

24 MAY 2024

ORDER

**APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT
OF THE CRIME OF GENOCIDE IN THE GAZA STRIP**

(SOUTH AFRICA v. ISRAEL)

**APPLICATION DE LA CONVENTION POUR LA PRÉVENTION ET LA RÉPRESSION
DU CRIME DE GÉNOCIDE DANS LA BANDE DE GAZA**

(AFRIQUE DU SUD c. ISRAËL)

24 MAI 2024

ORDONNANCE

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INTERNATIONAL COURT OF JUSTICE

YEAR 2024

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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)**

REQUEST FOR THE MODIFICATION OF THE ORDER OF 28 MARCH 2024

ORDER

Present: President SALAM; Vice-President SEBUTINDE; Judges ABRAHAM, YUSUF, XUE, BHANDARI, IWASAWA, NOLTE, CHARLESWORTH, BRANT, GÓMEZ ROBLEDÓ, CLEVELAND, AURESCU, TLADI; Judge ad hoc BARAK; Registrar GAUTIER.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Article 41 of the Statute of the Court and Article 76 of the Rules of Court,

Makes the following Order:

1. On 29 December 2023, the Republic of South Africa (hereinafter “South Africa”) filed in the Registry of the Court an Application instituting proceedings against the State of Israel (hereinafter “Israel”) concerning alleged violations in the Gaza Strip of obligations under the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the “Genocide Convention” or the “Convention”).

2. In its Application, South Africa seeks to found the Court’s jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article IX of the Genocide Convention.

3. The Application contained a Request for the indication of provisional measures submitted with reference to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court.

4. Since at the time of the filing of the Application the Court included upon the Bench no judge of the nationality of either of the Parties, each Party availed itself of its right under Article 31 of the Statute to choose a judge *ad hoc* to sit in the case. South Africa chose Mr Dikgang Ernest Moseneke and Israel chose Mr Aharon Barak.

5. After hearing the Parties, the Court, by an Order of 26 January 2024, indicated the following provisional measures:

“(1) 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;

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

(3) 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) 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) 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) 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.”

6. Following the election to the Court, with effect from 6 February 2024, of Judge Dire Tladi, a South African national, Mr Moseneke ceased to sit as judge *ad hoc* in the case, in accordance with Article 35, paragraph 6, of the Rules of Court.

7. By a letter dated 12 February 2024, South Africa, referring to “the developing circumstances in Rafah”, called upon the Court urgently to exercise its power under Article 75, paragraph 1, of the Rules of Court. By a letter dated 15 February 2024, Israel provided its observations on South Africa’s communication.

8. By letters dated 16 February 2024, the Registrar informed the Parties of the following decision of the Court in response to South Africa’s communication:

“The Court notes that the most recent developments in the Gaza Strip, and in Rafah in particular, ‘would exponentially increase what is already a humanitarian nightmare with untold regional consequences’, as stated by the United Nations Secretary-General (Remarks to the General Assembly on priorities for 2024 (7 Feb. 2024)).

This 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.”

9. On 26 February 2024, Israel submitted, within the time-limit fixed for that purpose, a report on all measures taken to give effect to the Court’s Order on the indication of provisional measures of 26 January 2024, pursuant to paragraph 86, subparagraph 6, thereof. South Africa duly presented its observations on that report.

10. On 6 March 2024, South Africa requested the Court “to indicate further provisional measures and/or to modify its provisional measures indicated on 26 January 2024”, with reference to Article 41 of the Statute of the Court, as well as Articles 75, paragraphs 1 and 3, and 76 of the Rules of Court. On 15 March 2024, Israel provided its written observations on that Request.

11. By an Order of 28 March 2024, the Court reaffirmed the provisional measures indicated in its Order of 26 January 2024 and indicated 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) 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) 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”.

The Court also directed Israel to submit a report to the Court on all measures taken to give effect to that Order, within one month as from the date thereof.

12. On 29 April 2024, Israel submitted, within the time-limit fixed for that purpose, a report on all measures taken to give effect to the Court’s Order on the indication of provisional measures of 28 March 2024, pursuant to paragraph 51, subparagraph 3, thereof. South Africa duly presented its observations on that report.

13. On 10 May 2024, South Africa submitted to the Court an “urgent Request for the modification and indication of provisional measures” pursuant to Article 41 of the Statute and Articles 75 and 76 of the Rules of Court.

14. In its Request, South Africa asked the Court to indicate the following provisional measures:

- “1. The State of Israel shall immediately withdraw and cease its military offensive in the Rafah Governorate.
- 2. The State of Israel shall immediately take all effective measures to ensure and facilitate the unimpeded access to Gaza of United Nations and other officials engaged in the provision of humanitarian aid and assistance to the population of Gaza, as well as fact-finding missions, internationally mandated bodies or officials, investigators, and journalists, in order to assess and record conditions on the ground in Gaza and enable the effective preservation and retention of evidence, and shall ensure that its military does not act to prevent such access, provision, preservation or retention.
- 3. The State of Israel shall submit an open report to the Court: (a) on all measures taken to give effect to these provisional measures within one week as from the date of this Order; and (b) on all measures taken to give effect to all previous provisional measures indicated by the Court within one month as from the date of this Order.”

15. The Registrar immediately communicated to the Government of Israel a copy of South Africa's Request, in accordance with Article 73, paragraph 2, of the Rules of Court. In a separate communication on the same day, Israel was invited to present written observations on that Request by 15 May 2024. By letters dated 13 May 2024, the Registrar informed the Parties that, pursuant to Article 74, paragraph 3, of its Rules, the Court had fixed 16 and 17 May 2024 as the dates for the oral proceedings on the Request. By a letter also dated 13 May 2024, Israel asked the Court to postpone the hearings to the following week. After having ascertained the views of the Applicant, which opposed this request, the Court, in light of the circumstances, decided not to postpone the hearings. The Parties were informed of the Court's decision by letters dated 14 May 2024.

16. At the public hearings held on 16 and 17 May 2024, oral observations on the Request were presented by:

On behalf of South Africa: HE Mr Vusimuzi Madonsela,
Mr Vaughan Lowe,
Mr John Dugard,
Mr Max du Plessis,
Ms Adila Hassim,
Mr Tembeka Ngcukaitobi,
Ms Blinne Ní Ghrálaigh.

On behalf of Israel: Mr Gilad Noam,
Ms Tamar Kaplan Tourgeman.

17. At the end of its oral observations, South Africa asked the Court to indicate the following provisional measures:

“South Africa respectfully requests the Court to order the State of Israel, as a State party to the Genocide Convention and as a [P]arty to these proceedings, to:

- (1) *immediately, and further to its obligations under the Court's previous Orders of 26 January 2024 and 28 March 2024, cease its military operations in the Gaza Strip, including in the Rafah Governorate, and withdraw from the Rafah Crossing and immediately, totally and unconditionally withdraw the Israeli army from the entirety of the Gaza Strip;*
- (2) *immediately, and further to its obligations under provisional measure 4 of the Court's 26 January 2024 Order and provisional measures 2 (a) and 2 (b) of the Court's 28 March 2024 Order, take all effective measures to ensure and facilitate the unimpeded access to Gaza of United Nations and other officials engaged in the provision of humanitarian aid and assistance to the population of Gaza, as well as fact-finding missions, internationally mandated bodies and/or officials,*

investigators, and journalists, in order to assess and record conditions on the ground in Gaza and enable the effective preservation and retention of evidence; and ensure that its military does not act to prevent such access, provision, preservation or retention;

- (3) submit an open report to the Court (a) on all measures taken to give effect to these provisional measures within one week as from the date of this Order; and (b) on all measures taken to give effect to all previous provisional measures indicated by the Court within one month as from the date of this Order.”

18. At the end of its oral observations, Israel requested the Court to “reject the request for the modification and indication of provisional measures submitted by the Republic of South Africa”.

19. At the end of the hearings, a Member of the Court put a question to Israel, which provided a written reply to the question on 18 May 2024. South Africa submitted written comments on the reply provided by Israel on 20 May 2024.

*

* *

I. GENERAL OBSERVATIONS

20. In the view of the Court, South Africa’s present Request is a request for the modification of the Order of 28 March 2024. For this reason, the Court must determine whether the conditions set forth in Article 76, paragraph 1, of the Rules of Court have been fulfilled. That paragraph reads as follows:

“At the request of a party or *proprio motu*, the Court may, at any time before the final judgment in the case, revoke or modify any decision concerning provisional measures if, in its opinion, some change in the situation justifies such revocation or modification.”

21. The Court must first ascertain whether, taking account of the information that the Parties have provided with respect to the current situation, there is reason to conclude that the situation that warranted the decision set out in its Order of 28 March 2024 has changed since that time. If the Court finds that there was a change in the situation since the delivery of its earlier Order, it will then have to consider whether such a change justifies a modification of its earlier decision concerning provisional measures. Any such modification would be appropriate only if the general conditions laid down in Article 41 of the Statute of the Court were also met in this instance (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Request for the Modification of the Order Indicating Provisional Measures of 7 December 2021, Order of 12 October 2022, I.C.J. Reports 2022 (II)*, p. 581, para. 12).

22. The Court will thus begin by determining whether there has been a change in the situation that warranted the decision set out in its Order of 28 March 2024.

* *

23. South Africa states that its present Request is prompted by the ground incursion that Israel's military began on 7 May 2024 in Rafah, the "last refuge" in Gaza for 1.5 million Palestinians, the majority of whom had been forcibly displaced from northern and central Gaza, and the last viable centre in Gaza for habitation, public administration, and the provision of basic public services and medical care. South Africa contends that Israel has now seized control of both the Rafah crossing and the Kerem Shalom (Karem Abu Salem) crossing, thereby taking full and direct control over all entry and exit points for people and goods to and from Gaza, and that it has closed the former crossing and "mostly disabled" the latter. It alleges that medical facilities in Rafah are also in danger, as the main facility in the entire Rafah Governorate is no longer operational, while the functioning of others is severely impacted. South Africa argues that Israel has directed Palestinians in the eastern portion of Rafah to relocate to "the so-called Al-Mawasi 'humanitarian area' in the Khan Younis Governorate", which is allegedly already overcrowded and lacking in safety, as well as in essential services. According to South Africa, a mass evacuation on this scale is "impossible to carry out safely". The Applicant adds that, in any event, "there is nowhere for Palestinians in Rafah to go", as approximately 76 per cent of the territory of Gaza is now under evacuation orders, and "an estimated two thirds of homes have been damaged or destroyed".

24. In the Applicant's view, Israel's military incursion into Rafah, in light of the extreme risk it poses to humanitarian supplies and basic services in Gaza, to the Palestinian medical system and to the survival of Palestinians in Gaza as a group, "is not only an escalation of the prevailing situation, but gives rise to new facts that are causing irreparable harm to the rights of the Palestinian people in Gaza". South Africa argues that "[t]his amounts to a change in the situation in Gaza since the Court's Order of 28 March 2024, within the meaning of Articles 75 (3) and 76 (2) of the Rules of the Court".

*

25. Israel rejects South Africa's contention that there has been a change in the situation since the Court's Order of 28 March 2024. It claims that, "[w]hile 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 threat to the State of Israel and its citizens". Israel refutes South Africa's allegations that it has closed critical border crossings in Gaza, or that it has failed to facilitate the provision of fuel for sustaining humanitarian operations and facilities. Israel emphasizes that, on the contrary, it has made continuous efforts to alleviate the humanitarian situation in the Gaza Strip, including by opening a new land crossing at Erez West on 12 May 2024, by facilitating the establishment of a floating pier off the Gaza coast, which became operational on 17 May 2024, and by supporting the "rehabilitation of hospitals" in and outside Rafah.

26. Israel contends that it “continues to take extraordinary measures in order to minimize harm to Palestinian civilians in Gaza”, in particular by informing civilians of planned operations by the Israeli Defense Forces in specific areas, by putting in place clear and definite targeting procedures so as to achieve the requisite military needs while minimizing civilian harm, by taking additional measures to ensure that the Israeli Defense Forces are aware of sensitive sites, such as medical services and shelters, and by ensuring that humanitarian aid continues to be delivered during the course of hostilities.

* * *

27. The Court recalls that, in its Order of 26 January 2024, it noted that the military operation conducted by Israel following the attack of 7 October 2023 had resulted in “a large number of deaths and injuries, as well as the massive destruction of homes, the forcible displacement of the vast majority of the population, and extensive damage to civilian infrastructure” (*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. 46). In its decision communicated to the Parties by letters of 16 February 2024, the Court noted, quoting the United Nations Secretary-General, that the developments in the Gaza Strip, and in Rafah in particular, “would exponentially increase what [wa]s already a humanitarian nightmare with untold regional consequences” (see paragraph 8 above). The Court further recalls that, in its Order of 28 March 2024, it observed with regret that the catastrophic living conditions of the Palestinians in the Gaza Strip had deteriorated further since January 2024, especially in view of the prolonged and widespread deprivation of food and other basic necessities to which the Palestinians in the Gaza Strip had been subjected (*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*, para. 18).

28. The Court notes that the catastrophic humanitarian situation in the Gaza Strip which, as stated in its Order of 26 January 2024, was at serious risk of deteriorating, has deteriorated, and has done so even further since the Court adopted its Order of 28 March 2024. In this regard, the Court observes that the concerns that it expressed in its decision communicated to the Parties on 16 February 2024 with respect to the developments in Rafah have materialized, and that the humanitarian situation is now to be characterized as disastrous. After weeks of intensification of military bombardments of Rafah, where more than a million Palestinians had fled as a result of Israeli evacuation orders covering more than three quarters of Gaza’s entire territory, on 6 May 2024, nearly 100,000 Palestinians were ordered by Israel to evacuate the eastern portion of Rafah and relocate to the Al-Mawasi and Khan Younis areas ahead of a planned military offensive. The military ground offensive in Rafah, which Israel started on 7 May 2024, is still ongoing and has led to new evacuation orders. As a result, according to United Nations reports, nearly 800,000 people have been displaced from Rafah as at 18 May 2024.

29. The Court considers that the above-mentioned developments, which are exceptionally grave, in particular the military offensive in Rafah and the resulting repeated large-scale displacement of the already extremely vulnerable Palestinian population in the Gaza Strip, constitute a change in the situation within the meaning of Article 76 of the Rules of Court.

30. The Court is also of the view that the provisional measures indicated in its Order of 28 March 2024, as well as those reaffirmed therein, do not fully address the consequences arising from the change in the situation explained above, thus justifying the modification of these measures. However, in order to modify its earlier decision concerning provisional measures, the Court must still satisfy itself that the general conditions laid down in Article 41 of the Statute of the Court are met in the current situation.

II. CONDITIONS FOR THE INDICATION OF PROVISIONAL MEASURES

31. The Court recalls that, in its Order of 26 January 2024 indicating provisional measures in the present case, it concluded that “prima facie, it ha[d] jurisdiction pursuant to Article IX of the Genocide Convention to entertain the case” (*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. 31). In its Order of 28 March 2024 concerning South Africa’s Request of 6 March 2024 for the modification of the Order of 26 January 2024, the Court stated that it saw no reason to revisit that conclusion (*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*, para. 24). The Court likewise sees no reason to do so for the purposes of deciding on the present Request.

32. In the Order of 26 January 2024, the Court also found that at least some of the rights claimed by South Africa under the Genocide Convention and for which it was seeking protection were plausible, namely the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts mentioned in Article III, and the right of South Africa to seek Israel’s compliance with the latter’s obligations under that Convention (*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. 54). The Court saw no reason to revisit this conclusion in its Order of 28 March 2024 (*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*, para. 25). The Court likewise sees no reason to do so for the purposes of deciding on the present Request. It further considers that, by their very nature, at least some of the provisional measures sought pursuant to the present Request (see paragraph 17 above) are aimed at preserving the rights claimed by the Applicant that the Court has found to be plausible.

33. The Court must now consider whether the current situation entails a risk of irreparable prejudice to the plausible rights claimed by South Africa and whether there is urgency.

34. The Court recalls in this regard that it has previously concluded that, in view of the fundamental values sought to be protected by the Genocide Convention, the plausible rights in question in these proceedings are of such a nature that prejudice to them is capable of causing irreparable harm (see *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. 66; *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, para. 27).

* *

35. The Applicant states that the situation in Gaza “could not be more urgent” and therefore demands the indication of further or modified provisional measures. South Africa refers, in particular, to the widespread risk of violent death and injury faced by the displaced Palestinian population, as well as to the increased restrictions on the provision of humanitarian assistance and the deprivation of access to healthcare that will ensue if hospitals in Rafah are rendered inoperable.

36. The Applicant contends that there has already been “a total collapse of infrastructure, of sanitation, of water, of food supply: in short, the conditions necessary to sustain life for the 2.3 million Palestinians in Gaza”. According to South Africa, “[t]he level of destruction that Israel has caused across Gaza and is now wreaking on Rafah threatens the very survival of future Palestinian generations in Gaza”.

37. South Africa further contends that the very manner in which Israel is pursuing its military operations in Rafah, as well as elsewhere in Gaza, is itself genocidal. Thus, according to South Africa, an “explicit order that Israel ‘cease its military activities’” is required to “protect what is left of Palestinian life in Gaza”. South Africa emphasizes that there are no evacuation zones in Gaza where humanitarian aid and assistance are provided. It contends, in particular, that Al-Mawasi cannot be considered as a humanitarian zone for Palestinians instructed to evacuate from Rafah because it is

“profoundly unsafe: over-crowding, mountains of waste, and the lack of water and sanitation are leading to the spread of disease, while Israeli military attacks on the area, including aerial bombardment, shelling and sniping, have led to and continue to lead to serious injury and death”.

According to South Africa, Israel “had no plan in place to accommodate the hundreds of thousands of Palestinians ordered to flee Rafah and other areas in early May 2024 — just like it had no plan to accommodate those forced to flee as a result of previous evacuation orders”.

38. The Applicant finally states that Israel’s “complete refusal to allow independent investigators” in Gaza entails a risk that the true number of Palestinian casualties will remain unknown and that evidence will be obliterated as a result of Israel’s ongoing military operation. In South Africa’s view, this justifies the imposition of a measure requiring Israel to grant unimpeded access to Gaza to “persons able to investigate ongoing atrocities”, particularly in light of the recent

discovery of multiple mass graves at Nasser Hospital in Khan Younis and at Al Shifa Hospital in Gaza City with bodies “reportedly showing signs of torture and summary executions”.

*

39. Israel maintains that the allegations against it are “patently untrue” and that many of South Africa’s assertions lack any basis in fact or law. The Respondent argues that the provisional measures indicated by the Court that are currently in place are entirely sufficient and claims that South Africa has not established that the “extreme measures” that it now seeks are justified.

40. Israel contends that there has not been “a large-scale assault” on Rafah, but rather that specific, limited and localized operations have been undertaken, prefaced by incremental and localized evacuations and support for humanitarian activities. It states that, as part of its efforts to facilitate the evacuation of civilians from parts of the Rafah region where intense hostilities were expected, “a humanitarian area was initially delineated by Israel in the Al-Mawasi area” located outside the theatre of planned hostilities. Israel states that this area was “expanded very significantly” since the beginning of the military offensive.

41. According to the Respondent, the Israeli Defense Forces implement “[r]estricted fire areas” and “tactical pauses in fighting along evacuation routes” to enhance the security of the Palestinians evacuating. Israel further states that two main routes can reach this “humanitarian area”, making it possible to deliver aid, including from the floating pier off the Gaza coast operational since 17 May 2024. It also alleges that it actively facilitates the provision of food, water and shelter, and that six of the eight field hospitals in Gaza are located in that area. Israel submits that it has purchased 40,000 tents capable of sheltering 320,000 people in the humanitarian area and that 7,000 of those tents have entered Gaza. According to Israel’s assessment, approximately 800,000 civilians have evacuated the Rafah area to date, whether as a result of sectoral warnings issued by the Israeli Defense Forces or on their own initiative.

42. In Israel’s view, an Order by the Court requesting the cessation of hostilities by Israel “would mean that 132 hostages would remain to languish in Hamas’ tunnels forsaken . . . [and that] Hamas would be left unhindered and free to continue its attacks against Israeli territory and Israeli civilians”. Israel also states that its military action in Rafah has the purpose of protecting its civilians and rescuing the Israeli hostages still held by Hamas and other armed groups. The Respondent further states that it has in place the necessary mechanisms to examine and investigate allegations of wrongdoing by its military forces and to ensure accountability.

* *

43. The Court recalls that, on 7 May 2024, Israel began a military offensive in Rafah, following weeks of intensified bombardment, and that, as a result, approximately 800,000 Palestinians were displaced from Rafah as at 18 May 2024 (see paragraph 28 above).

44. The Court notes that senior United Nations officials have consistently underscored the immense risks associated with a military offensive in Rafah. For instance, on 3 May 2024, the Spokesperson of the Office for the Coordination of Humanitarian Affairs (OCHA) warned that an assault on Rafah would put “hundreds of thousands of people . . . at imminent risk of death” and would severely impact the humanitarian operation in the entire Gaza Strip, which is run primarily out of Rafah (OCHA, “Hostilities in the Gaza Strip and Israel — Flash Update #162”, 6 May 2024). On 6 May 2024, the United Nations Children’s Fund (UNICEF) indicated that about half of the approximately 1.2 million Palestinians sheltering in Rafah were children, and warned that military operations therein would result in “the few remaining basic services and infrastructure they need to survive being totally destroyed” (UNICEF, “UNICEF warns: There is ‘nowhere safe to go’ for the 600,000 children of Rafah”, press release, 6 May 2024).

45. United Nations sources indicate that the above-mentioned risks have started to materialize and will intensify even further if the operation continues. For instance, on 8 May 2024, the Director-General of the World Health Organization stated that the Al Najjar Hospital, one of the last remaining medical facilities in the Rafah Governorate, was no longer functional due to the ongoing hostilities in its vicinity. On 17 May 2024, the World Food Programme (WFP) warned that it had been unable to access its warehouse in Rafah for over a week and observed that “[t]he incursion into Rafah is a significant setback to recent modest progress on access” (WFP, “Gaza updates: WFP responds to hunger crisis as Rafah incursion cuts access to warehouse”, press release, 17 May 2024).

46. On the basis of the information before it, the Court is not convinced that the evacuation efforts and related measures that Israel affirms to have undertaken to enhance the security of civilians in the Gaza Strip, and in particular those recently displaced from the Rafah Governorate, are sufficient to alleviate the immense risk to which the Palestinian population is exposed as a result of the military offensive in Rafah. The Court observes, for instance, that according to a statement by the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Mr Philippe Lazzarini, on 18 May 2024,

“[t]he areas that people are fleeing to now do not have safe water supplies or sanitation facilities. Al-Mawasi — as one example — is a sandy 14 square kilometre agricultural land, where people are left out in the open with little to no buildings or roads. It lacks the minimal conditions to provide emergency humanitarian assistance in a safe and dignified manner.”

The Court observes that Israel has not provided sufficient information concerning the safety of the population during the evacuation process, or the availability in the Al-Mawasi area of the necessary amount of water, sanitation, food, medicine and shelter for the 800,000 Palestinians that have evacuated thus far. Consequently, the Court is of the view that Israel has not sufficiently addressed and dispelled the concerns raised by its military offensive in Rafah.

47. In light of the considerations set out above, and taking account of the provisional measures indicated in its Orders of 26 January 2024 and 28 March 2024, the Court finds that the current situation arising from Israel's military offensive in Rafah entails a further risk of irreparable prejudice to the plausible rights claimed by South Africa and that there is urgency, in the sense that there exists a real and imminent risk that such prejudice will be caused before the Court gives its final decision.

III. CONCLUSION AND MEASURES TO BE ADOPTED

48. The Court concludes, on the basis of the above considerations, that the circumstances of the case require it to modify its decision set out in its Order of 28 March 2024.

49. The Court recalls that, in accordance with Article 75, paragraph 2, of its Rules, when a request for the indication of provisional measures has been made, it has the power under its Statute to indicate measures that are, in whole or in part, other than those requested. In the present case, having considered the terms of the provisional measures requested by South Africa and the circumstances of the case, the Court finds that the measures to be indicated need not be identical to those requested.

50. The Court considers that, in conformity with its obligations under the Genocide Convention, Israel must immediately halt its military offensive, and any other action in the Rafah Governorate, which may inflict on the Palestinian group in Gaza conditions of life that could bring about its physical destruction in whole or in part.

51. The Court recalls that, in its Order of 26 January 2024, it ordered Israel, *inter alia*, to “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 Genocide Convention]” (see paragraph 5 above). In the present circumstances, the Court is also of the view that, in order to preserve evidence related to allegations of acts falling within the scope of Article II and Article III of the Genocide Convention, Israel must take effective measures to ensure the unimpeded access to the Gaza Strip of any commission of inquiry, fact-finding mission or other investigative body mandated by competent organs of the United Nations to investigate allegations of genocide.

52. The Court also considers that the catastrophic situation in Gaza confirms the need for the immediate and effective implementation of the measures indicated in its Orders of 26 January 2024 and 28 March 2024, which are applicable throughout the Gaza Strip, including in Rafah. In these circumstances, the Court finds it necessary to reaffirm the measures indicated in those Orders. In so doing, the Court wishes to emphasize that the measure indicated in paragraph 51 (2) (a) of its Order of 28 March 2024, requiring the “unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance”, necessitates that the Respondent maintain open land crossing points, and in particular the Rafah crossing.

53. In view of the specific provisional measures it has decided to indicate, the Court considers that Israel must 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. The report so provided will then be communicated to South Africa, which shall be given the opportunity to submit to the Court its comments thereon.

54. The Court recalls that its orders on provisional measures under Article 41 of the Statute have binding effect and thus create international legal obligations for any party to whom the provisional measures are addressed (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 22 February 2023, I.C.J. Reports 2023*, p. 29, para. 65).

55. The Court underlines that the present Order is without prejudice to any findings concerning the Respondent's compliance with the Orders of 26 January 2024 and 28 March 2024.

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56. In its Orders of 26 January 2024 and 28 March 2024, the Court expressed its grave concern over the fate of the hostages abducted during the attack in Israel on 7 October 2023 and held since then by Hamas and other armed groups, and called for their immediate and unconditional release. The Court finds it deeply troubling that many of these hostages remain in captivity and reiterates its call for their immediate and unconditional release.

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57. For these reasons,

THE COURT,

(1) By thirteen votes to two,

Reaffirms the provisional measures indicated in its Orders of 26 January 2024 and 28 March 2024, which should be immediately and effectively implemented;

IN FAVOUR: *President* Salam; *Judges* Abraham, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judge ad hoc* Barak;

(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 civilians in the Rafah Governorate:

(a) By thirteen votes to two,

Immediately halt its military offensive, and any other action in the Rafah Governorate, which may inflict on the Palestinian group in Gaza conditions of life that could bring about its physical destruction in whole or in part;

IN FAVOUR: *President* Salam; *Judges* Abraham, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judge ad hoc* Barak;

(b) By thirteen votes to two,

Maintain open the Rafah crossing for unhindered provision at scale of urgently needed basic services and humanitarian assistance;

IN FAVOUR: *President* Salam; *Judges* Abraham, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judge ad hoc* Barak;

(c) By thirteen votes to two,

Take effective measures to ensure the unimpeded access to the Gaza Strip of any commission of inquiry, fact-finding mission or other investigative body mandated by competent organs of the United Nations to investigate allegations of genocide;

IN FAVOUR: *President* Salam; *Judges* Abraham, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judge ad hoc* Barak;

(3) By thirteen votes to two,

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.

IN FAVOUR: *President* Salam; *Judges* Abraham, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judge ad hoc* Barak.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-fourth day of May, two thousand and twenty-four, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of South Africa and the Government of the State of Israel, respectively.

(Signed) Nawaf SALAM,
President.

(Signed) Philippe GAUTIER,
Registrar.

Vice-President SEBUTINDE appends a dissenting opinion to the Order of the Court; Judges NOLTE, AURESCU and TLADI append declarations to the Order of the Court; Judge *ad hoc* BARAK appends a dissenting opinion to the Order of the Court.

(Initialed) N.S.

(Initialed) Ph.G.
