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CR 2024/28

**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2024

Public sitting

held on Friday 17 May 2024, at 10 a.m., at the Peace Palace,

President Salam presiding,

*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)*

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le vendredi 17 mai 2024, à 10 heures, au Palais de la Paix,

sous la présidence de M. Salam, président,

*en l'affaire relative à l'Application de la convention pour la prévention
et la répression du crime de génocide dans la bande de Gaza
(Afrique du Sud c. Israël)*

COMPTE RENDU

Present: President Salam
 Vice-President Sebutinde
 Judges Abraham
 Yusuf
 Xue
 Bhandari
 Iwasawa
 Nolte
 Charlesworth
 Brant
 Gómez Robledo
 Cleveland
 Aurescu
 Tladi
 Judge *ad hoc* Barak

 Registrar Gautier

Présents : M. Salam, président
M^{me} Sebutinde, vice-présidente
MM. Abraham
Yusuf
M^{me} Xue
MM. Bhandari
Iwasawa
Nolte
M^{me} Charlesworth
MM. Brant
Gómez Robledo
M^{me} Cleveland
MM. Aurescu
Tladi, juges
M. Barak, juge *ad hoc*

M. Gautier, greffier

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Mr Zane Dangor, Director-General of the Department of International Relations and Cooperation of the Republic of South Africa,

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comme agente adjointe.

The PRESIDENT: Please be seated. The sitting is open.

The Court meets this morning to hear the single round of oral argument of the State of Israel on the Request submitted by the Republic of South Africa on 10 May 2024 for the indication of additional provisional measures and the modification of previous provisional measures 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)*.

I now give the floor to the Co-Agent of Israel, Mr Gilam Noam. You have the floor, Sir.

Mr NOAM:

1. Mr President, Members of the Court, it is an honour to appear before you once again on behalf of the State of Israel.

2. This case, even by its very name — the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* — suggests an inversion of reality. It has given rise to South Africa's egregious and repeated efforts to bring Israel before this Court through the obscene exploitation of the most sacred convention.

3. South Africa presents the Court yet again, for the fourth time within the scope of less than five months, with a picture that is completely divorced from the facts and circumstances. Israel is engaged in a difficult and tragic armed conflict. South Africa ignores this factual context, which is essential in order to comprehend the situation, and also ignores the applicable legal framework of international humanitarian law. It makes a mockery of the heinous charge of genocide.

4. As Israel has previously stated before this Court, when dealing with the law, facts matter, truth should matter. Words must retain their meaning. Calling something a genocide, again and again, does not make it genocide. Repeating a lie does not make it true. Here, in the Peace Palace, it cannot be otherwise.

5. Mr President, Israel received notification of this hearing on Monday, less than four days ago, while it was observing a particularly painful national Remembrance Day. This notification came as a great surprise, because the Court had already invited Israel to submit its observations on South Africa's request *in writing* by Wednesday of this week.

6. Israel was preparing its written observations when the Court suddenly announced that it would hold an oral hearing instead. In seeking to accommodate the Court's decision, Israel immediately reached out to its legal team so as to guarantee that it could properly be represented by counsel. That proved impossible, as Israel's lead counsel is shipborne this week and other counsel were likewise unable to come to The Hague on such short notice. For this reason, Israel wrote to the Court, in good faith, asking that the hearing be rescheduled to next week. It explained that the dates fixed by the Court significantly impacted Israel's ability to be sufficiently well represented and the fundamental principle of equality of arms. Israel's request was rejected. The date of this hearing remained that which South Africa had expressly requested.

7. The regrettable result is that Israel is not represented today by its chosen team of counsel and advocates. The equality of the parties and the administration of justice have been severely undermined.

8. Out of respect for this Court — the same respect that Israel has shown through all these past several months — Israel's Co-Agents have nonetheless travelled to appear at this hearing. South Africa's complaint yesterday that Israel has failed to respond to its current request is therefore wholly unfounded. Israel expects that the Court will appreciate the predicament that Israel has been placed in. This is all the more so given that South Africa yesterday quite radically changed the terms of its requested provisional measures, which Israel has been given less than 24 hours to respond to.

9. Mr President, Members of the Court, bearing all that in mind, allow me to recall four basic facts that South Africa continues to conceal. It is highly regrettable, to say the least, that these basic facts must once again be stated in this Great Hall.

10. First, Israel is engaged in a war it did not want and did not start. It is under attack and fighting to defend itself and its citizens.

11. Since the horrific onslaught that began on 7 October 2023, which saw thousands of Israeli citizens brutally slaughtered, mutilated, raped and injured, and 254 women, men and children taken hostage into Gaza, Hamas and other terrorist organizations in Gaza continue to attack Israel, including by indiscriminate rocket fire into Israeli cities and towns. They have vowed to try and repeat the atrocities of 7 October 2023 many times over. Since the beginning of the hostilities, more

than 10,000 rockets have been fired from the Gaza Strip towards Israel with the aim of killing as many Israelis as possible. The last two weeks alone saw 278 rockets launched.

12. Damage of an unprecedented scale has been caused to Israeli civilian homes and infrastructure, with entire communities destroyed. Approximately 60,000 residents of towns in southern Israel remain displaced from their homes seven months on. It may be years before they are able to return to their homes and rebuild their communities. Sirens continue to go off across the country as rockets, missiles and drones are launched against Israel from several fronts.

13. Rafah in particular is a focal point for ongoing terrorist activity. It is a stronghold for Hamas' operatives, with several battalions belonging to the Rafah Brigades entrenched in the area.

14. Also present in Rafah is an intricate underground tunnel infrastructure that runs underneath the city and provides ample space for operatives, command and control rooms and military equipment. Nearly 700 tunnel shafts have been identified in Rafah, from which approximately 50 tunnels cross into Egypt. These tunnels are used by Hamas to supply itself with weapons and ammunition, and could potentially be used to smuggle out of Gaza hostages or Hamas senior operatives.

15. Since the start of the present hostilities, more than 1,400 rockets were fired from Rafah alone, including more than 120 in the last two weeks. Approximately 600 launch sites were identified in the Rafah area, many of which hidden within or in close proximity to civilian infrastructure. Information regarding rocket launches from Rafah during the current conflict can be found in tab 1 of your judges' folder. Israeli hostages are also being held in Rafah by their captors¹. In fact, Israeli forces managed to rescue two Israeli hostages from Rafah on 11 February 2024. I recall that South Africa filed a request with this Court *the next day* for provisional measures that would prevent Israel from taking military action in Rafah and this request was rightfully denied.

16. South Africa purports to describe Rafah as a "last refuge" for civilians in Gaza². While many civilians have indeed evacuated to Rafah over the past few months, the fact remains that the city of Rafah also serves as a military stronghold for Hamas, which continues to pose a significant

¹ IDF Spokesperson, Press Briefing, "Update by the IDF Spokesperson" (14 May 2024), <https://www.idf.il/200396> (in Hebrew).

² Request for provisional measures of South Africa, 10 May 2024, para. 6.

threat to the State of Israel and its citizens. In tab 2 of your folders, you can find a map showing locations of rocket sites, tunnel shafts, and command and control sites embedded in the civilian population in Rafah.

17. South Africa warns this Court that “if Rafah falls, so too does Gaza”³. Once again, however, the reality is exactly the opposite. Only by bringing down Hamas’ military stronghold in Rafah will Palestinians be liberated from the clenched grip of a murderous terrorist régime, and the road to peace and prosperity may finally be paved.

18. The reality is that any State put in Israel’s difficult position would do the same. The right of defence against the brutality of the Hamas terrorist organization cannot be in doubt. It is an inherent right afforded to Israel as it is to any State. Israel is committed, as it must be, to realizing this right in accordance with the law which is why it has worked diligently to enable the protection of civilians even as Hamas seeks deliberately to endanger them. To deny Israel this basic right would be to suggest, shockingly, that the most fundamental right afforded to all States should be withheld from one. This is an unthinkable outcome that would tell Israeli citizens and the hostages that they are not deserving of protection, of life itself, and tells the Israeli State that it will be treated unequally in a manner that is at odds with the most basic of legal principles.

19. Israel is acutely aware of the large number of civilians that are concentrated in Rafah. It is also acutely aware of Hamas’ efforts to use these civilians as a shield — that is why its battalions are present there; that is why its rockets are there; that is why hostages are there. We do not wish harm to these civilians, as Hamas does. That is precisely why Israel is taking steps to try and contend with the massive complexity that such a situation presents. That is why there has not been “a large scale assault” on Rafah, but rather specific, limited and localized operations prefaced with evacuation efforts and support for humanitarian activities.

20. Does Israel face complex operational challenges in Gaza? Certainly. But can we imagine a situation where a State does not take military action to protect its civilians when they are under fire? And can we imagine a court of law telling a State that the law prevents it from defending itself from attack? This is simply untenable.

³ *Ibid.*, para. 7; see also para. 16 (“With Rafah’s destruction, the destruction of Gaza itself will be complete”).

21. When I last stood at this podium in January, Israeli hostages had been in captivity for almost 100 days. At the time, this seemed inconceivable. *Yet the hostages have now been in captivity for over seven months.* More than 130 children, women and men, including the sick and elderly, have now been held in Gaza for *224 days*, incommunicado and in inhumane conditions.

22. Among them is 23-year-old Hersh Goldberg Polin. Hersh was abducted from the Nova music festival in Re'im, severely injured. On 25 April 2024, Hamas released a video of Hersh. In it, he is seen with an amputated arm, which was blown off by Hamas terrorists. He is alive. He needs medical treatment.

23. At least 36 of those who were taken hostage on 7 October 2023 have been confirmed dead and their bodies are still held in the Gaza Strip. Among them are Yossi Sharabi, a 53-year-old father of three, and Itai Svirsky, who is 38 years old. Both of them were kidnapped from their homes in Be'eri.

24. On 14 January 2024, in a display of pure and unadulterated cruelty, Hamas made public a video of the two and of a third hostage, 26-year-old Noa Argamani, who was also kidnapped from the music festival, promising to announce on the following day which of the three are alive. Shortly thereafter, it was confirmed that Yossi and Itai had both been killed, after 102 days in brutal captivity. Additional information regarding hostages still held by Hamas can be found at tab 3 of your judges' folder.

25. It remains unclear how many more innocent victims have been killed at the hands of Hamas. Simply put, this situation is unconscionable. It is unbearable for the parents who watched videos of their young daughters bruised and bleeding, paraded before cheering crowds in Gaza, and who have heard harrowing accounts told by survivors released from Gaza of the torture and sexual violence they suffered at the hands of their captors. And it is intolerable for a nation obligated to defend its citizens and wishing for their return.

26. This Court has called for the immediate release of the hostages, but to no avail. It is Israel's right and obligation to defend them, and all its citizens, from the evil that was unleashed on them on 7 October 2023 and since then. Any State would do the same.

27. Mr President, Members of the Court, I next turn to the second fact that must be kept in mind. Hamas, with whom Israel is engaged in this armed conflict, is not a party to these proceedings.

28. Israel is engaged in an intense armed conflict with a ruthless jihadist terrorist organization; one that is not only targeting Israeli civilians, but is also using Palestinian civilians to shield itself, in utter disregard for their lives or for the law.

29. By exploiting the Genocide Convention, South Africa is suggesting a convoluted reading of international law, under which *any* armed conflict could be brought before the Court. It seeks, once again, to obtain provisional measures that would bind only Israel and not its adversary. The absurd result would be that Israel would be denied its inherent right to defend itself. Hamas, for its part, would remain free to continue committing its horrific crimes.

30. The purpose of the Genocide Convention is not to have the Court supervise the conduct of armed hostilities by parties to the conflict by the assertion of a genocide. Rather, the Convention, and subsequently this Court's jurisdiction, is limited to the grave crime of genocide. I am compelled to restate once again that there is a tragic war going on. But there is no genocide.

31. Yet particularly at the provisional measures stage, when the evidentiary threshold is such that the applicant is not required to provide proof of its allegations or the existence of specific intent to commit genocide, there is a danger that the Court will find itself engaged in the micromanagement of operational aspects of an armed conflict. This is what South Africa has been asking the Court to do.

32. Judge *ad hoc* Barak warned precisely of this danger when the Court handed down its decision on South Africa's third request for provisional measures. He observed that:

“[T]he Court has accepted South Africa's invitation to become the micromanager of an armed conflict and use the Genocide Convention as an excuse to rule on the basis of international humanitarian law. Managing an armed conflict under the Genocide Convention is a dangerous endeavour, especially when one of the belligerents is not a party to the Convention.”⁴

33. This remains true when considering South Africa's fourth request.

34. Mr President, Members of the Court, this brings me to the third basic fact that must not be ignored.

⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024* (separate opinion of Judge *ad hoc* Barak, p. 1, para. 6).

35. South Africa purports to come before you, yet again, as a guardian of humanity. In fact, it has a clear ulterior motive when it asks you to order Israel to stay away from Rafah and to withdraw all its troops from Gaza. It does so in order to obtain military advantage for its ally, Hamas, which it does not wish to see defeated. It is for this reason that South Africa continues to abuse the Genocide Convention, this Court, and the procedure for provisional measures.

36. Just six days ago — on 11 May 2024, only a day after it submitted the present request for additional provisional measures — South Africa hosted a Hamas delegation in Johannesburg⁵. South Africa's Foreign Minister herself met with Hamas representatives. They did not use the meeting to urge Hamas to release the hostages, to stop targeting Israeli civilians, to cease using human shields, to cease operating from within and nearby hospitals, UN facilities and other protected sites. They apparently met to discuss their continued campaign against Israel, in the Court and on the ground.

37. Mr President, Members of the Court, South Africa is not interested in the truth, nor is it interested in law or justice. Once again, it is exploiting the Court and its authority to issue provisional measures. It is in no rush to reach the merits of this case, when it will have to substantiate its baseless claims with evidence that simply does not exist.

38. Israel, for its part, has shown nothing but respect for the judicial process and for the law more generally. As the Court will recall, on 28 April 2024 Israel provided the Court with a lengthy report detailing, *inter alia*, the numerous steps that Israel has actively and effectively taken to address the humanitarian situation in the Gaza Strip, consistent with the Court's previous Orders.

39. Rather than first responding to Israel's report, South Africa rushed to submit yet another request for provisional measures — its *fourth* — for fear that Hamas' last significant stronghold will fall.

40. Hamas itself has repeatedly rejected every offer for a ceasefire. On 25 April 2024, 18 States called upon Hamas to release immediately the hostages still being held in Gaza. They said: "We emphasize that the deal on the table to release the hostages would bring an immediate and prolonged

⁵ The Palestinian Information Center, "Hamas Delegation arrives in South Africa for anti-apartheid conference" (11 May 2024), <https://english.palinfo.com/news/2024/05/11/318791/>. See tab 4 of the judges' folder.

ceasefire in Gaza, that would facilitate a surge of additional necessary humanitarian assistance to be delivered throughout Gaza, *and lead to the credible end of hostilities.*”⁶

41. Four days ago, on 13 May 2024, the United States National Security Advisor noted in the same vein that “[t]here could be a ceasefire tomorrow if Hamas simply released women, wounded, and elderly hostages. Israel put a forward-leaning proposal on the table. The world should be calling on Hamas to come back to the table and accept a deal.”⁷

42. South Africa spoke yesterday about rebuilding a viable Palestinian society. Yet South Africa’s actions speak louder than its words. By its actions, it is clear that South Africa wishes to see Hamas remain in control of the Palestinians in Gaza and to destine them to misery. It is Israel that wishes to see a different future for Gaza. One in which Palestinians and Israelis can both live in peace. Hamas, the genocidal terrorist organization, will stop at nothing to prevent that.

43. Mr President, Members of the Court, this brings me to the fourth fact that the Court must not lose sight of.

44. As is the case with all armed conflicts, incidents involving alleged violations of the rules regulating the conduct of hostilities may occur. This reality is not unique to Israel. No State is infallible.

45. Israel’s independent and robust legal system addresses all allegations of misconduct, including in the current hostilities. They must not be thrown before this Court in the form of facts and conclusions, and as evidence of something they are not. Armed conflict is not a synonym for genocide.

46. South Africa mentions some individual incidents reported in the media and attempts to present them as evidence of unlawful policies.

47. Yet exceptional incidents are just that — exceptional. They do not evidence a policy of illegal behaviour, let alone a policy of genocide. And they also cannot be cited as fact until a proper

⁶ “Joint Statement from the Leaders of the United States, Argentina, Austria, Brazil, Bulgaria, Canada, Colombia, Denmark, France, Germany, Hungary, Poland, Portugal, Romania, Serbia, Spain, Thailand, and the United Kingdom Calling for the Release of the Hostages Held in Gaza” (25 April 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/04/25/joint-statement-from-the-leaders-of-the-united-states-argentina-austria-brazil-bulgaria-canada-colombia-denmark-france-germany-hungary-poland-portugal-romania-serbia-spain-thailand-an/> (emphasis added).

⁷ The White House, Press Briefing by Press Secretary Karine Jean-Pierre and National Security Advisor Jake Sullivan (13 May 2024), <https://www.whitehouse.gov/briefing-room/press-briefings/2024/05/13/press-briefing-by-press-secretary-karine-jean-pierre-and-national-security-advisor-jake-sullivan-16/>.

examination is carried out. Not every media report reflects facts or incidents correctly or in their full context.

48. Israel has been, and remains, committed to acting in accordance with its international legal obligations, including those under international humanitarian law and the Genocide Convention.

49. Israel has in place the necessary mechanisms to examine and investigate allegations of wrongdoing by its military forces and to ensure accountability for violations of the law. Information about these mechanisms and their activity since the commencement of hostilities has been provided by Israel in both the report of 26 February 2024 and the report of 28 April 2024.

50. It bears repeating before the Court today that since the beginning of the hostilities, 55 criminal investigations have been opened by the Military Advocate General with respect to incidents that raise, prima facie, reasonable suspicion of criminal misconduct. In addition, the Fact Finding and Assessment Mechanism, a permanent, independent and professional mechanism in charge of examining exceptional incidents, is in the process of addressing hundreds of incidents from the current conflict.

51. With respect to various public statements, as I stressed in January before the Court, the Israeli legal system knows how to draw a line between statements that are troubling, and even obscene, but still fall within the right of freedom of speech in a democratic society, and those statements which go beyond that right.

52. Israel's reports have also outlined the steps taken by Israel's law enforcement agencies to examine dozens of statements made in the context of the current hostilities, in order to ascertain whether legal steps are warranted.

53. It was recently decided that some cases justify the promotion of criminal proceedings.

54. At the same time, since the outset of these proceedings, South Africa has consistently cherry-picked statements or taken others out of context, in an attempt to attribute to Israel the intent to commit genocide, taking advantage of the low evidentiary threshold at the provisional measures stage. It does so in the present request as well, attributing to Israel alleged "genocidal aims and acts" based on statements clearly calling for victory over Hamas and for its destruction.

55. Israel has made repeatedly clear that the policy and instructions for conducting the hostilities stem from the decisions of the Ministerial Committee on National Security Affairs and the War Cabinet, and not from various social media accounts or interviews.

56. As Ms Kaplan Tourgeman will explain, the decisions of the Israeli Cabinet, and their implementation on the ground, leave no doubt that South Africa's allegations regarding genocide are completely and utterly baseless.

57. Israel's law enforcement authorities also act to counter Israeli protesters who blocked the transfer of aid from Israel to Gaza. The Israeli police secures co-ordinated convoys during their passage in Israel. With respect to the incident on 13 May 2024, during which protesters caused damage to aid trucks, the Israeli police is prioritizing the investigation, which was assigned to a special investigation unit and has already resulted in the investigation of several suspects and witnesses. The authorities are acting in this regard, and will continue to act, in order to investigate and prosecute if appropriate, and to ensure the continued effective and efficient transfer of humanitarian aid.

58. As part of a lessons-learned process, an improved mechanism was adopted by the police and the IDF to ensure the safety of the convoys.

59. Finally, even during hostilities, the doors of Israel's High Court of Justice, a central pillar of Israel's robust and independent legal system, are open to those who seek to challenge the actions of Israel's Government. This includes non-governmental organizations (NGOs) and individuals who are not Israeli citizens and residents, if they are potentially affected by such actions.

60. In fact, Israel's High Court of Justice is currently reviewing a petition submitted by a number of Israeli NGOs concerning the humanitarian situation in the Gaza Strip⁸. The court is reviewing the compliance of the Israeli Government's policy with both international humanitarian law and Israeli law.

61. In its response to the petition, the State has submitted extensive briefs and has participated in two public oral hearings before a senior three-judge panel. It has presented in detail the effort it is

⁸ HCJ 2280/24, *Gisha et al. v. Government of Israel et al.*

undertaking to alleviate the humanitarian situation. An additional statement will be submitted to the court within the next few days, concerning, *inter alia*, the operation in Rafah.

62. As I stated before this Court in January 2024, even when the cannons roar in Gaza, the law is not silent. Israel's legal system and its domestic mechanisms are a testament to this.

63. Mr President, Members of the Court, let me now say something about the weakness of South Africa's allegations. Its counsel berated Israel yesterday for "casting aspersions" at what it called "credible" information provided by South Africa. But the sad truth is that South Africa cites hateful social media accounts and unsubstantiated news reports in support of its claims. Surely this cannot pass.

64. An additional flaw in this regard is South Africa's heavy reliance on documents prepared by third parties or under the auspices of the United Nations, when these cannot be said to constitute sufficient evidence of a reliable quality. Indeed, the Court has itself had occasion to observe that UN reports may only be of such quality "to the extent that they are of probative value and are corroborated, if necessary, by other credible sources". The Court, moreover, stated that "the precise evidentiary value accorded to any report, including those produced by United Nations entities, also depends on the methodology and amount of research underlying its preparation".

65. It is important to clarify. Israel does not underestimate the reports of the United Nations and other sources. We study them, draw conclusions and lessons in the appropriate cases. However, statements from such reports should not be accepted automatically, especially in a complex combat reality.

66. These words of caution are of particular significance in the present case, as the materials cited by South Africa have been prepared without access to relevant and necessary information, including that held by Israel, and often without any attempt to access such information. They frequently rely on Hamas sources or on those subject to Hamas intimidation.

67. One striking example which gives serious cause for alarm is that even UN OCHA — which has so far parroted information generated by Hamas-run agencies in Gaza regarding fatalities — has recently started to accept that the information coming out of Gaza is flawed. It highlighted that more than 10,000 of the fatalities declared by Hamas are unnamed, and thus unverifiable. Concurrently, it revised dramatically the number of verifiable fatalities of women and children to approximately half

than was previously presented and stopped parroting the baseless claim that 70 per cent of the casualties are women and children. It turns out that the data the United Nations were using, and that South Africa has presented to this Court as true, was wrong. While the number of overall fatalities has not changed, the breakdown is crucial. Hamas has been concealing the number of militants in its unverified lists of Palestinian casualties. Hamas' lists also contain persons who died from reasons unrelated to IDF action, such as fire of terrorist organizations, and show many irregularities in reported age, gender and ID numbers. In this way, an armed conflict can easily be portrayed as genocide.

68. As we have stated, every civilian death is a tragedy. Moreover, overall fatality counts during a war are not, in and of themselves, evidence of unlawful conduct under international law. Once again, the facts matter.

69. South Africa has not missed an opportunity to make outlandish accusations against Israel, and its fourth request for provisional measures is replete with blatant distortions and misrepresentations. We heard plenty such outrageous distortions and misrepresentations yesterday as well. Perhaps most repugnant is South Africa's suggestion that Israel has created "zones of extermination", evoking terminology reminiscent of the systemic extermination of European Jews during the Holocaust. Similarly outrageous is South Africa's cynical attempt to equate Israel's actions with "the genocidal practices at Srebrenica". How low South Africa has stooped.

70. These allegations levelled at Israel are patently untrue and emphatically denied. Like many of the claims in South Africa's Application and Requests, they lack any basis in fact or law. South Africa claims that Israel has closed critical border crossings into Gaza, when this is blatantly untrue. It has claimed that Israel has failed to facilitate the provision of fuel for sustaining humanitarian operations and facilities. This is also untrue. Ms Kaplan Tourgeman will further elaborate on these points in a moment, as well as on the continuous efforts that Israel has been making to alleviate the humanitarian situation in the Gaza Strip.

71. As counsel for Israel noted before the Court during the oral hearing on 12 January 2024, a State intent on committing genocide would not undertake the operational and humanitarian efforts that Israel has taken, and is taking, to mitigate civilian harm. It would not have delayed a ground

manoeuvre for weeks, urging civilians to seek safer space and, in doing so, sacrifice operational advantage. It would not invest massive resources in facilitating humanitarian aid.

72. If anybody should be told that enough is enough, it is surely South Africa and not Israel. At what point do we say enough to South Africa's repeated attempts to exploit the provisional measures procedure of this Court in such a vile and cynical manner? This war, like all wars, is tragic and terrible for Israelis and Palestinians, and it has exacted a terrible human price. But it is not genocide. I can only recall once again that Israel has made it clear that if the hostages were released and Hamas were to lay down its arms, the hostilities would cease, and has been engaged intensively in negotiations to that effect.

73. Mr President, Members of the Court, South Africa asks this Court to order Israel to "cease its military operations in the Gaza Strip"⁹.

74. South Africa has asked the Court to order the cessation of military operations by Israel in its previous requests. The Court has not done so.

75. The Court is well aware that to do so would mean that 132 hostages would remain to languish in Hamas' tunnels forsaken. It would mean that Hamas would be left unhindered and free to continue its attacks against Israeli territory and Israeli civilians, which it has a stated intention to do¹⁰.

76. It would turn the Genocide Convention into a sword rather than a shield and would strip Israel of its rights under international law and Israeli civilians of its protection.

77. Such a situation is both legally and morally untenable.

78. For all of the reasons given in response to South Africa's earlier requests for similar provisional measures¹¹, the Court rightfully rejected South Africa's previous requests and it would be wholly inappropriate to grant a provisional measure in such terms.

79. The second of the provisional measures requested by South Africa repeats earlier requests it has made, either sufficiently covered by the various provisional measures ordered by the Court or

⁹ South Africa's letter of 16 May 2024, p. 1.

¹⁰ CR 2024/2, p. 55, para. 6 (Staker).

¹¹ *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. 11 (1); Request by South Africa for the indication of provisional measures and modification of the Court's prior provisional measures decisions, 6 March 2024, para. 17 (1).

rejected in previous rounds. South Africa has not given sufficient reason why the Court should now deviate from or essentially duplicate its earlier decisions.

80. The third provisional measure requested by South Africa would require that Israel submit an open report to the Court on all measures taken to give effect to these and previous provisional measures.

81. As I have said, Israel has engaged fully and sincerely in these proceedings, despite the outrageous and libellous claims that have been levelled against it. It has submitted to the Court two detailed reports and has been forthcoming about the efforts it is undertaking, as well as the challenges it is dealing with, to alleviate the humanitarian situation in Gaza. It has made clear time and again its unwavering commitment to its obligations under international law. It has done this while the fighting continues and its citizens are still under attack. South Africa has responded with a barrage of requests. It has clearly adopted a strategy of dragging Israel to Court endlessly regardless of any legal undertakings by Israel. In these circumstances, ordering Israel to submit another report is unwarranted.

82. Mr President, that concludes my statement. I ask that you now invite Ms Kaplan Tourgeman to the podium.

The PRESIDENT: I thank the Co-Agent of Israel and ask Ms Tamar Kaplan Tourgeman to take the floor. You have the floor, Madam.

Ms KAPLAN TOURGEMAN:

1. Mr President, Members of the Court, it is an honour to appear before you on behalf of the State of Israel.

2. As you have just heard, Israel is still under attack. We are still counting more and more of our dead, and attending to thousands more who are wounded. No less than 132 children, women and men are still held hostage — in unimaginable conditions — by Hamas and other Palestinian militants in Gaza. Tens of thousands of Israeli citizens are internally displaced. Most of them have not seen their homes in over seven months; many have no homes to return to. The very grave effect of the horrific massacre of 7 October 2023 continues to ripple through our people and communities, who must not be forgotten. They, too, are worthy of international law's protection.

3. Mr President, Members of the Court, I draw particular attention to the women still held hostage in Gaza. Ms Amit Sosna, who was held captive in Gaza by Hamas for 55 days, testified recently that she was physically abused, beaten up and chained to a bed, threatened at gunpoint and forced to perform sexual acts on her captor. Hamas refuses to release these women, and all the other hostages it holds. It brazenly refuses to alleviate the humanitarian suffering that this war has brought to all concerned, on both sides. It has turned down numerous proposals for a ceasefire, and it continues to favour death and destruction as a strategy.

4. We heard nothing about that yesterday. In fact, while South Africa made many outrageous, false statements yesterday, perhaps most striking was what it did not say. We have hardly heard the word Hamas, even though it is Hamas that has brought about all the suffering and pain that we are witnessing — the suffering of Israelis and Palestinians alike. Instead we sat here and listened to venomous accusations, to language that is so hateful, so out of touch with reality, that it was difficult to believe we are in a court of law.

5. Mr President, Members of the Court, there is no doubt that this war is tragic and has caused great suffering — on both sides. Again, this is Hamas' doing. South Africa provides an account that is not only incredibly partial; it is also distorted. But to apply the law properly, to impart justice, surely the facts must matter.

6. These facts cannot but show that Israel is seeking consistently to abide by the law in the excruciating circumstances of warfare that Hamas has deliberately created. The blatant misrepresentation we heard yesterday cannot alter that.

7. For a start, South Africa claims that Israel has “shut down” the two main land crossings through which aid enters into Gaza¹², these being the Rafah and Kerem Shalom crossings; and that Israel has cut Gaza off from all humanitarian, medical and other supplies¹³. This is patently untrue.

8. The truth is that Israel allows and facilitates, as it has been for months, the provision of more and more humanitarian aid to the civilian population throughout the Gaza Strip. It does so through a number of crossings on a daily basis. I refer the Court to the map that is now on the screen before you, and also at tab 5 of your folders.

¹² Request for provisional measures of South Africa, 10 May 2024, para. 7.

¹³ *Ibid.*

9. Contrary to South Africa's claim, the Kerem Shalom crossing has been in continuous operation since December 2023, with one recent exception between 5 and 8 May 2024, when it was closed after Hamas fired at Kerem Shalom. Even though Hamas fire continued on 8, 10, 11 and 12 May 2024 — and several times even yesterday — the crossing remained open, allowing more and more aid to flow in. This crossing has been the central entry point for aid for months.

10. I note that South Africa has not only wrongly alleged that the Kerem Shalom crossing has been shut down. It also requested that Israel relinquish control over it. I hardly need to say much about this request given that Kerem Shalom is situated on sovereign Israeli territory.

11. As for the Rafah crossing, to say that Israel closed this crossing is inaccurate at best. Its operation was disrupted on 6 May 2024 and since then, Israel has taken active measures and has been in intensive discussions with Egypt, supported by other international actors, in an effort to resume the flow of aid. In the meantime, and in keeping with its consistent efforts, Israel has taken immediate measures to ensure that alternative paths are available for the continued increase in its provision of humanitarian assistance to the Gaza Strip.

12. In this context, the Prime Minister of Israel convened two high-level meetings to ensure continued adequate response to the humanitarian situation in the Gaza Strip. The Prime Minister instructed the relevant authorities in Israel to take immediate interim steps to enable increased flow of aid to the Gaza Strip through other routes and sources. South Africa neglected to mention yesterday that the total amount of aid entering Gaza in the last few days is now once again increasing significantly.

13. Indeed, on 12 May 2024, a new land crossing was opened at Erez West. It joins yet another new land crossing, fully operationalized on 1 May 2024, at Erez East, which together allow for the entry into Gaza of an additional 200 trucks per day, after their inspection elsewhere.

14. An additional land route bringing aid into Gaza since March 2024 which, again, is fully operational, is Gate 96. This land route brings aid directly into northern Gaza, thus reducing the risk of looting of aid convoys that otherwise make their way to the area from the southern part of the Strip. For this purpose, Israel allows Palestinian truck drivers from Gaza to enter Israeli territory, following security checks, in order to collect and upload humanitarian supplies.

15. Israel has done a great deal to expand the capacity of land crossings, including by extending the working hours there. It has also expanded infrastructure and roads supporting the operation of the crossings. The Israeli Government allocated approximately US\$52 million to the implementation of such efforts. We heard nothing about all of that yesterday.

16. Aerial routes remain in operation so as to allow for direct parachuting of aid into Gaza. Such operations are undertaken almost daily, involving a significant number of States. Many thousands of aid packages were provided in this way by dozens of operations in recent weeks¹⁴.

17. The temporary floating pier off the Gaza coast, whose construction began following President Biden's declaration on 7 March 2024, begins operating today. It is expected to enable the delivery of approximately 2.2 million food portions per day by the World Food Programme. I should add that this location, too, came under Hamas fire last month while construction was underway.

18. Further progress in relation to maritime routes was achieved last week, when Israel and Cyprus adopted on 8 May 2024 technical arrangements which aim to facilitate the implementation of the Cyprus maritime corridor about which Israel has previously informed this Court¹⁵. This corridor was already utilized even prior to the concluding of the arrangements, but they will further improve its operation. Is this what a hermetic closure looks like?

19. Mr President, Members of the Court, it is not difficult to see that Israel has been making extensive efforts over the recent months, together with various international partners, to increase the provision of humanitarian assistance throughout the Gaza Strip. There have been remarkable achievements. South Africa's complete disregard of this reality and this truth is as telling as it is alarming.

20. Israel's extensive and ongoing actions have been detailed in the reports submitted by Israel to the Court, most recently on 28 April 2024. They have brought about a significant increase in the amount of humanitarian aid that has entered into Gaza. They are consistent with the decision adopted on 4 April 2024 by Israel's Ministerial Committee on National Security Affairs, headed by the Prime Minister of Israel, "to increase the efforts to allow and facilitate the transfer of humanitarian aid for the civilian population in the Gaza Strip" and to establish a ministerial team to "implement the policy

¹⁴ Report by the State of Israel to the International Court of Justice, 28 April 2024, para. 33.

¹⁵ *Ibid.*, para. 34.

of the Cabinet regarding the transfer of humanitarian aid to the Gaza Strip”. The decision records that these steps are undertaken “further to the recommendations of security and foreign affairs officials concerning the need to continue the provision of humanitarian aid to the civilian population in the Gaza Strip”¹⁶.

21. All of these steps have had a significant impact in alleviating the humanitarian situation and avoiding the catastrophes which South Africa threatened were imminent in December, then January, then February, then March and then April. While the situation is constantly changing, Israel is adapting and continues to work to improve the humanitarian situation and to prevent harm to civilians and to aid workers. I note that, as Mr Noam has said, Israel’s actions in this context are currently under the judicial review of Israel’s Supreme Court.

22. These steps have been repeatedly accompanied by clear statements from Israel’s leadership. For example, Israel’s Prime Minister Netanyahu said on 15 May 2024 that

“our policy from the start — from the beginning of the war, my policy was you have to provide the basic humanitarian aid that is required by international law. But in the last six weeks, we actually changed it. Not merely to providing basic humanitarian aid, but flooding Gaza with humanitarian aid.”¹⁷

23. Israel’s Defence Minister Gallant likewise said on 1 May 2024 that “we are taking significant measures in order to increase the volume of humanitarian aid into Gaza. This is essential.” He added that “[w]e are fighting Hamas, a brutal terrorist organization. We are not fighting the civilians in Gaza, and we will facilitate the delivery of humanitarian aid.”¹⁸

24. In order to show a genocidal intent that simply is not there, South Africa continues to distort other statements. In quoting the Prime Minister as stating that Gaza must not constitute a threat to Israel, they omit to mention that he was expressly speaking about Hamas and returning the hostages it took¹⁹. When quoting the Minister of Defence as saying that the military operates

¹⁶ *Ibid.*, para. 19.

¹⁷ *CNBC Transcript: Prime Minister of Israel Benjamin Netanyahu Speaks with CNBC’s Sara Eisen on “Squawk on the Street” Today* (15 May 2024), <https://www.cnbc.com/2024/05/15/cnbc-transcript-prime-minister-of-israel-benjamin-netanyahu-speaks-with-cnbc-sara-eisen-on-squawk-on-the-street-today.html>.

¹⁸ See <https://www.israelnationalnews.com/news/389270>.

¹⁹ Prime Minister’s Office, PM Netanyahu at the IDF Induction Base at Tel Hashomer, met with IDF recruits slated to be fighters at crossings and field observers in the various sectors (9 April 2024), <https://www.gov.il/en/pages/event-idf090424>.

“neighbourhood by neighbourhood”²⁰ and will reach every location in Gaza, they neglected to say that he, too, referred expressly to Hamas²¹. In the same statement, he also made plain that the humanitarian issue is a central one²².

25. While South Africa turns a blind eye to Israel’s remarkable efforts, they have not gone unnoticed by others. The UN Senior Humanitarian Coordinator, who was appointed following Security Council resolution 2720, said on 24 April 2024, in a briefing to the UN Security Council, that Israel has taken a number of steps to improve aid delivery; when asked about her contacts with the Israeli side, she said that there is very constructive co-operation with her mission²³. Senior government officials of various States likewise said they saw real and demonstrable progress in the delivery of aid.

26. To say, as South Africa brazenly does, that Israel is deliberately denying humanitarian aid cannot be further from the truth. On the contrary, Israeli actions, undertaken in accordance with orders from Israel’s highest levels of government, show exactly the opposite. Only yesterday, no less than 365 trucks carrying humanitarian supplies entered into Gaza through the various land crossings. More than 330 of these trucks entered through Kerem Shalom — the same crossing that South Africa said yesterday was shut down.

27. Other allegations by South Africa fare no better. Contrary to South Africa’s allegations, thousands of international aid workers have been entering and exiting Gaza. Deconfliction mechanisms were reviewed and improved following highly unfortunate incidents in order to guarantee that their safety is always maintained. These lessons learned, too, have been detailed in Israel’s recent report to the Court. Fuel continues to be delivered to Gaza, including this past Wednesday, when 76,000 litres were transferred to the World Food Programme.

28. Time does not permit setting the record straight with regard to all of South Africa’s outrageous misrepresentations. But the claim that Israel is deliberately hampering medical services

²⁰ See <https://hm-news.co.il/451577/>.

²¹ See <https://www.now14.co.il/%D7%A4%D7%A2%D7%95%D7%9C%D7%94-%D7%91%D7%A8%D7%A4%D7%99%D7%97-%D7%91%D7%A7%D7%A8%D7%95%D7%91/>.

²² *Ibid.*

²³ OCHA, Remarks to the Security Council by Sigrid Kaag, Senior Humanitarian and Reconstruction Coordinator for Gaza (24 April 2024), <https://www.ochaopt.org/content/remarks-security-council-sigrid-kaag-senior-humanitarian-and-reconstruction-coordinator-gaza>.

in Gaza, or that Rafah is the last viable location for medical care, cannot be left unanswered. Israel persistently continues to facilitate the enhancement of medical services throughout the entire Gaza Strip. In addition to the hospitals located in Rafah, efforts have been extended to support the rehabilitation of hospitals elsewhere in the territory. This may be seen at tab 6 of your folders. In fact, 14 hospitals are in operation outside Rafah. Eight field hospitals are in full operation, with only two of them located in Rafah. A field hospital which was established by the International Committee of the Red Cross in the Al-Mawasi area, began operating as recently as 9 May 2024. One more field hospital is due to open later this month, and the establishment of four more field hospitals is currently under consideration. Mobile clinics continue to operate in the Al-Mawasi area, too. Collaboration with a host of international actors, including the World Health Organization, continues in order to strengthen and expand medical care all over.

29. South Africa would do well to tell its ally Hamas to stop exploiting hospitals, and other protected sites, as military command centres. And since we heard grave misrepresentations yesterday about the Shifa hospital, it must be made clear that even during very intense fighting in the Shifa hospital after Hamas reinstated the hospital compound as a military hub, the IDF took proactive steps aimed to ensure continuous medical care to patients hospitalized there. Despite the intense military activity on the premises, no patients or medical staff were harmed during the operation by the IDF. On 22 March 2024, the IDF brought into the hospital, in the course of its operational activity, trucks carrying medical equipment, food and water, including over 10,000 units of medicine, hundreds of painkiller packages, over one hundred packages of bandages and IVs, and dozens of advanced medical monitoring devices. Contrary to the impression that South Africa sought to leave you with, the IDF's Chief of the Staff said to the forces on that occasion that "we do everything not to harm patients, not to harm the medical staff . . . In this operation not one medical staff was harmed, no patients were harmed, and many terrorists were killed and captured"²⁴. He said that a hospital is not a safe place — not safe for terrorists.

30. South Africa even saw fit to present to the Court a false translation in its attempt to create intent. The soldiers in the video shown yesterday were not saying "to destroy" but "to dismantle"

²⁴ See https://allisrael.com/idf-chief-halevi-praises-very-very-successful-shifa-hospital-op-says-goals-achieved-but-not-done?fireglass_rsn=true#fireglass_params&tabid=a6e157c055ffa734&application_server_address=fgtehilcloud-3-me-west1.prod.fire.glass&popup=true&is_right_side_popup=false&start_with_session_counter=1.

Rafah, a clear reference to Hamas capabilities. South Africa ignores any such statements that show Israel's true intentions. It has to distort the facts to sustain its libel of genocide and such repugnant terms as "final stages" and "exterminations zones".

31. Israel continues to take extraordinary measures in order to minimize harm to Palestinian civilians in Gaza. These have been described at length to the Court, in the previous hearing and in our written submissions, and ignored to the same extent by South Africa. Time permits only several examples, one of which is that Israel has sent over 15 million text messages informing civilians of planned IDF activity in specific areas, so that they can avoid them. It has made over 18 million pre-recorded phone calls and an additional 100,000 individual phone calls alerting individuals of danger in their vicinity. Over 9 million leaflets, dropped over specific areas, have provided civilians with information as to where humanitarian aid may be accessed and how to leave zones of combat. Once again, is this how a military set on total or partial destruction of a people operates?

32. It is also the Israeli military that has put in place clear and definite procedures for targeting. This requires, *inter alia*, selection of munitions that would achieve the military need while minimizing civilian harm, and the conduct, for each and every strike, of a proportionality assessment in accordance with international humanitarian law. The IDF, moreover, marks sensitive sites, such as medical services and shelters, on military operational systems, and takes additional measures to ensure that IDF forces are aware of them. All this likewise applies in operations in Rafah, as may be seen at tab 7 of your folders. While fighting to defend Israel, it is also engaged in ensuring that humanitarian aid continues to flow in.

33. South Africa speaks of extermination zones, but the source cited in its request in support of this allegation does not say this, let alone prove it. It does reference express statements from the IDF Chief of Staff that civilians in combat areas must not be killed; an official statement by the IDF that the IDF does not define areas where anyone present could be shot; and a discussion of the IDF's review of exceptional incidents where there are allegations of violations of this rule.

34. Equally unsettling is South Africa's false allegation that the IDF uses artificial intelligence that decides who to attack, a claim the origin of which is one press report that relies on anonymous sources. Unfortunately, South Africa did not tell the Court yesterday of Israel's official response to

that report, which states clearly that the claims are simply not true. South Africa's claims regarding IDF attack procedures are also false.

35. Mr President, Members of the Court, if South Africa seeks to point to any change in the situation since your Order of 28 March 2024, it should have acknowledged all these remarkable humanitarian efforts by Israel. It should also have recognized the crimes committed constantly by Hamas, and the circumstances that compel Israel to respond to them, as any State would. Instead, it offers grandstanding and rhetoric. No real evidence; just a transparent attempt to relitigate the same matter one more time, and to extract more and more from this procedure.

36. Mr President, Members of the Court, even if South Africa could establish a relevant change in the circumstances — which it has not done — it has not established any change in the situation that would justify the extreme measures that it is now seeking. The measures currently in place are entirely sufficient and no further ones are needed.

37. As Mr Noam explained, South Africa is trying once more to drag this Court down a very dangerous path. It will have you say that a sovereign State that is under a persistent attack, whose citizens are held hostage in brutal conditions, cannot defend itself or its citizens. As you have consistently made clear, there is no international law to this effect. Indeed, it is inconceivable that there would be.

38. Mr President, Members of the Court, we must be very clear. Acceding to South Africa's request would be an affront to the very idea of the protection afforded by the law. For the Court to accede to South Africa's request is to enable Hamas' battalions to continue to target Israel, to attack humanitarian crossings and to destine the Palestinians in Gaza to perpetual war. It is to enable Hamas to reconstitute its forces in order to commit the 7 October 2023 atrocities again and again, as they have vowed to do. It is to condemn the hostages to near certain death. What would it mean for the women still held in captivity?

39. Granting South Africa's request would be to side with a terrorist organization, which will no doubt celebrate any such decision. It is to legitimize, protect and reward Hamas' despicable method of warfare, to enable its heinous crimes to persist, with all the consequences that might follow.

40. Mr President, Members of the Court, it is one thing to require that Israel abide by its international legal obligations and protect civilians when exercising its inherent right to defend itself. But to deny Israel that inherent right is a different thing altogether. It is unthinkable.

41. Can it really be maintained that if hostages are brutally held captive in Rafah, Israel cannot come to their rescue? Can it really be maintained that if Hamas continues to use Gaza as a launching pad for its indiscriminate attacks, Israel cannot defend itself against them? We respectfully submit that international law offers a clear answer to these questions.

42. Mr President, Members of the Court, on this basis and in accordance with Article 60, paragraph 2, of the Rules of Court, I now proceed to read Israel's final submission:

“The State of Israel requests the Court to reject the request for the modification and indication of provisional measures submitted by the Republic of South Africa.”

43. Mr President, Members of the Court, I thank you for your attention. That concludes Israel's presentation. Thank you.

The PRESIDENT: I thank the Co-Agent of Israel, Ms Tamar Kaplan Tourgeman.

Before the end of this set of hearings, I would like to give the floor to Judge Nolte, who wishes to put a question to Israel. Judge Nolte, you have the floor.

Judge NOLTE: Thank you, Mr President. My question is:

“Can Israel provide information about the existing humanitarian conditions in the designated evacuation zones, in particular Al-Mawasi, and how it would ensure safe passage to these zones, as well as the provision of shelter, food, water and other humanitarian aid and assistance to all evacuees that are, and can be expected to arrive, in these zones?”

Thank you, Mr President.

The PRESIDENT: I thank Judge Nolte. The written text of this question will be communicated to the Parties as soon as possible.

Israel is invited to provide its written reply to the question no later than tomorrow, Saturday 18 May 2024, at 6 p.m. Furthermore, any comments South Africa may wish to make, in accordance with Article 72 of the Rules of Court, on the response by Israel must be submitted no later than Monday 20 May 2024, at noon.

This brings to an end the oral proceedings on the Applicant's request for the indication of additional provisional measures and the modification of previous provisional measures 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)*. It remains for me to thank the Agents, counsel and advocates of the Applicant and the Respondent for their statements in the course of these hearings.

In accordance with usual practice, I would ask the Agents to remain at the Court's disposal to provide any additional information the Court may require. The Court will render its Order on the request for the indication and modification of provisional measures as soon as possible. The Parties will be advised in due course as to the date on which the Court will deliver its Order at a public sitting.

Since the Court has no other business before it today, the sitting is declared closed.

The Court rose at 11.30 a.m.
