

INTERNATIONAL COURT OF JUSTICE

Application of the Convention on the Prevention and Punishment
of the Crime of Genocide in the Gaza Strip
(South Africa v. Israel)

**DECLARATION OF INTERVENTION BY
THE REPUBLIC OF CHILE**

12 September 2024

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DECLARATION OF INTERVENTION BY
THE REPUBLIC OF CHILE

1. The Government of the Republic of Chile (hereinafter “Chile”), has the honour to submit to the International Court of Justice a declaration of intervention pursuant to Article 63 of the Statute of the Court, in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*.
2. Under Article 82 of the Rules of the Court, a Declaration of Intervention submitted pursuant to Article 63 of the Court’s Statute shall state the name of an agent, specify the case and the convention to which it relates, and “shall contain:
 - (a) particulars of the basis on which the declarant State considers itself a party to the convention;
 - (b) identification of the particular provisions of the convention the construction of which it considers to be in question;
 - (c) a statement of the construction of those provisions for which it contends;
 - (d) a list of the documents in support, which documents shall be attached.”
3. The aforementioned elements are addressed below, in turn.

I. CASE AND CONVENTION TO WHICH THE DECLARATION RELATES

4. On 29 December 2023, the Republic of South Africa (hereinafter “South Africa”) filed before the Court an application instituting proceedings against the State of Israel (hereinafter “Israel”) concerning alleged violations of its obligations under Articles I, III, IV, V and VI of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 (hereinafter the “Genocide Convention” or the “Convention”) in relation to Palestinians in Gaza, basing the Court’s jurisdiction on the compromissory clause contained in Article IX of the Convention and on Article 36, paragraph 1, of the Statute of the Court.
5. In the same application, South Africa also requested the Court to indicate provisional measures.

6. After having heard both parties on the matter, on 26 January 2024, the Court issued an order on provisional measures. The Court found that it had *prima facie* jurisdiction because, at that stage, the Parties appeared “to hold clearly opposite views as to whether certain acts or omissions allegedly committed by Israel in Gaza amount to violations by the latter of its obligations under the Genocide Convention”,¹ and in “the Court’s view, at least some of the acts and omissions alleged by South Africa to have been committed by Israel in Gaza appear to be capable of falling within the provisions of the Convention”.²
7. The Court also found that there was a link between some of the requested measures and the rights asserted by South Africa under the Genocide Convention, which the Court concluded were plausible. Finally, the Court considered that there was “a real and imminent risk that irreparable prejudice will be caused to the rights found by the Court to be plausible, before it gives its final decision”.³ It thus indicated several provisional measures.
8. Since then, at South Africa’s request, the Court has further issued additional provisional measures, on two different occasions,⁴ due to the fact that previous provisional measures did not fully address the consequences arising from new developments, which are exceptionally grave.

II. CHILE IS A PARTY TO THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

9. Chile has been a party to the Genocide Convention since 3 June 1953, when it deposited its instrument of ratification with the Secretary-General of the United Nations in accordance with the provisions of Article XI of the Convention. Accordingly, the Convention entered into force for Chile on 1 September 1953. Chile did not formulate any reservations and remains a party to the Convention.

¹ *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, at p. 11, para. 28.

² *Ibid.*, at p. 12, para. 30.

³ *Ibid.*, at p. 22, para. 74.

⁴ Through Orders of 28 March 2024 and 24 May 2024.

III. THE PARTICULAR PROVISIONS OF THE CONVENTION WHOSE CONSTRUCTION IS IN QUESTION AND CHILE'S STATEMENT ON THEIR INTERPRETATION

10. Chile considers that the provisions of the Genocide Convention whose construction is in question in the present case are Articles I, II, III, IV, V, VI and IX.

A. Construction of Article IX – Jurisdictional clause

11. As aforementioned, South Africa based the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and Article IX of the Genocide Convention.

12. Article IX of the Genocide Convention makes the Court's jurisdiction conditional on the existence of a dispute relating to the interpretation, application, or fulfilment of the Convention.

13. Israel has already anticipated that it contends the assertion that a dispute existed between both Parties before the filing of the proceedings. During its oral pleadings concerning South Africa's first request of provisional measures, Israel argued that there were no bilateral interactions between the two States, that South Africa's unilateral assertions did not suffice to establish the existence of a dispute, and that it was not provided with a reasonable opportunity to respond to the allegations of genocide.⁵

14. Hence, in Chile's view, the construction of Article IX of the Genocide Convention is in question in the present case. Chile's statement regarding the construction of this provision will address two points. First, the meaning of "dispute" in Article IX of the Genocide Convention, and second, the *erga omnes* character of the obligations in the Convention.

15. Regarding the first point, under Article 31 of the Vienna Convention on the Law of Treaties, the term "dispute" shall be interpreted in accordance with its ordinary meaning under international law. In this regard, the Court's well-established case law has determined that a dispute is "a disagreement on a point of law or fact, a conflict

⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)*, Verbatim Record of 12 January 2024, at pp. 25-28.

of legal views or of interest” between parties.⁶ In order for a dispute to exist, “[i]t must be shown that the claim of one party is positively opposed by the other”.⁷ The two sides must “hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations”.⁸

16. In principle, the relevant date in which a dispute needs to be in existence is the date of the filing of the application.⁹ On that date, what must be demonstrated is that “the respondent was aware, or could not have been unaware, that its views were positively opposed by the applicant”.¹⁰ However, the conduct of the Parties subsequent to the application may also be relevant to confirm the existence of a dispute.¹¹
17. In making such determination, the Court must take into account, in particular, any statements or documents exchanged between the parties,¹² as well as any exchanges made in multilateral settings.¹³ Furthermore, the Court must pay special attention “to the content of a party’s statement and to the identity of the intended addressees, in

⁶ *Mavrommatis Palestine Concessions*, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 11.

⁷ *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment, I.C.J. Reports 1962, p. 328.

⁸ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016 (I), p. 270, para. 34; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016 (I), p. 26, para. 50.

⁹ *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016 (I), p. 27, para. 52.

¹⁰ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016 (I), p. 271, para. 38; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016 (I), p. 32, para. 73; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011 (I), p. 100, para. 63; and *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Preliminary Objections, Judgment, 2024, p. 33, para. 45.

¹¹ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016 (I), p. 272, para. 40; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, I.C.J. Reports 2022, p. 477, para. 64.

¹² *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I), pp. 220-221, para. 35.

¹³ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011 (I), pp. 94-95, paras. 51 and 53.

¹³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)*, Order of 26 January 2024, paras. 28.

order to determine whether that statement, together with any reaction thereto, show that the parties before it held clearly opposite views”.¹⁴

18. For a declaration made in a multilateral setting to be considered as evidence of a dispute, it shall not be made in hortatory terms¹⁵ and it “must refer to the subject-matter of the treaty with sufficient clarity to enable the State against which a claim is made to identify that there is, or may be, a dispute with regard to that subject-matter”.¹⁶
19. The amount of time in which a statement is issued before the institution of proceedings is not relevant, as long as it is clear that the respondent knew at that time that its views were positively opposed by the applicant.¹⁷
20. Lastly, regarding the second point on the construction of Article IX, Chile would like to note that since the obligations arising from the Genocide Convention have an *erga omnes partes* character, in the sense that each State party has an interest in compliance with them in any given case,¹⁸ any State party to the Convention, without distinction, is entitled to invoke the responsibility of another State party for an alleged breach of its obligations, without the need to demonstrate a special interest.¹⁹

¹⁴ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016, p. 255, at p. 273, para. 45. See also, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, I.C.J. Reports 2022, p. 477, at p. 29, para. 64.

¹⁵ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016, p. 255, at p. 274, para. 46.

¹⁶ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011 (I), p. 85, para. 30; and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, I.C.J. Reports 2022, p. 477, at p. 32, para. 72.

¹⁷ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Preliminary Objections, Judgment, 2024, p. 35, para. 50.

¹⁸ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012 (II), p. 449, para. 68; see also *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain)*, Second Phase, Judgment, I.C.J. Reports 1970, p. 32, para. 33.

¹⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, ICJ, 22 July 2022, para. 108-109.

B. Construction of Article II – The definition of genocide

21. The definition of genocide enshrined in Article II of the Genocide Convention is premised on two core elements: a prohibited conduct or *actus reus*, comprised by a series of acts enumerated in Article II, and the intent on the part of the perpetrator to destroy a protected group in whole or in part, or *mens rea*. This subjective element is genocide's essential characteristic, which distinguishes it from other serious crimes under international law.²⁰
22. With regard to Article II of the Convention, Chile would like to focus on two specific legal issues that are in question in the present case. First, the protected groups which fall within the scope of protection of the Genocide Convention, and second, the genocidal intent.
23. In relation to the first issue, pursuant to Article II of the Convention, the genocidal intent must be directed against a group with particular positive characteristics, namely, a distinct collection of people who have a specific group identity²¹ — national, ethnical, racial, or religious— “as such”. By requiring the destruction of a group “as such” the Convention clarifies that the victim is targeted not because of their individual identity, but rather due to their membership in a protected group. Hence, the victim of the crime of genocide is both the group itself as well as the individual.²² This is what makes genocide an exceptionally grave crime and distinguishes it from other serious crimes.²³
24. Furthermore, and as previously noted by the Court, the drafting history of the Convention confirms that the protected groups must be defined in a positive way, encompassing groups “with specific distinguishing well-established, some said immutable, characteristics. A negatively defined group cannot be seen in that way”.²⁴

²⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J., 3 February 2015, para. 132.

²¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, at p. 219, para. 193.

²² ICTR, Trial Chamber I, *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Judgement, 2 September 1998, para. 521.

²³ ICTY, Trial Chamber, *Prosecutor v. Radovan Karadžić*, IT-95-5/18-T, Judgement, 24 March 2016, para 551.

²⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, at p. 219, para. 194.

25. To determine whether a victim is a member of a protected group under the Genocide Convention, a number of factors must be taken into account, including the exercise of a particular religion, the commonly shared language or culture, and the socio-historic context in which the group inhabits.²⁵ Additionally, the victims' self-identification might also be relevant to establish the existence of a protected group,²⁶ considering that membership in a group is, essentially, a subjective rather than an objective concept.²⁷
26. On this point, Chile notes the Court's preliminary finding that the Palestinians "appear to constitute a distinct national, ethnical, racial or religious group" under the Genocide Convention.²⁸ Chile also notes the Court's recent Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* of 19 July 2024, in which the Court found that the regime of comprehensive restrictions imposed by Israel on Palestinians in the Occupied Palestinian Territory "constitutes systematic discrimination based on, *inter alia*, race, religion or ethnic origin".²⁹
27. In addition, the Genocide Convention also provides protection for parts of a group. However, when assessing a genocidal intent directed towards a part of a group, that part must be *substantial*.³⁰ This does not require a specific numeric threshold to be reached; it is enough to consider the potential effect of the intended destruction of that section on the group as a whole.³¹ In this sense, the prominence of the allegedly targeted part within the group as a whole is relevant, considering its importance to the broader community.³² Similarly, an intent to destroy a part of a group within a

²⁵ ICTY, Trial Chamber, *Prosecutor v. Radislav Krstić*, IT-98-33-T, Judgment, 02 August 2001, para 557.

²⁶ *Ibid.*, para 559.

²⁷ ICTR, Trial Chamber I, *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, ICTR-96-3-T, Judgment and Sentence, 6 December 1999, para. 56.

²⁸ *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, at p. 15, para. 45.

²⁹ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, p. 64, para. 223.

³⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, at p. 219, para. 198.

³¹ *Ibid.*

³² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 3, at p. 65, para. 142.

geographically limited region is generally sufficient, and it is not necessary to intend to achieve the complete annihilation of a group from every corner of the globe.³³

28. Regarding the second issue, Chile notes that the jurisprudence of the Court has made clear that genocide requires the specific intent to destroy —physically or biologically—³⁴, in whole or in part, the protected group as such.
29. Chile acknowledges that this element presents significant evidential challenges, since external manifestations of intent might be particularly difficult to obtain or detect. In fact, because of its nature, genocidal intent is not usually susceptible of direct proof. However, the lack of direct evidence is not necessarily an impediment to a finding of genocide.
30. Indeed, this specific intent may be inferred from a number of facts and circumstances, “such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group, the repetition of destructive and discriminatory acts, or the existence of a plan or policy”.³⁵ Similarly, the Court has noted that a pattern of conduct can be accepted as evidence if the intent to destroy is the only reasonable inference that can be drawn from said pattern.³⁶
31. Other elements that might also be relevant to provide indications of the perpetrator’s state of mind are statements and utterances of the accused;³⁷ orders to commit crimes or inciting and encouraging words intended to lead to the commission of crimes;³⁸

³³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, at p. 219, para. 199.

³⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 3, at pp. 62-63, paras. 134-136.

³⁵ ICTY, Appeals Chamber, *Prosecutor v. Zdravko Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, para. 246.

³⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 3, at p. 122, para. 417; and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, at pp. 196-197, para. 373.

³⁷ ICTR, Appeals Chamber, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, ICTR-99-52-A, Judgment, 28 November 2007, para. 567.

³⁸ ICTR, Trial Chamber III, *The Prosecutor v. Siméon Nchamihigo*, ICTR-01-63-T, Judgement and Sentence, 12 November 2008, para. 333-335.

implied calls to kill members of the targeted group;³⁹ the use of derogatory language to describe the targeted group or its members, among others.⁴⁰

32. Consequently, to determine whether the perpetrator meets the *mens rea* requirement, the Court must conduct a holistic analysis of evidence, considering the overall factual picture within the context in which the acts occurred, and the pattern of conduct of the accused. Assessing all evidence, taken together, is an approach that aligns with the fluid concept of intent.⁴¹
33. Lastly, it is essential to note that the Genocide Convention does not require that the intent to destroy a group (in whole or in part) be the sole or primary purpose of the perpetrator.⁴² Genocide's special intent must be distinguished from the reasons or motivations which may have caused the accused to act.⁴³ Indeed, members of a protected group could be targeted for their nationality, ethnicity, race, and/or religion, in addition to other reasons. Therefore, evidence of further motives —personal, political, or linked to military advantage— will not preclude a finding of genocide if such special intent is otherwise established.⁴⁴

C. Construction of Article I – Duty to prevent genocide

34. Article I of the Genocide Convention, establishes a general duty to prevent and to punish acts of genocide.
35. The duty to prevent, albeit directly linked with the duty to punish, constitutes a distinct obligation,⁴⁵ with its own scope, that compels all State parties to the Convention to

³⁹ ICTR, Appeals Chamber, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, ICTR-99-52-A, Judgment, 28 November 2007, paras. 568-569.

⁴⁰ ICTY, Appeals Chamber, *Prosecutor v. Zdravko Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, paras. 573-576.

⁴¹ *Ibid.*, para. 247.

⁴² ICTR, Appeals Chamber, *The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, ICTR-96-10-A & ICTR-96-17-A, 13 December 2004, para. 304.

⁴³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, at p. 219, para. 189.

⁴⁴ UN Security Council, *Final Report of the Commission of Experts established pursuant to Security Council Resolution 935 (1994)*, UN Doc. S/1994/1405, 9 December 1994, para. 159.

⁴⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, at p. 219, para. 425.

“take such action as they can to prevent genocide from occurring”⁴⁶ but also any acts punishable under the Convention, such as those enumerated within Article III.

36. The Court has previously stated that the duty to prevent is a due diligence obligation⁴⁷ of an *erga omnes* character, that is not territorially limited.⁴⁸ Due diligence obligations entail the adoption of appropriate rules and measures, a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators.⁴⁹ The standard of due diligence will vary depending on the circumstances, however, it is clear that the more serious the risk, the more severe the applicable standard.⁵⁰

37. In the case of the duty to prevent genocide under Article I of the Convention, to determine whether this standard has been met, the Court will need to assess, amongst others, the State’s capacity to influence effectively the action of persons likely to commit, or already committing, genocide, including geographical distance from the scene of the events, the strength of the political links with the main actors, and its legal position regarding the endangered population.⁵¹ Thus, if after having considered the aforementioned parameters the Court finds that the “State manifestly failed to take all measures to prevent genocide which were within its power”, then the duty of prevention will be deemed to have been breached.⁵²

38. For these purposes, “it is irrelevant whether the State whose responsibility is in issue claims, or even proves, that even if it had employed all means reasonably at its disposal, they would not have sufficed to prevent the commission of genocide”.⁵³

⁴⁶ *Ibid.*, at p. 220, para. 428.

⁴⁷ *Ibid.*, at p. 221, para. 430.

⁴⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, Preliminary Objections, Judgment, I.C.J. Reports 1996, p. 595, at p. 616.

⁴⁹ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, at p. 79, para. 197.

⁵⁰ International Tribunal for the Law of the Sea, *Request for an advisory opinion submitted by the commission of small island states on climate change and international law*, Advisory Opinion, 2024 at p. 86, para. 239.

⁵¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, at p. 221, para. 430.

⁵² *Ibid.*

⁵³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, at p. 221, para. 430.

What is important is that the State had the means to do so, but it manifestly refrained from using them.⁵⁴

39. Lastly, it is important to note that even if the obligation to prevent genocide is only breached if genocide was actually committed, the obligation to prevent genocide arises in that case “at the moment in which the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed.”⁵⁵
40. Certainty that genocide or any of the other punishable acts under the Convention are about to be committed is not necessary, rather awareness of the serious danger that those acts would be committed suffices.⁵⁶ Hence, from that moment onwards, any failure to adopt and implement suitable measures to prevent genocide or any related acts from being committed would entail the State’s responsibility.⁵⁷
41. The Court has previously found that the rendering of an order indicating provisional measures, even if not a definitive finding on the merits, could be indicative of the influence a State might exercise over the actors,⁵⁸ and Chile proposes it could also be indicative of its awareness that a serious risk might be committed.
42. In the case at hand, the Court has issued three different orders indicating provisional measures, having found that the facts and circumstances presented by South Africa “are sufficient to conclude that at least some of the rights claimed by South Africa and for which it is seeking protection are plausible. This is the case with respect to the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts identified in Article III”.⁵⁹
43. In particular, the Court has found a serious risk that these acts might be committed based on “certain statements by Israeli State officials, including members of its military”,⁶⁰ in the deteriorating catastrophic humanitarian situation in the Gaza Strip

⁵⁴ *Ibid.*, at p. 225, para. 438.

⁵⁵ *Ibid.*, at pp. 221-222 para. 431.

⁵⁶ *Ibid.*, p. 43, at pp. 222-223, para. 432.

⁵⁷ *Ibid.*, at pp. 222-223, para. 432.

⁵⁸ *Ibid.*, at pp. 223-224, para. 435.

⁵⁹ *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.

⁶⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (South Africa v. Israel), Provisional Measures, Order of 26 January 2024, Declaration of Judge Nolte, para. 15.

due to the famine and starvation that has been setting in,⁶¹ and due to the “military offensive in Rafah and the resulting repeated large-scale displacement of the already extremely vulnerable Palestinian population in the Gaza Strip.”⁶²

44. Furthermore, the provisional measures that were indicated, show the potential influence Israel can exercise over the situation in Gaza. In particular, the Court has thus far ordered Israel, amongst others, to (i) take all measures within its power to prevent the commission of all acts that would constitute genocide, and ensure that its military does not commit any of those acts; (ii) 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,⁶³ (iii) take all necessary and effective measures to ensure, without delay, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance, and ensure that its military does not prevent this provision,⁶⁴ and (iv) 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”, while also ensuring the unimpeded access to the Gaza Strip of any investigative body mandated by competent organs of the United Nations to investigate allegations of genocide.⁶⁵

45. After the issuance of the provisional measures, and considering the Court’s finding that the right of the Palestinians in Gaza to be protected from acts of genocide was plausible, Israel cannot claim that it was not aware of the existence of this risk.

46. Likewise, the availability of other information raising serious concerns about the likelihood of the commissions of acts of genocide or other acts punishable by the Convention, is also revealing of a State’s awareness of this risk.⁶⁶

⁶¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (South Africa v. Israel), Provisional Measures, Order of 28 March 2024.

⁶² *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 24 May 2024.

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

⁶⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (South Africa v. Israel), Provisional Measures, Order of 28 March 2024.

⁶⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (South Africa v. Israel), Provisional Measures, Order of 24 May 2024.

⁶⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, at p. 225, para. 438.

D. Construction of Articles I and VI – Duty to punish

47. The duty to punish, enshrined in Articles I and VI of the Convention, imposes an obligation on State parties to prosecute and try before a competent tribunal any person charged with genocide or any of the other acts enumerated in Article III.
48. This duty arises even if the State is found to have incurred in responsibility for acts of genocide or any other acts enumerated in Article III, since “these are two distinct internationally wrongful acts attributable to the State, and both can be asserted against it as bases for its international responsibility.”⁶⁷
49. In the *Bosnian Genocide* case the Court declared that the obligation to prosecute imposed by Article VI is subject to an express territorial limit,⁶⁸ stating that “Article VI only obliges the Contracting Parties to institute and exercise territorial criminal jurisdiction”.⁶⁹ However, because of the specific circumstances of that case, in which the acts of genocide were committed in Bosnian territory by an entity not considered to be a State organ, nor under the effective control of the Respondent, the Court did not have the opportunity to determine whether the obligation to punish genocide and its related acts is confined solely to those territories over which a State has sovereignty, or whether it also extends to those territories over which it exercises jurisdiction or effective control.⁷⁰
50. In particular, and relevant to the present case, the Court would need to determine whether Israel has a duty to punish acts of genocide or other related acts committed within Gaza, considering its recent finding that Gaza remains an occupied territory even after the withdrawal of Israeli military presence in 2005, and especially since 7 October 2023.⁷¹ For this purpose, in interpreting the duty under Article VI, the Court would need to consider the law of occupation under international humanitarian law.
51. Chile is aware that an intervention under Article 63 of the Court’s Statute must only relate to the construction of provisions of the relevant Convention. However, the

⁶⁷ *Ibid.*, at p. 201, para. 383.

⁶⁸ *Ibid.*, at p. 120, para. 184.

⁶⁹ *Ibid.*, at pp. 226-227, para. 442.

⁷⁰ Marko Milanovic, *Territorial Application of the Genocide Convention and State Succession in The UN GENOCIDE CONVENTION: A COMMENTARY* (Paola Gaeta, ed.) (OUP, 2009), at p.481.

⁷¹ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, pp. 30-31, paras. 93-94.

Court has declared that references to other rules and principles of international law outside the Genocide Convention would be taken into account in so far as they may be relevant for the construction of the Convention's provisions, in accordance with the customary rules of treaty interpretation reflected in the Vienna Convention on the Law of Treaties, in particular Article 31, paragraph 3 (c).⁷²

52. Under customary international law as reflected in Article 42 of the Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907 (hereinafter “the Hague Regulations of 1907”), territory is considered occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised.⁷³ In other words, a “State occupies territory that is not its own when, and to the extent that, it exercises effective control over it.”⁷⁴
53. In this regard, considering that Gaza is currently under the occupation of Israel in the context of an ongoing armed conflict,⁷⁵ in determining whether Article VI includes an obligation to punish acts committed in Gaza, any relevant rules of the law of occupation shall be taken into account, together with the context.
54. Pursuant to Article 43 of the Hague Regulations of 1907, in an occupied territory, the authority of the legitimate power passes into the hands of the occupant, who has a duty to take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.⁷⁶ Hence, in a situation of occupation, the temporary holder of authority is the Occupying Power.

⁷² *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Declarations of Intervention, Order of 5 June 2023, para. 84; and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Declarations of Intervention, Order of 3 July 2024, para. 45.

⁷³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, at p. 167, para. 78; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, at p. 28, para. 86 and p. 30, para. 92.

⁷⁴ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, at p. 30, para. 90.

⁷⁵ *Ibid.*, para. 93.

⁷⁶ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

55. This is further confirmed by Article 64 of the Fourth Geneva Convention relative to the protection of civilian persons in time of war, that authorizes the Occupying Power to subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations.⁷⁷ Indeed, the authoritative commentary to the Convention by the International Committee of the Red Cross, explains that these powers are necessary to ensure an effective administration of justice, since the Occupying Power, as the temporary holder of legal power, would need to assume responsibility for penal jurisdiction in cases where local courts are unable to function properly.⁷⁸
56. In this regard, while it is true that in an occupation the tribunals of the occupied territory shall, in principle, continue to function; in situations where that is not possible, it falls unto the Occupying Power to exercise relevant penal jurisdiction. This would certainly include the prosecution and punishment of persons charged with acts of genocide or other related acts committed in the occupied territory.
57. In fact, the exercise of criminal jurisdiction to punish genocide and related crimes is essential to enable Israel, as an occupying power, to fulfil its obligations under the Fourth Geneva Convention. Furthermore, as recently put by the Court “[i]t is the effective control of a territory, regardless of its legal status under international law, which determines the basis of the responsibility of a State for its acts affecting the population of the territory or other States.”⁷⁹
58. Thus, in light of the purely humanitarian and civilizing purpose of the Convention, it follows that the duty to punish is applicable not only to sovereign territory, but also to territories under the jurisdiction or effective control of a State, including occupied territories. A conclusion to the contrary would lead to intolerable situations of impunity where a State charged with the main responsibility of protecting a population because of its control over the territory, would be exempted from

⁷⁷ Fourth Geneva Convention relative to the protection of civilian persons in time of war of 12 August 1949, Art. 64(2).

⁷⁸ ICRC, Commentary on Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, Article Art. 64 (1958).

⁷⁹ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, at p. 72, para. 264.

punishing any acts of genocide committed in that territory, even if such acts were committed by its own forces.

E. Construction of Articles III, IV, V, and VI – Direct and public incitement to commit genocide

59. As a final point, Chile would like to refer to public incitement to commit genocide, enshrined in Article III of the Genocide Convention.
60. Direct and public incitement to commit genocide is an autonomous crime under international law,⁸⁰ punishable as such, even if it fails to produce the result expected by the perpetrator,⁸¹ if there is no causal relationship between the speech and the subsequent acts,⁸² and if no act of genocide has resulted therefrom.⁸³
61. Thus, in order to assert whether direct and public incitement to commit genocide has taken place in the present case—as claimed by South Africa—the Court must focus not on the *effects* of the speeches or appeals but on their *content*. As noted by the International Criminal Tribunal for Rwanda, “[i]t is the potential of the communication to cause genocide that makes it incitement”.⁸⁴ Direct and public incitement is punishable because it carries a significant risk for society, even if it fails to produce any results.⁸⁵
62. On its examination, the Court should bear in mind that direct and public incitement to commit genocide must be distinguished from hate speech or any other appeal for violence or discrimination,⁸⁶ and that the *actus reus* of this crime under the Genocide

⁸⁰ ICTR, Appeals Chamber, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, ICTR-99-52-A, Judgment, 28 November 2007, para. 678.

⁸¹ ICTR, Trial Chamber I, *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Judgement, 2 September 1998, para. 562.

⁸² ICTR, Trial Chamber I, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, ICTR-99-52-T, Judgment and Sentence, 3 December 2003, para. 1015.

⁸³ ICTR, Appeals Chamber, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, ICTR-99-52-A, Judgment, 28 November 2007, para. 678; *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Judgment, 14 December 2015, para. 2677.

⁸⁴ ICTR, Trial Chamber I, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, ICTR-99-52-T, Judgment and Sentence, 3 December 2003, para. 1015.

⁸⁵ ICTR, Trial Chamber I, *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Judgement, 2 September 1998, para. 562.

⁸⁶ ICTR, Appeals Chamber, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, ICTR-99-52-A, Judgment, 28 November 2007, para. 692.

Convention requires that incitement fulfils two characteristics: directness and publicity.

63. An incitement is *direct* if it incorporates “a call for criminal action”.⁸⁷ In the present case, the Court should give particular weight to the content of appeals by some Israeli high-level public officials, who have made calls to kill all individuals living in Gaza (e.g., “*the Gaza Strip should be flattened, and for all of them there is but one sentence, and that is death*”⁸⁸); or to ignore the civilian status of individuals living in Gaza (e.g., “*we have to wipe the Gaza Strip off the map... There are no innocents there*”⁸⁹; “*there is no such thing as uninvolved civilians in Gaza*”⁹⁰; “*when we say that Hamas should be destroyed, it also means those who celebrate, those who support, and those who hand out candy — they’re all terrorists, and they should also be destroyed*”⁹¹). Although it is not necessary for these appeals to have actually produced effects (due to the autonomous nature of the crime), the fact that they influenced the conduct of a third party may be a means to establish its direct character.⁹² Thus, the Court might consider to what extent these calls seem to have resonated within Israeli soldiers.⁹³
64. The directness must also be examined in the light of the cultural and linguistic content. As noted by the International Criminal Tribunal for Rwanda, “a particular speech may be perceived as ‘direct’ in one country, and not so in another, depending on the

⁸⁷ ICTR, Trial Chamber I, *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Judgement, 2 September 1998, para. 556.

⁸⁸ Yitzhak Kroizer, Member of the Knesset. See, The Guardian ‘Israeli public figures accuse judiciary of ignoring incitement to genocide in Gaza’ (3 January 2024) <https://www.theguardian.com/world/2024/jan/03/israeli-public-figures-accuse-judiciary-of-ignoring-incitement-to-genocide-in-gaza>, accessed 6 July 2024.

⁸⁹ Yitzhak Kroizer, Member of the Knesset. See, Haaretz, ‘Editorial | Fire Israel's Far Right’ (6 November 2023) <https://www.haaretz.com/opinion/editorial/2023-11-06/ty-article/.premium/fire-israels-far-right/0000018b-a11c-dc0b-a1cb-e5de69890000>, accessed 6 July 2024.

⁹⁰ Amihai Ben-Eliyahu, Minister of Heritage. See, The Times of Israel, ‘Far-right minister says nuking Gaza an option, PM suspends him from cabinet meetings’ (5 November 2023) <https://www.timesofisrael.com/far-right-minister-says-nuking-gaza-an-option-pm-suspends-him-from-cabinet-meetings/>, accessed 6 July 2024.

⁹¹ Itamar Ben-Gvir, Minister of National Security. See, The Times of Israel ‘«We should be worried»: Israel faces peril at The Hague in Gaza «genocide» case’ (10 January 2024) <https://www.timesofisrael.com/we-should-be-worried-israel-faces-peril-at-the-hague-in-gaza-genocide-case/>, accessed 6 July 2024.

⁹² ICTR, Appeals Chamber, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, ICTR-99-52-A, Judgment, 28 November 2007, footnote 1674.

⁹³ See, leaked video of soldiers singing “Gaza we have come to conquer. ... We know our slogan – there are no people who are uninvolved.” See The Telegraph, ‘Israeli troops filmed setting fire to food supplies in Gaza’ (13 December 2023) <https://www.telegraph.co.uk/world-news/2023/12/13/israel-defense-forces-soldiers-gaza-viral-videos-food-fire/>, accessed 6 July 2024.

audience”.⁹⁴ Thus, although vague or indirect suggestions will not be sufficient,⁹⁵ an implicit call may also amount to direct and public incitement to commit genocide, as long as the persons for whom the message was intended grasped the implications thereof.⁹⁶

65. On this point, it is important to assess the public appeals made by different Israeli authorities –including the Prime Minister–, with references to biblical passages and the people of Amalek (“*The memory of Amalek must be erased*”⁹⁷; “*You must remember what Amalek has done to you*”⁹⁸). The Court should consider the cultural meaning of Amalek, and whether it might be understood in the Jewish culture as a call for the commission of crimes against Gazans, including children and babies.⁹⁹

66. Language of dehumanization may also be relevant for assessing if a speech amounts to direct and public incitement to commit genocide. In the Rwandan Genocide, Tutsis were often described as “cockroaches” (*Inyenzi*) by the perpetrators.¹⁰⁰ Similarly, the International Criminal Tribunal for the former Yugoslavia found that the existence of derogatory language was relevant to support findings on genocide.¹⁰¹ Thus, dehumanizing appeals concerning Gazans, especially those coming from high-level

⁹⁴ ICTR, Trial Chamber I, *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Judgement, 2 September 1998, para. 557.

⁹⁵ *Ibid.*, para. 562; ICTR, Appeals Chamber, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, ICTR-99-52-A, Judgment, 28 November 2007, para. 692.

⁹⁶ ICTR, Trial Chamber I, *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Judgement, 2 September 1998, paras. 557-558.

⁹⁷ Boaz Bismuth, Member of the Knesset. See, The Guardian ‘Israeli public figures accuse judiciary of ignoring incitement to genocide in Gaza’ (3 January 2024) <https://www.theguardian.com/world/2024/jan/03/israeli-public-figures-accuse-judiciary-of-ignoring-incitement-to-genocide-in-gaza>, accessed 6 July 2024.

⁹⁸ Prime Minister Benjamin Netanyahu. See, NPR ‘Netanyahu’s references to violent biblical passages raise alarm among critics’ (7 November 2023) <https://www.npr.org/2023/11/07/1211133201/netanyahus-references-to-violent-biblical-passages-raise-alarm-among-critics>, accessed 6 July 2024.

⁹⁹ Deuteronomy 25:17-19: “Remember what the Amalekites did to you on the journey after you left Egypt. They met you along the way and attacked all your stragglers from behind when you were tired and weary. They did not fear God. When the Lord your God gives you rest from all the enemies around you in the land the Lord your God is giving you to possess as an inheritance, blot out the memory of Amalek under heaven. Do not forget”. See also 1 Samuel 15:1-3: “Samuel told Saul, The Lord sent me to anoint you as king over his people Israel. Now, listen to the words of the Lord. This is what the Lord of Armies says: ‘I witnessed what the Amalekites did to the Israelites when they opposed them along the way as they were coming out of Egypt. Now go and attack the Amalekites and completely destroy everything they have. Do not spare them. Kill men and women, infants and nursing babies, oxen and sheep, camels and donkeys.’” (Christian Standard Bible, the emphases are added).

¹⁰⁰ ICTR, Trial Chamber I, *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Judgement, 2 September 1998, paras. 90, 148; ICTR, Trial Chamber I, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, ICTR-99-52-T, Judgment and Sentence, 3 December 2003, para. 187.

¹⁰¹ ICTY, Appeals Chamber, *Prosecutor v. Zdravko Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, paras. 573-576.

authorities (“*we are fighting human animals*”¹⁰²; “*human animals must be treated as such*”,¹⁰³ “*we are the people of the light, they are the people of darkness*”¹⁰⁴) bear special relevance.

67. Incitement must also be *public*, which requires considering both the place where the incitement occurred and the audience. An incitement is public if made to a number of individuals in a public place or to members of the general public at large —such as incitement made using mass media—. ¹⁰⁵ However, it must be noted that incitement can take place not only through oral appeals but also through written material disseminated in public places, public display of placards or posters, or any other means of audio-visual communication. ¹⁰⁶
68. Direct and public incitement to commit genocide requires that the individual must have acted with the intent to directly prompt another to commit genocide. ¹⁰⁷ On this point, Chile refers to the statements made above on the means at the disposal of the Court to infer this intent.
69. Finally, as detailed in the previous section, Chile would like to point out that under Article IV of the Genocide Convention, State Parties have an obligation to punish all individuals responsible for direct and public incitement to commit genocide, including constitutionally responsible rulers, public officials, and private individuals. This entails, as further developed in Article VI of the Convention, an obligation to try individuals charged with direct and public incitement to commit genocide by a

¹⁰² Yoav Gallant, Minister of Defence. *See*, The Times of Israel, ‘Defense minister announces «complete siege» of Gaza: No power, food or fuel’ (9 October 2023) https://www.timesofisrael.com/liveblog_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/, accessed 6 July 2024.

¹⁰³ Major General Ghassan Alian, Coordinator of Government Activities in the Territories. *See*, The Times of Israel, ‘COGAT chief addresses Gazans: «You wanted hell, you will get hell» (10 October 2023) https://www.timesofisrael.com/liveblog_entry/cogat-chief-addresses-gazans-you-wanted-hell-you-will-get-hell/, accessed 6 July 2024.

¹⁰⁴ Prime Minister Benjamin Netanyahu. *See* X @i24NEWS_EN (25 October 2023) https://twitter.com/i24NEWS_EN/status/1717233758003171833, accessed 6 July 2024.

¹⁰⁵ ICTR, Trial Chamber I, *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Judgement, 2 September 1998, para. 556. *See also*, ICTR, Trial Chamber I, *The Prosecutor v. Eliézer Niyitegeka*, ICTR-96-14-T, Judgement and Sentence, 16 May 2003, para. 431.

¹⁰⁶ ICTR, Trial Chamber I, *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Judgement, 2 September 1998, para. 559.

¹⁰⁷ *Ibid.*, para. 560.

competent tribunal of the State in the territory of which the act—in this case, the acts of direct and public incitement to commit genocide— was committed.

70. In this regard, the Court may consider whether the public appeals that could amount to direct and public incitement to commit genocide have been subject to criminal proceedings, and/or whether officials responsible for these calls remain in office. This is particularly relevant in the present case, considering that the Court reinforced Israel's special duty to prevent and punish direct and public incitement to commit genocide in relation to members of the Palestinian group in the Gaza Strip by its provisional measures Order of 26 January 2024.¹⁰⁸

71. In any case, the focus on some appeals by high-level authorities should not obscure the fact that State Parties' obligations under Articles IV and VI of the Convention have an even wider scope, and encompass actions that may amount to direct and public incitement to commit genocide, even if committed by private individuals, for whose conduct the State is not responsible.

F. Conclusion

72. Since its adoption, it has been manifestly clear that the Genocide Convention has a purely humanitarian and civilizing purpose: to safeguard the very existence of certain human groups and to confirm and endorse the most elementary principles of morality.¹⁰⁹ In this regard, States Parties not only have a common interest in the accomplishment of those high purposes, but also a legal and moral duty to take all actions necessary for the prevention and suppression of acts of genocide.

73. Chile expresses its confidence in the work of the Court as an authority in international law, and recognizes its crucial role in interpreting and clarifying the obligations under the Convention, and ensuring that the principles enshrined in it are upheld and applied consistently across the international community.

¹⁰⁸ *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, at p. 25.

¹⁰⁹ *Reservations to the Genocide Convention*, Advisory Opinion of 28 May 1951, I.C.J. Reports 1951, p. 23.

74. On the basis of the statements set out above, Chile avails itself of the right conferred upon it by Article 63 of the Statute to intervene in the proceedings in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, and believes that the present Declaration meets the requirements established in Article 63 of the Statute and Article 82 of the Rules of Court and is, thus, admissible.
75. Chile reserves the right to supplement or amend this Declaration, and to submit its written observations on the subject-matter of the intervention, as it considers necessary in response to subsequent developments in these proceedings.

IV. DOCUMENTS IN SUPPORT OF THE DECLARATION

76. The documents submitted in support of this declaration and annexed hereto are:
- (i) United Nations Depository Notification of 15 June 1953 informing that, on 3 June 1953, the Government of Chile deposited with the Secretary-General of the United Nations, in accordance with the provisions of Article XI, an instrument of ratification of the Convention on the Prevention and Punishment of the Crime of Genocide, of 9 December 1948, which became effective on 1 September 1953.
 - (ii) Letter No. 161308 dated 6 February 2024 from the Registrar of the International Court of Justice, Mr. Philippe Gautier, notifying the States Parties to the Convention on the Prevention and Punishment of the Crime of Genocide, of 9 December 1948, that South Africa had invoked the Convention as the basis for the jurisdiction of the Court and the claims on the merits.

V. APPOINTMENT OF AGENTS

77. The Government of the Republic of Chile hereby appoints Ambassador Claudio Troncoso Repetto, General Director of Legal Affairs of the Chilean Ministry of Foreign Affairs, as its Agent for the purposes of this Declaration and the present proceedings.

78. Pursuant to Article 40, paragraph 1, of the Rules of Court, Chile requests that all communications relating to this case be sent to the Embassy of the Republic of Chile to the Kingdom of the Netherlands, at Parkstraat 30 2514 JK The Hague, Netherlands.

THE HAGUE, 12 September 2024

Claudio Troncoso Repetto
Agent of the Republic of Chile

LIST OF ANNEXES

Annex 1 United Nations Depository Notification of 15 June 1953 informing that, on 3 June 1953, the Government of Chile deposited with the Secretary-General of the United Nations, in accordance with the provisions of Article XI, an instrument of ratification of the Convention on the Prevention and Punishment of the Crime of Genocide, of 9 December 1948, which became effective on 1 September 1953.

Annex 2 Letter No. 161308 dated 6 February 2024 from the Registrar of the International Court of Justice, Mr. Philippe Gautier, notifying the States Parties to the Convention on the Prevention and Punishment of the Crime of Genocide, of 9 December 1948, that South Africa had invoked the Convention as the basis for the jurisdiction of the Court and the claims on the merits.

CERTIFICATION

The Ambassador of the Republic of Chile to the Kingdom of the Netherlands certifies the authenticity of the signature and the capacity of the Agent of the Republic of Chile who has signed the Declaration of Intervention by the Republic of Chile, and also certifies that the documents annexed to the aforementioned Declaration of Intervention are true and accurate copies of the originals of these documents.

Jaime Moscoso Valenzuela
Ambassador of the Republic of Chile
to the Kingdom of the Netherlands

Annex 1

United Nations Depository Notification of 15 June 1953 informing that, on 3 June 1953, the Government of Chile deposited with the Secretary-General of the United Nations, in accordance with the provisions of Article XI, an instrument of ratification of the Convention on the Prevention and Punishment of the Crime of Genocide, of 9 December 1948, which became effective on 1 September 1953.

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FILE NO.:

C.N.50.1953.TREATIES

15 June 1953

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

RATIFICATION BY CHILE

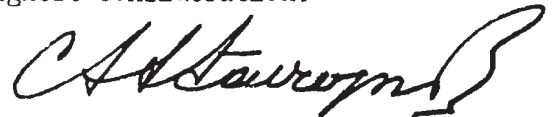
Sir,

I am directed by the Secretary-General to inform you that, on 3 June 1953, the instrument of ratification by the Government of Chile of the Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature at Paris on 9 December 1948, was deposited with the Secretary-General of the United Nations in accordance with the provisions of Article XI of the Convention.

In accordance with the provisions of Article XIII of the Convention, the ratification by Chile will become effective on 1 September 1953, that is to say, on the ninetieth day following the deposit of the instrument of ratification with the Secretary-General.

The present notification is made in accordance with Article XVII (a) of the Convention.

Accept, Sir, the assurances of my highest consideration.



Constantin A. Stavropoulos
Principal Director
in charge of the Legal Department

Annex 2

Letter No. 161308 dated 6 February 2024 from the Registrar of the International Court of Justice, Mr. Philippe Gautier, notifying the States Parties to the Convention on the Prevention and Punishment of the Crime of Genocide, of 9 December 1948, that South Africa had invoked the Convention as the basis for the jurisdiction of the Court and the claims on the merits.



By email only

161308

6 February 2024

Excellency,

I have the honour to refer to my letter (No. 161010) dated 3 January 2024 informing your Government that, on 29 December 2023, South Africa filed in the Registry of the Court an Application instituting proceedings against the State of Israel in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*. A copy of the Application was appended to that letter. The text of the Application is also available on the website of the Court (www.icj-cij.org).

Article 63, paragraph 1, of the Statute of the Court provides that:

[w]henever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith”.

Further, under Article 43, paragraph 1, of the Rules of Court:

“Whenever the construction of a convention to which States other than those concerned in the case are parties may be in question within the meaning of Article 63, paragraph 1, of the Statute, the Court shall consider what directions shall be given to the Registrar in the matter.”

On the instructions of the Court, given in accordance with the said provision of the Rules of Court, I have the honour to notify your Government of the following.

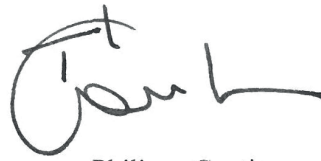
In the above-mentioned Application, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the “Genocide Convention”) is invoked both as a basis of the Court’s jurisdiction and as a substantive basis of the Applicant’s claims on the merits. In particular, the Applicant seeks to found the Court’s jurisdiction on the compromissory clause contained in Article IX of the Genocide Convention and alleges violations of Articles I, III, IV, V and VI of the Convention. It therefore appears that the construction of this instrument will be in question in the case.

/s/

[Letter to the States parties to the Genocide Convention
(except South Africa and Israel)]

Your country is included in the list of parties to the Genocide Convention. The present letter should accordingly be regarded as the notification contemplated by Article 63, paragraph 1, of the Statute. I would add that this notification in no way prejudices any question of the possible application of Article 63, paragraph 2, of the Statute, which the Court may later be called upon to determine in this case.

Accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Gautier', with a stylized flourish at the end.

Philippe Gautier
Registrar