Libya supported The South Africa’s case before the Court and it declared its intention to intervene “in support of the Palestinian people”.¹

This case raises important issues concerning the Genocide Convention. As this Court has recognized, the prohibition of genocide is a *jus cogens* norm in international law. The Court has confirmed in these proceedings that the Convention imposes *erga omnes partes* obligations “in the sense that each State party has an interest in compliance with them in any given case”. And in considering the object of the Convention, the Court has confirmed that: “The Convention was manifestly adopted for a purely humanitarian and civilizing purpose. In such a convention, the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d’être* of the convention.”

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Article 82(1) of the Rules of the Court requires that declarations be filed “as soon as possible, and not later than the date fixed for the opening of the oral proceedings”. The State of Libya confirms that it has filed this Declaration at the earliest possible opportunity, after confirmation of the Court’s jurisdiction, the filing of the parties’ memorial and counter-memorial.

The Court has recognized that Article 63 confers a right of intervention where the State seeking to intervene confines its intervention to “the point of interpretation which is in issue in the proceedings, and does not extend to general intervention in the case.” The Court has also held that, “in accordance with the terms of Article 63 of the Statute, the limited object of the intervention is to allow a third State not party to the proceedings, but party to a convention whose construction is in question in those proceedings, to present to the Court its observations on the construction of that convention.”

The State of Libya recognizes and accepts that even though it does not seek to become a party to the case, by availing itself of the right to intervene under Article 63(2) of the Statute of the Court, the construction of the Genocide Convention given by the judgment in this case will be equally binding upon it.

B. Procedural background

¹ The president of the presidential council has declared libya will join the case of south Africa against Israel before the international court of justice <https://lana.gov.ly/post.php?lang=en&id=300134>

On 29 December 2023, The Republic of Sout Africa instituted proceedings against Israel, alleging violations of the Genocide Convention. The Registrar notified the State of libya as one of the parties to the Genocide Convention of the filing of The South Africa's application.

With its application, South Africa submitted a request for the indication of provisional measures.

The Court issued an order indicating provisional measures on 26 January 2024, including that Israel “ and in accordance with its obligations under the Genocide Convention, in relation to Palestinians in Gaza, to 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. The Court recalls that these acts fall within the scope of Article II of the Convention when they are committed with the intent to destroy in whole or in part a group as such. The Court further considers that Israel must ensure with immediate effect that its military forces do not commit any of the above-described acts.



Case and convention to which this declaration relates

The State of Libya files this Declaration to intervene in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of*

Genocide (The South Africa v. Israel). The case raises questions of construction of the Genocide Convention. The State of Libya, as a party to the Convention, has a direct interest in the construction which the Court may place upon its provisions, and this Declaration relates to questions of construction arising in this case.

Grounds upon which the state of Libya considers itself a party to the convention

On 16 May 1989, the state of Libya deposited its instrument of accession to the Genocide Convention with the Secretary-General of the United Nations, in accordance with Article XI of the Convention. The state of Libya has not filed any reservations, declarations, or objections to the Convention and remains a party to the Convention as of the date this Declaration was filed.

Provisions of the convention the construction of which the state of Libya considers to be in question


This case raises fundamental questions concerning the construction of multiple provisions of the Genocide Convention.

The state of libya focuses its intervention on the proper construction of the provisions concerning the duty not to commit and to prevent genocide and the duty to punish genocide in Article I, read in conjunction with Article II, and Articles III (a), III (b), III (c), III (d), III (e), IV, V and VI; of the genocide convention.

The state of libya claims that Israel has violated the Genocide Convention by “engaging in genocide against the Palestinian people and the failure to prevent genocide and failure to punish genocide in violation of Articles I, II, IV and VI” and “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 or of any of the acts enumerated in Article III, in violation of Article V”.

Israel has violated the provisions of the Genocide Convention, including the duty to punish. The proper construction of Articles I, II, IV, V and VI is therefore in

question in the case and is the subject of this Declaration. The State of Libya reserves the right to supplement or amend the present Declaration and the scope of its observations, to the extent additional matters of construction arise as the case progresses or as it becomes aware of them upon receipt of the parties’ pleadings and documents annexed to them, in accordance with Article 86(1) of the Rules of the Court.

 **Statement of the construction of Article I, read in conjunction with Article II, and Articles III (a), III (b), III (c), III (d), III (e), IV, V and VI; of the convention.**

The provisions of the Genocide Convention should be construed in accordance with Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties (the “Vienna Convention”), which the Court has confirmed represent customary international law. Article 31(1) provides that: “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” Article 31(3) makes clear that, together with the context, the interpretation of a treaty must take account of the subsequent practice of the parties to the treaty to the extent that this establishes the agreement of the parties regarding the treaty’s interpretation, as well as any relevant rules of international law applicable in the relations between the parties to the treaty. According to Article 32 of the Vienna Convention, recourse may also be had to supplementary means of interpretation, including the *travaux préparatoires* of the treaty.

In accordance with the Vienna Convention, the state of Libya will refer to other rules of international law applicable between the parties to the Genocide Convention, including relevant treaties and customary international law, to support the construction of the Genocide Convention for which it contends, and will refer to the Convention’s *travaux préparatoires* to supplement its

interpretation. Pursuant to Article 38(1)(d) of the Statute of the Court, the state of Libya will also refer to “judicial decisions” of courts and tribunals and academic writing “as subsidiary means for the determination of rules of law”.

Construction of Articles I, II, and Articles III (a), III (b), III (c), III (d), III (e), IV, V and VI; of the Convention will be communicated to the Court well before the date fixed for the opening of the oral proceedings as required by Article 82(1) of the Rules of the Court.

CONCLUSION

For the reasons set out in this Declaration, the State of Libya avails itself of its right under Article 63(2) of the Statute of the Court to intervene in these proceedings and respectfully requests the Court to recognize the admissibility of this Declaration.

The state of Libya has appointed the undersigned as Agent for the purposes of the present Declaration.

The address for service to which all communications concerning this case should be sent is:

H.E. the Ambassador of the state of Libya to the Kingdom of the Netherlands
Embassy of the State of Libya to the Kingdom of the Netherlands,
Parkweg 15 2585 JH
Den Haag, the Netherlands



Prof. Ahmed El Gehani
State of Libya Agent