

## **STATEMENT**

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**for the Republic of South Africa**

### **RISK OF FURTHER GENOCIDAL ACTS, RISKS OF IRREPARABLE PREJUDICE AND URGENCY**

#### **INTRODUCTION AND APOLOGY**

1. Madame la présidente, Mesdames et Messieurs les juges, c'est un grand honneur pour moi que de paraître devant la Cour de nouveau. C'est également à la fois un privilège et une lourde responsabilité que de représenter l'Afrique du Sud dans cette affaire d'une si grande gravité.
2. Il me revient d'examiner l'urgence et le risque de préjudice irréparable aux droits revendiqués – les deux dernières conditions auxquelles est subordonné l'exercice du pouvoir de la Cour d'indiquer des mesures conservatoires.
3. Je souhaiterais avant cela adresser aux Membres francophones de la Cour les excuses sincères de l'Afrique du Sud du fait qu'elle ne présente aucune de ses soumissions en langue française. L'Afrique du Sud vous prie de n'y voir aucun manque de courtoisie de sa part.
4. Je vais, si vous me le permettez, poursuivre ma plaidoirie en langue anglaise.

## OVERVIEW

5. Madam President, Members of the Court, there is an urgent need for provisional measures to protect Palestinians in Gaza from the irreparable prejudice caused by Israel's violations of the Genocide Convention.<sup>1</sup>
  
6. The United Nations Secretary-General and its Chiefs describe the situation in Gaza variously as “a crisis of humanity”,<sup>2</sup> a “living hell”,<sup>3</sup> a “blood bath”,<sup>4</sup> a situation of “utter, deepening” and unmatched “horror”,<sup>5</sup> where “an entire population” is “besieged and

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<sup>1</sup> Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951), 78 *UNTS* 277.

<sup>2</sup> UN, Meetings Coverage and Press Releases, *Press Conference by Secretary-General António Guterres at United Nations Headquarters* (6 November 2023), <https://press.un.org/en/2023/sgsm22021.doc.htm>; UN OCHA, *UN relief chief: The war in Gaza must end* (5 January 2024), .

<sup>3</sup> United Nations Relief and Works Agency for the Near East (‘UNRWA’), *Remarks of UNRWA Commissioner-General Philippe Lazzarini at the Global Refugee Forum* (13 December 2023), <https://www.unrwa.org/newsroom/official-statements/statement-unrwa-commissioner-general-philippe-lazzarini-global-refugee>; UN News, ‘*Ten weeks of hell’ for children in Gaza: UNICEF* (19 December 2023), <https://news.un.org/en/story/2023/12/1144927>; “Gaza has become “uninhabitable”: UN Aid Chief Griffiths”, *The Statesman* (6 January 2024), <https://www.thestatesman.com/world/gaza-has-become-uninhabitable-un-aid-chief-griffiths-1503256794.html>.

<sup>4</sup> Tedros Adhanom Ghebreyesus @DrTedros, Tweet (9:49 pm, January 7, 2024), <https://twitter.com/DrTedros/status/1744098839110320633>.

<sup>5</sup> Office of the United Nations High Commissioner for Human Rights (‘UN OHCHR’), *Opening Opening statement by UN High Commissioner for Human Rights Volker Türk at press conference ahead of Human Rights Day* (6 December 2023), <https://www.ohchr.org/en/statements-and-speeches/2023/12/opening-statement-un-high-commissioner-human-rights-volker-turk>; “Level of horror in Gaza is unmatched in our lifetime’: UN”, *Press TV* (27 December 2023), <https://www.presstv.ir/Detail/2023/12/27/717140/Palestine-Gaza-Israel-UN-Francesca-Albanese>;

under attack, denied access to the essentials for survival”,<sup>6</sup> “on a massive scale”.<sup>7</sup> As the United Nation’s Under Secretary-General for Humanitarian Affairs stated last Friday:

“Gaza has become a place of death and despair . . . Families are sleeping in the open as temperatures plummet. Areas where civilians were told to relocate for their safety have come under bombardment. Medical facilities are under relentless attack. The few hospitals that are partially functional are overwhelmed with trauma cases, critically short of all supplies, and inundated by desperate people seeking safety. A public health disaster is unfolding. Infectious diseases are spreading in overcrowded shelters as sewers spill over. Some 180 Palestinian women are giving birth daily amidst this chaos. People are facing the highest levels of food insecurity ever recorded. Famine is around the corner. For children in particular, the past 12 weeks have been traumatic: No food. No water. No school. Nothing but the terrifying sounds of war, day in and day out. Gaza has simply become uninhabitable. Its people are witnessing daily threats to their very existence — while the world watches on.”<sup>8</sup>

7. The Court has heard of the horrific death toll, and of the more than 7,000 Palestinian men, women and children reported missing, presumed dead or dying slow, excruciating

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<sup>6</sup> UN Inter-Agency Standing Committee, *Statement by Principals of the Inter-Agency Standing Committee, on the situation in Israel and the Occupied Palestinian Territory, “We need an immediate humanitarian ceasefire”* (5 November 2023), <https://interagencystandingcommittee.org/about-inter-agency-standing-committee/statement-principals-inter-agency-standing-committee-situation-israel-and-occupied-palestinian>.

<sup>7</sup> UN OHCHR, *Opening statement by UN High Commissioner for Human Rights Volker Türk at press conference ahead of Human Rights Day* (6 December 2023), <https://www.ohchr.org/en/statements-and-speeches/2023/12/opening-statement-un-high-commissioner-human-rights-volker-turk>.

<sup>8</sup> United Nations Office for the Coordination of Humanitarian Affairs (‘UN OCHA’), *UN relief chief: The war in Gaza must end, Statement by Martin Griffiths, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator* (5 January 2024), <https://www.unocha.org/news/un-relief-chief-war-gaza-must-end>.

deaths trapped under the rubble.<sup>9</sup> Reports of field executions,<sup>10</sup> and torture and ill-treatment are mounting,<sup>11</sup> as are images of decomposing bodies of men, women and children, left unburied where they were killed — some being picked on by animals.<sup>12</sup> It is becoming ever clearer that huge swathes of Gaza — entire towns, villages, refugee camps — are being wiped from the map.<sup>13</sup> According to the World Food Programme,

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<sup>9</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #83* (3 January 2024),

<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-83>.

<sup>10</sup> “Civilians sheltering in a Gaza school killed execution style”, *Al Jazeera* (13 December 2023),

<https://www.aljazeera.com/program/newsfeed/2023/12/13/civilians-sheltering-inside-a-gaza-school-killed-execution>; UN OHCHR, *OPT: Unlawful killings in Gaza City* (20 December 2023), <https://reliefweb.int/report/occupied-palestinian-territory/un-human-rights-office-opt-unlawful-killings-gaza-city>; “A young Palestinian boy recalls how his parents were shot and killed in front of him, during a raid by Israeli soldiers on their home in #Gaza”, *Al Jazeera* (28 December 2023),

<https://www.instagram.com/reel/C1ZcfeKNNWc/?igsh=MWFkNHhrYWxtNjBqeA%3D%3D>; Maha Hussaini, “War on Gaza: Survivors recount harrowing Israeli field executions”, *Middle East Eye*

(4 January 2024), <https://www.middleeasteye.net/news/war-gaza-survivors-recount-harrowing-israeli-field-executions>.

<sup>11</sup> UN OHCHR, *OPT: Disturbing reports from the north of Gaza of mass detentions, ill-treatment and enforced*

*disappearances of possibly thousands of Palestinians* (16 December 2023), <https://reliefweb.int/report/occupied-palestinian-territory/un-human-rights-office-opt-disturbing-reports-north-gaza-mass-detentions-ill-treatment-and-enforced-disappearances-possibly-thousands-palestinians>; Yuval Abraham, “Inside Israel’s torture camp for Gaza detainees”, *+972 Magazine*

(5 January 2023), <https://www.972mag.com/israel-torture-camp-gaza-detainees/>; Al-Haq, Al Mezan Centre for Human Rights (‘Al Mezan’), Palestinian Centre for Human Rights (‘PCHR’), *Urgent Call for Independent Investigation Amidst Persistent Reports of Torture, Enforced Disappearance, and Another Palestinian “Death” in Israeli Custody* (2

January 2024), <https://www.mezan.org/en/post/46349>; Human Rights Watch (‘HRW’), *Israel: Gaza Workers Held Incommunicado for Weeks Release Information on Detained Gaza Workers* (3 January 2024),

<https://www.hrw.org/news/2024/01/03/israel-gaza-workers-held-incommunicado-weeks>.

<sup>12</sup> Quds News Network, @QudsNen, Tweet (12:57 am, January 7, 2024),

<https://twitter.com/QudsNen/status/1743783957311770872>; “Israel Gaza: ‘I walked my kids past explosions and rotting corpses’”, *BBC News* (21 December 2023), <https://www.bbc.co.uk/news/world-middle-east-67635735>; Raja Abdulrahim, Samar Abu Elouf, Yousef Masoud, “As Gaza Losses Mount Under Strikes, Dignified Burials Are Another Casualty”, *The New York Times*

(6 January 2024), <https://www.nytimes.com/2024/01/06/world/middleeast/gaza-israel-burials-deaths.html>;

“[Civil Defense in Gaza: Dozens of decomposing bodies were recovered from the streets of Beit Lahia in the northern Gaza Strip] الدفاع المدني في غزة: انتشار عشرات الجثث المتحللة من شوارع بيت لاهيا شمالي القطاع”, *Al Jazeera* (23 December 2023),

[https://www.youtube.com/watch?v=r\\_ZbRGHZoRU](https://www.youtube.com/watch?v=r_ZbRGHZoRU).

<sup>13</sup> United Nations Satellite Centre (‘UNOSAT’), *UNOSAT Gaza Strip Comprehensive Damage Assessment - 26 November 2023* (12 December 2023), <https://unosat.org/products/3769>; Dominic Bailey, Erwan Rivault, Daniele Palumbo, “Nearly 100,000 Gaza buildings may be damaged, satellite images show”, *BBC News* (1 December 2023),

<https://www.bbc.com/news/world-middle-east-67565872>; Netta Ahituv, “Amid Israeli Destruction in Gaza, a New Crime Against Humanity Emerges: Domicide”, *Haaretz* (4 January 2024), <https://www.haaretz.com/israel-news/2024-01-04/ty-article-magazine/.highlight/amid-israeli-destruction-in-gaza-a-new-crime-against-hmanity-emerges-domicide/0000018c->

“[f]our out of five people [in the world], in famine or a catastrophic type of hunger, are in Gaza right now”.<sup>14</sup> Indeed, experts warn that deaths from starvation and disease risk significantly outstripping deaths from bombings.<sup>15</sup>

8. The daily statistics stand as clear evidence of the urgency and the risk of irreparable prejudice: on the basis of current figures, on average 247 Palestinians are being killed and are at risk of being killed each day,<sup>16</sup> many of them blown to pieces.<sup>17</sup> They include 48 mothers each day — two every hour;<sup>18</sup> and over 117 children each day,<sup>19</sup> leading UNICEF to call Israel’s actions a “war on children”.<sup>20</sup> On current rates, which show no

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[d585-d751-ad8d-ffa5965e0000](https://twitter.com/OnlinePalEng/status/1744283176183222552); Palestine Online, @OnlinePalEng, Tweet (9:01 am, January 8, 2024), <https://twitter.com/OnlinePalEng/status/1744283176183222552>.

<sup>14</sup> Interview with Arif Husain, Chief Economist at the United Nations World Food Program, quoted in Isaac Chotiner, “Gaza is Starving”, *The New Yorker* (3 January 2023), <https://www.newyorker.com/news/q-and-a/gaza-is-starving>; Save the Children, *Press Release: Deaths by starvation and disease may top deaths by bombs as families squeezed into deadly “safe zones”, two months into Gaza crisis* (9 December 2023), <https://www.savethechildren.net/news/deaths-starvation-and-disease-may-top-deaths-bombs-families-squeezed-deadly-safe-zones-two>.

<sup>15</sup> Henry Mance, “UN aid chief Martin Griffiths: ‘The war in Gaza isn’t halfway through’”, *Financial Times* (18 December 2023), <https://www.ft.com/content/01b592be-47c7-4a20-9bbd-621aa40f7640>.

<sup>16</sup> 23,210 to 9 January 2024: UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 94* (9 January 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-94>. The statistics are up to date until 9 January 2024 throughout.

<sup>17</sup> Maram Humaid, “‘Piles of body parts’: Gaza’s Maghazi residents find families ‘in pieces’” *Al Jazeera* (28 December 2023), <https://www.aljazeera.com/features/2023/12/28/piles-of-body-parts-gazas-maghazi-residents-find-families-in-pieces>; Hiba Yazbek and Karen Zraick, “A Doctor in Gaza Describes ‘Horrific Scenes’ After Israeli Airstrikes”, *The New York Times* (2 November 2023), <https://www.nytimes.com/2023/11/02/world/middleeast/voices-airstrikes-jabaliya-hospital.html>.

<sup>18</sup> United Nations, Meetings Coverage and Press Releases, *Two Thirds of Gaza War Dead Are Women and Children, Briefers Say, as Security Council Debates Their Plight* (22 November 2023), <https://press.un.org/en/2023/sc15503.doc.htm>.

<sup>19</sup> 7,729 children to 11 December 2023: UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 67* (12 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-67>.

<sup>20</sup> Interview with James Elder, UNICEF Spokesperson by CNN, “CNN speaks to UNICEF about dire situation in Gaza”, *CNN* (15 December 2023), <https://www.cnn.com/videos/world/2023/12/14/exp-unicef-gaza-james-elder-live-121402pseg1-cnni-world.cnn>.

sign of abating, each day, over three medics,<sup>21</sup> two teachers,<sup>22</sup> more than one United Nations employee and one journalist will be killed<sup>23</sup> — many while at work, or in what appear to be targeted attacks on their family homes or where they are sheltering.<sup>24</sup> The risk of famine will increase each day.<sup>25</sup> Each day, 629 people will be wounded,<sup>26</sup> some multiple times over<sup>27</sup> as they move from place to place, desperately seeking sanctuary. Each day, over 10 Palestinian children will have one or both legs amputated,<sup>28</sup> many without anaesthetic.<sup>29</sup> Each day, on current rates, an average of 3,900 Palestinian homes

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<sup>21</sup> 326 medics to 9 January 2024: UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 94* (9 January 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-94>.

<sup>22</sup> 221 teachers to 2 January 2024: UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #87* (8 January 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-87>.

<sup>23</sup> 148 UN staff and 112 journalists to 9 January 2024: UNOCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 94* (9 January 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-94>.

<sup>24</sup> Committee to Protect Journalists, *Journalist casualties in the Israel-Gaza war* (9 January 2024), <https://cpj.org/2024/01/journalist-casualties-in-the-israel-gaza-conflict/>; Human Rights Watch, *Letter to President Joe Biden Re: Protecting journalists and press freedom in the Israel-Gaza war* (10 January 2024), <https://www.hrw.org/news/2024/01/10/letter-president-joe-biden-re-protecting-journalists-and-press-freedom-israel-gaza>; “U.N. observes minute’s silence for 101 staff killed in Gaza”, *Reuters* (13 November 2023), <https://www.reuters.com/world/un-observes-minutes-silence-101-staff-killed-gaza-2023-11-13/>.

<sup>25</sup> United Nations, *The Question of Palestine, WFP Palestine Emergency Response – IPC analysis concludes that Gaza already surpassed the acute food insecurity threshold of famine – Situation Report 12* (4 January 2024), <https://www.un.org/unispal/document/wfp-palestine-emergency-response-situation-report-12-jan4-2024/>.

<sup>26</sup> 59,167 to 9 January 2024: UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 94* (9 January 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-94>.

<sup>27</sup> Nidal Al-Mughrabi, “Bombarded twice in Gaza, 4-year-old Ahmed loses parents, then legs”, *Reuters* (16 November 2023), <https://www.reuters.com/world/middle-east/bombarded-twice-gaza-4-year-old-ahmed-loses-parents-then-legs-2023-11-15/>; “Teenage girl patient killed in shelling of Gaza’s Nasser Hospital as Israel takes aim at health facilities”, *The New Arab* (18 December 2023), <https://www.newarab.com/news/teenage-girl-killed-shelling-gazas-nasser-hospital>.

<sup>28</sup> Save the Children, *Gaza: More than 10 children a day lose a limb in three months of brutal conflict* (7 January 2024), <https://www.savethechildren.net/news/gaza-more-10-children-day-lose-limb-three-months-brutal-conflict>; “Gaza’s child amputees face further risks without expert care”, *The Business Standard* (5 January 2024), <https://www.tbsnews.net/hamas-israel-war/gazas-child-amputees-face-further-risks-without-expert-care-769690>.

<sup>29</sup> UNICEF, *Facing life in the Gaza Strip with a new disability* (21 December 2023), <https://www.unicef.org/sop/stories/facing-life-gaza-strip-new-disability>.

will be damaged or destroyed.<sup>30</sup> More mass graves will be dug.<sup>31</sup> More cemeteries will be bulldozed and bombed and corpses violently exhumed, denying even the dead any dignity or peace.<sup>32</sup> Each day, ambulances, hospitals and medics will continue to be attacked and killed.<sup>33</sup> The first responders who have spent three months — without international assistance — trying to dig families out of the rubble with their bare hands will continue to be targeted;<sup>34</sup> on current figures one will be killed almost every second day, sometimes in attacks, launched against those attending the scene to rescue the wounded.<sup>35</sup> Each day yet more desperate people will be forced to relocate from where they are sheltering, or will be bombed in places they had been told to evacuate to.<sup>36</sup> Entire

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<sup>30</sup> 359,000 housing units damaged or destroyed to 7 January 2024: UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #88* (9 January 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-88>.

<sup>31</sup> Euro-Med Human Rights Monitor, *Israel demolishes Gaza cemeteries, confiscates dead bodies of Palestinians* (14 December 2023), <https://euromedmonitor.org/en/article/6032/Israel-demolishes-Gaza-cemeteries,-confiscates-dead-bodies-of-Palestinians>.

<sup>32</sup> Christoph Koettl and Christiaan Triebert, “Satellite Imagery and Video Shows Some Gazan Cemeteries Razed by Israeli Forces”, *The New York Times* (14 December 2023), <https://www.nytimes.com/2023/12/14/world/middleeast/gaza-cemeteries-damage-israel.html>; Unearthing the dead: Israeli forces destroy cemetery in Gaza city, Al Jazeera English, 10 January 2024, <https://www.youtube.com/watch?v=5zmZwrwrc>.

<sup>33</sup> 121 ambulances to 9 January 2024: UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 94* (9 January 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-94>; 294 health attacks and 94 health facilities affected to 29 December 2023: WHO, *oPt Emergency Situation Update* (29 December 2023), [https://www.emro.who.int/images/stories/Sitrep\\_-\\_issue\\_19.pdf](https://www.emro.who.int/images/stories/Sitrep_-_issue_19.pdf).

<sup>34</sup> Rami Jarrah @RamiJarrah, Tweet (3:42, January 9, 2024), <https://twitter.com/ramijarrah/status/1744731362391973962>; Al-Haq, Al Mezan, PCHR, *Civilians trapped under the rubble: medical and rescue teams denied access to IOF-deployed areas* (17 December 2023), <https://reliefweb.int/report/occupied-palestinian-territory/civilians-trapped-under-rubble-medical-and-rescue-teams-denied-access-iof-deployed-areas>.

<sup>35</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 94* (9 January 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-94>; Al-Haq, Al Mezan, PCHR, *Civilians trapped under the rubble: medical and rescue teams denied access to IOF-deployed areas* (17 December 2023), <https://reliefweb.int/report/occupied-palestinian-territory/civilians-trapped-under-rubble-medical-and-rescue-teams-denied-access-iof-deployed-areas>.

<sup>36</sup> UN OHCHR, *Gaza: Türk urges ceasefire as civilians pushed to frontier amid escalation* (19 December 2023), <https://www.ohchr.org/en/press-releases/2023/12/gaza-turk-urges-ceasefire-civilians-pushed-frontier-amid-escalation>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #86* (7 January 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-86>; “Gaza civilians afraid to leave home after bombing of ‘safe routes’”, *The Guardian* (15 October 2023), <https://www.theguardian.com/world/2023/oct/14/gaza-civilians-afraid-to-leave-home-after-bombing-of-safe-routes>.

multi-generational families will be obliterated;<sup>37</sup> and yet more Palestinian children will become “WCNSF”: “Wounded Child - No Surviving Family” — the terrible new acronym borne out of Israel’s genocidal assault on the Palestinian population in Gaza.<sup>38</sup>

9. There is an urgent need for provisional measures to prevent imminent, irreparable prejudice to the rights in issue in this case. There could not be a clearer or more compelling case. In the words of the Commissioner-General of the United Nations Relief and Works Agency, there must be “an end to the decimation of Gaza and of its people”.<sup>39</sup>

## THE COURT’S CASE LAW

### Criterion of Urgency

10. Turning to the Court’s case law, as the Court has recently reaffirmed, “[t]he condition of urgency is met when acts susceptible of causing irreparable prejudice can ‘occur at any

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<sup>37</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #10* (16 October 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-10>; UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 90* (5 January 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-90>; Walaah Sabah, “War on Gaza: How Israel wiped out one family in a so-called ‘safe zone’”, *Middle East Eye* (6 January 2024), <https://www.middleeasteye.net/news/war-gaza-how-israel-wiped-out-one-family-supposed-safe-zone-gaza>.

<sup>38</sup> Save the Children, *Children’s Mental Health in Gaza Pushed Beyond Breaking Point After Nearly a Month of Siege and Bombardment* (7 November 2023), <https://www.savethechildren.net/news/children-s-mental-health-gaza-pushed-beyond-breaking-point-after-nearly-month-siege-and>; Nedal Samir Hamdouna, Aseel Mousa, Julian Borger, “The plight of Gaza’s ‘WCNSFs’ – wounded child, no surviving family”, *The Guardian* (22 December 2023), <https://www.theguardian.com/world/2023/dec/22/the-plight-of-gazas-wcnsfs-wounded-child-no-surviving-family>.

<sup>39</sup> UNRWA, *Letter from UNRWA Commissioner-General Philippe Lazzarini to the UN General Assembly President Mr. Dennis Francis* (7 December 2023), <https://www.unrwa.org/resources/un-unrwa/letter-unrwa-commissioner-general-philippe-lazzarini-un-general-assembly>.



moment’ before the Court makes a final decision on the case”.<sup>40</sup> That is precisely the situation here. Any of those matters to which I have referred can and are occurring at any moment. United Nations Security Council resolutions demanding “the immediate, safe, unhindered delivery of humanitarian assistance, at scale” throughout Gaza<sup>41</sup> and “full, rapid, safe, and unhindered humanitarian access”<sup>42</sup> remain unimplemented. United Nations General Assembly resolutions calling for a humanitarian ceasefire have been ignored.<sup>43</sup> The situation could not be more urgent. Since these proceedings were initiated on 29 December 2023 alone, over 1,703 Palestinians have been killed in Gaza, and over 3,252 injured.<sup>44</sup>

### **Irreparable prejudice: Serious risks to human life and other fundamental rights**

11. As to the criterion of irreparable prejudice, for decades now, the Court has repeatedly found it to be satisfied in situations where serious risks arise to human life or to other fundamental human rights.

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<sup>40</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020*, p. 24, para 65; *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*, pp. 226-227, para. 66; originally from *Immunities and Criminal Proceedings (Equatorial Guinea v. France) (Order of 7 December 2016)*, p.1169, para. 90.

<sup>41</sup> UNSC Res 2720 (22 December 2023), *The situation in the Middle East, including the Palestinian question*, S/RES/2720, [https://undocs.org/S/RES/2720\(2023\)](https://undocs.org/S/RES/2720(2023)).

<sup>42</sup> UNSC Res 2712 (15 November 2023), *The situation in the Middle East, including the Palestinian question*, S/RES/2712, [https://undocs.org/S/RES/2712\(2023\)](https://undocs.org/S/RES/2712(2023)).

<sup>43</sup> UNGA Res ES-10/21 (27 October 2023), *Protection of civilians and upholding legal and humanitarian obligations*, A/RES/ES-10/21, <https://undocs.org/A/RES/ES-10/21>; UNGA Res ES-10/22 (12 December 2023), *Protection of civilians and upholding legal and humanitarian obligations*, A/RES/ES-10/22, <https://undocs.org/A/RES/ES-10/22>.

<sup>44</sup> 21,507 killed and 55,915 injured by 29 December 2024: UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 84* (29 December 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-84>; 23,210 killed and 59,167 injured as to 9 January 2024: UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 94* (9 January 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-94>.

12. In the cases of *Georgia v. Russia*, and *Armenia v. Azerbaijan*, the Court ordered provisional measures having found a serious risk of irreparable prejudice where hundreds of thousands of people had been forced from their homes.<sup>45</sup>
13. In ordering provisional measures in the latter case, the Court noted the context of the “long-standing exposure of the population . . . to a situation of vulnerability” including “hindrances to the importation . . . of essential goods, causing shortages of food, medicine, and other life-saving medical supplies”.<sup>46</sup>
14. In Gaza, nearly two million people — over 85 per cent of the population — have been repeatedly forced to flee their homes and shelters — not just once or twice but some three, four or more times over<sup>47</sup> — into ever-shrinking slivers of land, where they continue to be bombed and killed.<sup>48</sup> This is a population that Israel had already made vulnerable through 16 years of military blockade and crippling “de-development”.<sup>49</sup> Today, Israel’s “hindrances” to the import of food and essential items have brought Gaza

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<sup>45</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Order of 15 October 2008, p. 396, para. 142; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Order of 17 November 2023, p. 15, para. 58.

<sup>46</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Order of 17 November 2023, pp. 14-15, para. 55.

<sup>47</sup> UNRWA, *Situation Report #59 On the Situation in the Gaza Strip and the West Bank, including East Jerusalem* (2 January 2024), <https://www.unrwa.org/resources/reports/unrwa-situation-report-59-situation-gaza-strip-and-west-bank-including-east-jerusalem>; World Food Programme (‘WFP’), *Gaza on the brink as one in four people face extreme hunger* (20 December 2023), <https://www.wfp.org/stories/gaza-brink-one-four-people-face-extreme-hunger>.

<sup>48</sup> UNRWA, *Situation Report #59 On the Situation in the Gaza Strip and the West Bank, including East Jerusalem* (2 January 2024), <https://www.unrwa.org/resources/reports/unrwa-situation-report-59-situation-gaza-strip-and-west-bank-including-east-jerusalem>.

<sup>49</sup> UNCTAD, *Developments in the economy of the Occupied Palestinian Territory* (2023) (11 September 2023), TD/B/EX(74)/2, [https://unctad.org/system/files/official-document/tdbex74d2\\_en.pdf](https://unctad.org/system/files/official-document/tdbex74d2_en.pdf), paras. 35-58.

“to the brink of famine”, with adults — mothers, fathers, grandparents — regularly foregoing food so that children can eat at least something every day.<sup>50</sup> Medicine shortages and the lack of medical treatment, clean water and electricity, are so great that large numbers of Palestinians are dying and are at imminent risk of dying preventable deaths;<sup>51</sup> cancer and other services have long shut down,<sup>52</sup> women are undergoing caesarean sections without anaesthetic,<sup>53</sup> in barely functioning hospitals described as scenes from a “horror movie”,<sup>54</sup> with many undergoing otherwise unnecessary hysterectomies in an attempt to save their lives.<sup>55</sup>

15. In *Canada and the Netherlands v. Syria*, the Court made clear that “individuals subject to torture and other acts of cruel, inhuman or degrading treatment or punishment . . . are

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<sup>50</sup> WFP, *Gaza grapples with catastrophic hunger as new report predicts famine if conflict continues* (21 December 2023), <https://www.wfp.org/news/gaza-grapples-catastrophic-hunger-new-report-predicts-famine-if-conflict-continues>; CARE, *Gaza: After two months of war, women last to eat and children first to die* (7 December 2023), <https://www.care-international.org/news/gaza-after-two-months-war-women-last-eat-and-children-first-die>; UN News, Global Perspective Human Stories, *UPDATED: Everyone is hungry in Gaza, warn UN humanitarians* (2 January 2024), <https://news.un.org/en/story/2024/01/1145227>.

<sup>51</sup> Médecins Sans Frontières (“MSF”), *In Gaza, “the wounded are in danger of dying in the next few hours”* (19 October 2023), <https://www.msf.org/gaza-wounded-are-danger-dying-next-few-hours-palestine>; UNICEF, *Intensifying conflict, malnutrition and disease in the Gaza Strip creates a deadly cycle that threatens over 1.1 million children* (5 January 2024), <https://www.unicef.org/lac/en/press-releases/intensifying-conflict-malnutrition-and-disease-gaza-strip-creates-deadly-cycle>.

<sup>52</sup> “Gaza’s only cancer hospital goes out of service, health officials say”, *Reuters* (1 November 2023), <https://www.reuters.com/world/middle-east/gazas-only-cancer-hospital-goes-out-service-health-officials-2023-11-01/>; Corky Siemaszko, “Thousands of cancer patients in Gaza are out of medication and losing hope, hospital says”, *NBC News* (1 January 2024), <https://www.nbcnews.com/news/world/live-blog/israel-hamas-war-live-updates-idf-warns-military-campaign-gaza-last-20-rcna131784/rcrd28912?canonicalCard=true>; Tedros Adhanom Ghebreyesus, @DrTedros, Tweet (8:49 pm, January 7, 2024), <https://twitter.com/DrTedros/status/1744098839110320633?s=20>.

<sup>53</sup> UN News, *Interview: 5,500 women in Gaza set to give birth ‘in race against death’* (7 November 2023), <https://news.un.org/en/interview/2023/11/1143327>.

<sup>54</sup> UN Web TV, *UNICEF, WHO, OHCHR, UNHCR - Press Briefing: Rob Holand, Emergency Coordinator WHO* (1 December 2023), <https://webtv.un.org/en/asset/k1r/k1ro1d247a> (at 22:15).

<sup>55</sup> Juzoor for Health and Social Development, *The ravages of war: impact on mothers and newborns in Gaza* (11 November 2023), [https://www.juzoor.org/cached\\_uploads/download/2023/11/11/maternal-health-report-final-1699726911.pdf](https://www.juzoor.org/cached_uploads/download/2023/11/11/maternal-health-report-final-1699726911.pdf); Interview with Dr Mai Al-Kaileh (Palestinian Minister of Health) on Al Arabiya, 27 December 2023, <https://www.instagram.com/reel/C1W2QFCvmM8/?igsh=Ynk1NjRzdndnaHM5>.

at serious risk of irreparable prejudice”.<sup>56</sup> Palestinians in Gaza are also at risk of such irreparable prejudice, with videos of Palestinian boys and men, rounded up and stripped and degraded, broadcast to the world,<sup>57</sup> alongside footage of serious bodily harm, and accounts of serious mental harm and humiliation.<sup>58</sup>

16. In *Qatar v. United Arab Emirates*, the Court considered provisional measures to be justified having regard to the risk of irreparable prejudice deriving from factors such as people being forced to leave their places of residence without the possibility of return; the “psychological distress” of “temporary or potentially ongoing separation from their families”, and the harm associated with students being “prevented from taking their exams”.<sup>59</sup> If provisional measures were justified there, how could they not be in Gaza, where countless families have been separated — with some family members evacuating under Israeli military orders, and others staying behind at extreme risk to care for the wounded, infirm and the elderly; where husbands, fathers and sons are being rounded up and separated from their families, taken to unknown locations for indeterminate periods of time.<sup>60</sup> In the *Qatar v. United Arab Emirates* case, the Court issued a provisional order

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<sup>56</sup> *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic)*, Order of 16 November 2023, p. 18, para. 71.

<sup>57</sup> “Video shows stripped Palestinian men detained in Gaza”, *BBC News* (8 December 2023), <https://www.bbc.co.uk/news/world-middle-east-67659296>; “Palestinian detainees describe horrific torture by Israeli forces”, *Al Jazeera English* (26 December 2023), <https://www.youtube.com/watch?v=leVJAiGMDqI>; Palestine Online, @OnlinePalEng, Tweet (4:30 pm, 7 December 2023), <https://twitter.com/OnlinePalEng/status/1732799688259121639>.

<sup>58</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #77* (26 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-77>; Al-Haq, Al Mezan, PCHR, *Urgent Call for Independent Investigation Amidst Persistent Reports of Torture, Enforced Disappearance, and Another Palestinian “Death” in Israeli Custody* (2 January 2024), <https://www.mezan.org/en/post/46349>.

<sup>59</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Order of 23 July 2018, p. 431, para. 69.

<sup>60</sup> UN OHCHR, *OPT: Disturbing reports from the north of Gaza of mass detentions, ill-treatment and enforced disappearances of possibly thousands of Palestinians* (16 December 2023), <https://reliefweb.int/report/occupied-palestinian->

where harm to approximately 150 students was in issue. In Gaza, 625,000 schoolchildren have not attended school for three months,<sup>61</sup> with the United Nations Security Council “[e]xpressing deep concern that the disruption of access to education has a dramatic impact on children, and that conflict has lifelong effects on their physical and mental health”.<sup>62</sup> Almost 90,000 Palestinian university students cannot attend university in Gaza.<sup>63</sup> Over 60 per cent of schools, almost all universities, and countless bookshops and libraries,<sup>64</sup> have been damaged or destroyed, and hundreds of teachers and academics have been killed,<sup>65</sup> including deans of universities, and leading Palestinian scholars,<sup>66</sup>

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[territory/un-human-rights-office-opt-disturbing-reports-north-gaza-mass-detentions-ill-treatment-and-enforced-disappearances-possibly-thousands-palestinians](#); “‘Where will I leave these children, on the street?’ The struggle for survival faced by disabled Palestinians in Gaza”, *CNN* (17 November 2023), <https://edition.cnn.com/2023/11/17/middleeast/disabled-palestinians-gaza-survival-intl-cmd/index.html>.

<sup>61</sup> UNESCO, *Gaza: UNESCO calls for an immediate halt to strikes against schools* (27 October 2023), <https://www.unesco.org/en/articles/gaza-unesco-calls-immediate-halt-strikes-against-schools>; UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 73* (19 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-73>.

<sup>62</sup> Security Council (‘UNSC’) Res 2712, *The situation in the Middle East, including the Palestinian question*, S/RES/2712 (15 November 2023), [https://undocs.org/S/RES/2712\(2023\)](https://undocs.org/S/RES/2712(2023)).

<sup>63</sup> Birzeit University, *We, law students of Birzeit University, call on the world to stop the ongoing genocide by the Israeli occupation against the Palestinians in Gaza* (13 November 2023), <https://www.birzeit.edu/en/news/we-law-students-birzeit-university-call-world-stop-ongoing-genocide-israeli-occupation-against>; “Palestinian campus death toll passes 400, says ministry”, *Times Higher Education* (1 November 2023), <https://www.timeshighereducation.com/news/palestinian-campus-death-toll-passes-400-says-ministry>; Ahmed Asmar, “4,119 Palestinian school students killed, 7,536 injured in Gaza since Oct. 7”, *AA* (2 January 2024), <https://www.aa.com.tr/en/middle-east/4-119-palestinian-school-students-killed-7-536-injured-in-gaza-since-oct-7/3097921>.

<sup>64</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #86* (7 January 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-86>; “Laila Hussein Moustafa, ‘Opinion: When libraries like Gaza’s are destroyed, what’s lost is far more than books’”, *Los Angeles Times* (12 December 2023), <https://www.latimes.com/opinion/story/2023-12-12/gaza-library-bombing>.

<sup>65</sup> “Ministry of Education: Over 4,296 Palestinian students killed, 8,059 injured since start of Israeli aggression on October 7”, *Wafa* (9 January 2024), <https://english.wafa.ps/Pages/Details/140607>.

<sup>66</sup> “Israeli air strike in Gaza kills prominent scientist Sufyan Tayeh: Palestinian ministry”, *The Business Standard* (3 December 2023), <https://www.tbsnews.net/world/israeli-air-strike-gaza-kills-prominent-scientist-sufyan-tayeh-palestinian-ministry-750974>. Dr Said Al-Zubda, the President of the University College of Applied Sciences, Nour Naim, @NourNaim88, Tweet (1:36 pm, January 1, 2024), <https://twitter.com/NourNaim88/status/1741800681567100950>.

obliterating the very prospects for the future education of Gaza’s children and young people.<sup>67</sup>

### **Provisional measures and genocide**

17. Notably, the Court has found provisional measures to be justified in all three cases where they were previously sought in relation to violations of the Genocide Convention. It did so in *Bosnia v. Serbia* in 1993, finding — on the basis of evidence that was certainly no more compelling than that presently before the Court — that it was sufficient to determine that there was “a grave risk of acts of genocide being committed”.<sup>68</sup> The Court found provisional measures to be justified in *The Gambia v. Myanmar* case, on the basis of a risk of irreparable prejudice to the Rohingya, “subjected to . . . mass killings . . . as well as beatings, the destruction of villages and homes, denial of access to food, shelter and other essentials of life”.<sup>69</sup>
18. More recently, in indicating provisional measures in *Ukraine v. Russia*, the Court considered that Russia’s military activities had “resulted in numerous civilian deaths and injuries” and “caused significant material damage, including the destruction of buildings

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<sup>67</sup> Katherine Hearst, “War on Gaza: Palestinian drama teacher killed amid ‘deadliest’ assault on refugee camp”, *Middle East Eye* (28 December 2023), <https://www.middleeasteye.net/news/war-gaza-palestinian-drama-teacher-killed-israeli-assault-refugee-camp>; Killing of Captain Hani Al-Masri a Palestinian footballer and the coach of the Palestinian Olympic football team, Quds News Network, @QudsNen, Tweet (2:29 pm, January 6, 2024), <https://twitter.com/QudsNen/status/1743625904809452014>.

<sup>68</sup> *Bosnia v. Serbia, Provisional Measures, Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993*, p. 22, para. 45; see also *Bosnia v. Serbia, Provisional Measures, Order of 13 September 1993, I. C.J. Reports 1993*, p. 347, para. 49.

<sup>69</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020*, p. 26, para. 71.

and infrastructure”, giving rise to a risk of irreparable prejudice.<sup>70</sup> The Court had regard to the fact that the “[a]ttacks are ongoing and are creating increasingly difficult living conditions for the civilian population”, which it considered to be “extremely vulnerable”.<sup>71</sup> The Court also considered the fact that “[m]any persons have no access to the most basic foodstuffs, potable water, electricity, essential medicines or heating”, and that many were attempting to flee “under extremely insecure conditions”.<sup>72</sup> This is occurring in Gaza on a much more intensive scale, to a besieged, trapped, terrified population that has nowhere safe to go.

### **Provisional measures in situations of armed conflict**

19. Lest the contrary be suggested, it is clear from *Ukraine v. Russia* that the fact that the urgent risk of irreparable harm arises in a situation of armed conflict does not undermine much less preclude a request for provisional measures. That is also clear from the Court’s other judgments.
  
20. In the case of *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*,<sup>73</sup> for example, the Court ordered provisional measures based on its finding “that persons, assets and resources present on the territory of the Congo, particularly in the area of conflict, remain extremely vulnerable”, and that there was “a

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<sup>70</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, *Provisional Measures, Order of 16 March 2022*, I.C.J. Reports 2022, p. 228, para. 75.

<sup>71</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, *Provisional Measures, Order of 16 March 2022*, I.C.J. Reports 2022, p. 228, para. 75.

<sup>72</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, *Provisional Measures, Order of 16 March 2022*, I.C.J. Reports 2022, p. 228, para. 75.

<sup>73</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Provisional Measures, Order of 1 July 2000*, I.C.J. Reports 2000, p. 111.

serious risk that the rights at issue in this case . . . may suffer irreparable prejudice”.<sup>74</sup> Similarly, in *Costa Rica v. Nicaragua*, the Court indicated provisional measures in part on the basis that the presence of troops in the disputed territory gave “rise to a real and present risk of incidents liable to cause irremediable harm in the form of bodily injury or death”.<sup>75</sup>

21. In relation to the Genocide Convention in particular, the Court recalled in *Gambia v. Myanmar*, that “States parties expressly confirmed their willingness to consider genocide as a crime under international law which they must prevent and punish independently of the context ‘of peace’ or ‘of war’ in which it takes place”.<sup>76</sup>
  
22. More recently, in the *Guyana v. Venezuela* case, the Court considered that the serious risk of Venezuela “acquiring and exercising control and administration of the territory in dispute” gave rise to a risk of irreparable prejudice to the rights asserted in the case.<sup>77</sup> Similar factors are in issue here, having regard to the territorial ambitions and settlement plans for Gaza being raised by members of the Israeli government, and the relationship of those factors to the very survival of Palestinians in Gaza as such.

## **Provisional measures and mitigation of risk**

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<sup>74</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Order of 1 July 2000, I.C.J. Reports 2000, p. 111, para. 43.

<sup>75</sup> *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Order of 8 March 2011, p. 24, para. 75.

<sup>76</sup> *The Gambia v. Myanmar, Provisional Measures*, Order of 23 January 2020 pp. 27-28, para. 74, citing *Application on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, Judgment*, I.C.J. Reports 1996, p. 615, para. 31

<sup>77</sup> *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Provisional Measures*, Order of 1 December 2023, I.C.J. Reports 2023, p. 10, para. 37.



23. Similarly, any scaling up by Israel of access of humanitarian relief to Gaza in response to these proceedings or otherwise would be no answer to South Africa’s request for provisional measures. In the case of *Iran v. United States*, the Court found a risk of irreparable harm from the exposure of individuals to “danger to health and life”<sup>78</sup> caused by restrictions placed on “medicines and medical devices”, “foodstuffs” and other “goods required for humanitarian needs”.<sup>79</sup> That was notwithstanding the assurances offered by the United States for it to expedite the consideration of humanitarian issues;<sup>80</sup> and notwithstanding the fact that essentials were in any event exempt from United States sanctions.<sup>81</sup> The Court considered that the assurances were “not adequate to address fully the humanitarian and safety concerns raised” and that “there remain[ed] a risk that measures adopted” by the United States “may entail irreparable consequences”.<sup>82</sup>
24. In *Armenia v. Azerbaijan*, unilateral undertakings to alleviate restrictions alongside the *full* resumption of humanitarian and commercial deliveries did not defeat a request for the indication of provisional measures.<sup>83</sup> The Court was clear that while contributing “towards mitigating the imminent risk of irreparable prejudice resulting from” the

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<sup>78</sup> *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, *Provisional Measures, Order of 3 October 2018*, I.C.J. Reports 2018, p. 650, paras. 91-92.

<sup>79</sup> *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, *Provisional Measures, Order of 3 October 2018*, I.C.J. Reports 2018, pp. 643-644, para 70.

<sup>80</sup> *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, *Provisional Measures, Order of 3 October 2018*, I.C.J. Reports 2018, p. 650, paras. 91-92.

<sup>81</sup> *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, *Provisional Measures, Order of 3 October 2018*, I.C.J. Reports 2018, p. 649, para. 89.

<sup>82</sup> *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, *Provisional Measures, Order of 3 October 2018*, I.C.J. Reports 2018, p. 650, para. 92.

<sup>83</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, *Provisional Measures, Order of 17 November 2023*, I.C.J. Reports, pp. 16-17, para. 62.

military operation, those developments did “not remove the risk entirely”.<sup>84</sup> Indeed, in *Georgia v. Russia*, the Court made clear that it considers a “serious risk” to subsist where “the situation . . . is unstable and could rapidly change”. The Court considered that “given the ongoing tension and the absence of an overall settlement to the conflict in this region . . . populations also remain vulnerable”.<sup>85</sup>

25. Israel continues to deny that it is responsible for the humanitarian crisis it has created, even as Gaza starves.<sup>86</sup> The aid it has belatedly begun to allow in is wholly inadequate,<sup>87</sup> and does not come anywhere close to the average 500 trucks being permitted daily before October 2023.<sup>88</sup> Any unilateral undertakings Israel might seek to give about future aid would not remove the risk of irreparable prejudice, not least considering Israel’s past and current conduct towards the Palestinian people, including the 16 years of brutal siege on Gaza.<sup>89</sup>

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<sup>84</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 17 November 2023, I.C.J. Reports*, p. 17, para. 64. See also in this respect, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020*, p. 27, para. 73.

<sup>85</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 396, para. 142-143.

<sup>86</sup> Ambassador Gilad Erdan גילעד ארדן, @giladerdan1, Tweet (7:14 pm, December 22, 2023), <https://twitter.com/giladerdan1/status/1738261699713433651>.

<sup>87</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #81* (30 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-81>; UN News, *Global Perspective Human Stories, UPDATED: Aid relief arriving in Gaza but ‘too little, too late’, warns WHO* (9 January 2024), <https://news.un.org/en/story/2024/01/1145347>.

<sup>88</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 94* (9 January 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-94>; UN, *Humanitarian System for More than 2 Million Civilians in Gaza Facing Total Collapse, Secretary-General Warns, Once Again Urging Ceasefire, Aid Delivery at Scale Needed* (27 October 2023), <https://press.un.org/en/2023/sgsm22010.doc.htm>.

<sup>89</sup> James Elder @1james\_elder, Tweet (2:48 pm, December 19, 2023), [https://twitter.com/1james\\_elder/status/1737107611089272902](https://twitter.com/1james_elder/status/1737107611089272902).

26. In any event, as the United Nations Secretary-General has made clear, it is “a mistake” to measure “the effectiveness of the humanitarian operation in Gaza *based on the number of trucks*” allowed in.<sup>90</sup> As he has stressed, “[t]he real problem is that *the way Israel is conducting this offensive*” means that “the conditions for the effective delivery of humanitarian aid no longer exist”.<sup>91</sup> That would require “security, staff who can work in safety, logistical capacity, and the resumption of commercial activity. It requires electricity and steady communications. All of these remain absent”.<sup>92</sup> Indeed, only shortly after Israel opened the Kerem Shalom crossing to goods in late December 2023, it was struck in a drone attack, killing five Palestinians, and leading to another temporary closure.<sup>93</sup> Nowhere and nobody is safe. As the United Nations Secretary-General and all its Chiefs have made clear, without a halt to Israel’s military operations, crossings, aid convoys, and humanitarian workers<sup>94</sup> — like everyone and everything else in Gaza — remain at imminent risk of further irreparable prejudice. An unprecedented 148 United Nations staff have been killed to date.<sup>95</sup> Without a halt to Israel’s military activity in Gaza, there will be no end to the extreme situation facing Palestinian civilians.

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<sup>90</sup> UN OCHA, *Remarks to the media by the Secretary-General* (22 December 2023), <https://www.ochaopt.org/content/remarks-media-secretary-general> (emphasis added).

<sup>91</sup> UN, *Secretary-General's opening remarks at press conference on the situation in the Middle East* (22 December 2023), <https://www.un.org/sg/en/content/sg/speeches/2023-12-22/secretary-generals-opening-remarks-press-conference-the-situation-the-middle-east> (emphasis added); UN Secretary-General, *People of Gaza 'Being Told to Move like Human Pinballs', but Nowhere Is Safe, Secretary-General Tells Security Council, Pleading for Humanitarian Ceasefire* (8 December 2023), <https://press.un.org/en/2023/sgsm22076.doc.htm>.

<sup>92</sup> UN, *Secretary-General's opening remarks at press conference on the situation in the Middle East* (22 December 2023), <https://www.un.org/sg/en/content/sg/speeches/2023-12-22/secretary-generals-opening-remarks-press-conference-the-situation-the-middle-east> (emphasis added).

<sup>93</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #80* (29 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-80>.

<sup>94</sup> United Nations Secretary-General, Report on United Nations Security Council Resolution 2720 (5 January 2024), <https://twitter.com/Raminho/status/1743694636697174388/photo/3> (advanced copy); see also Martin Griffiths, @UNReliefChief, Tweet (12:13 am, December 29, 2023), <https://twitter.com/UNReliefChief/status/1740526522476191938>.

<sup>95</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 94* (9 January 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-94>.

## Provisional measures and Gaza

27. Madam President, Members of the Court, if the indication of provisional measures was justified on the facts in those cases I have cited, how could it not be here, in a situation of much greater severity, where the imminent risk of irreparable harm is so much greater? How could they not be justified in a situation that humanitarian veterans from crises spanning as far back as the killing fields of Cambodia<sup>96</sup> — “people who” (in the words of the United Nations Secretary-General) “have seen everything”<sup>97</sup> — if they say is so utterly “unprecedented” that they are “out of words to describe” it.<sup>98</sup>
28. It would be a complete departure from the long and distinguished line of jurisprudence that this Court has firmly established — and recently reconfirmed — for the Court not to order provisional measures in this case. The imminent risk of death, harm and destruction that Palestinians in Gaza face today, and that they risk every day during the pendency of these proceedings, on any view justifies — indeed compels — the indication of provisional measures. Some might say that the very reputation of international law — its ability and willingness to bind and to protect all peoples equally — hangs in the balance.

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<sup>96</sup> Interview with UN Relief Chief Martin Griffiths on CNN, 22 November 2023, in Christiane Amanpour, @amanpour, Tweet (4:08 pm, November 22, 2023), <https://twitter.com/amanpour/status/1727343309486542926>.

<sup>97</sup> UN, *Press Conference by Secretary-General António Guterres at United Nations Headquarters* (22 December 2023), <https://press.un.org/en/2023/sgsm22095.doc.htm>.

<sup>98</sup> UNRWA, *Remarks of UNRWA Commissioner-General Philippe Lazzarini at the Global Refugee Forum* (13 December 2023), <https://www.unrwa.org/newsroom/official-statements/statement-unrwa-commissioner-general-philippe-lazzarini-global-refugee>; UNRWA, @UNRWA, Tweet (2:46 pm, December 12, 2023), <https://twitter.com/UNRWA/status/1734585541591486755>.

## ELEMENTARY PRINCIPLES OF MORALITY

29. But the Genocide Convention is about more than legal precedent. It is also, — fundamentally — about the “confirm[ation] and endorse[ment of] elementary principles of morality”.<sup>99</sup> The Court recalled the 1946 General Assembly Resolution on the crime of genocide which made clear that:

“Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations.”<sup>100</sup>

30. Notwithstanding the Genocide Convention’s recognition of the need to rid the world of the “odious scourge” of genocide, the international community has repeatedly failed. It “failed” the people of Rwanda.<sup>101</sup> It had failed the Bosnian people, and the Rohingya, prompting this Court to take action.<sup>102</sup> It failed again by ignoring the early warnings of

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<sup>99</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020*, p. 27, para. 69, citing *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion of 28 May 1951, I.C.J. Reports 1951*, p. 23.

<sup>100</sup> UNGA Res 96, *The Crime of Genocide*, A/RES/96 (11 December 1946), preamble, as cited in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020*, pp. 27-28, para. 69.

<sup>101</sup> UN News, *Rwanda genocide ‘must leave us always with a sense of bitter regret and abiding sorrow’, says Secretary-General to New York memorial conference* (26 March 2004), <https://press.un.org/en/2004/sgsm9223.doc.htm>.

<sup>102</sup> See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993*, p. 24, para. 52; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020*, p. 30, para. 86.

the “grave risk of genocide to the Palestinian people” sounded by international experts since 19 October of last year.<sup>103</sup>

31. The international community continues to fail the Palestinian people, despite the overt dehumanising genocidal rhetoric by Israeli governmental and military officials, matched by the Israeli military’s actions on the ground; despite the horror of the genocide against the Palestinian population being livestreamed from Gaza to our mobile phones, computers and televisions screens — the first genocide in history where its victims are broadcasting their own destruction in real time in the desperate — so far vain — hope that the world might do something. Gaza represents nothing short of a “moral failure”, as described by the usually circumspect International Committee of the Red Cross.<sup>104</sup> As underscored by United Nations Chiefs, that failure has “repercussions not just for the people of Gaza . . . but for the generations to come who will never forget these [over] 90 days of hell and of assaults on the most basic precepts of humanity”.<sup>105</sup> As stated by a United Nations spokesperson in Gaza last week, at the site of a hospital clearly marked

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<sup>103</sup> UN OHCHR, *Gaza: UN experts decry bombing of hospitals and schools as crimes against humanity, call for prevention of genocide* (19 October 2023), <https://www.ohchr.org/en/press-releases/2023/10/gaza-un-experts-decry-bombing-hospitals-and-schools-crimes-against-humanity>; UN OHCHR, *Gaza is ‘running out of time’ UN experts warn, demanding a ceasefire to prevent genocide* (2 November 2023), <https://www.ohchr.org/en/press-releases/2023/11/gaza-running-out-time-un-experts-warn-demanding-ceasefire-prevent-genocide> ; UN OHCHR, *Gaza: UN experts call on international community to prevent genocide against the Palestinian people* (16 November 2023), <https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against>.

<sup>104</sup> International Committee of the Red Cross (‘ICRC’), *Gaza: ICRC president calls for the protection of civilians in the face of “moral failure”* (4 December 2023), <https://www.icrcnewsroom.org/story/en/2075/gaza-icrc-president-calls-for-the-protection-of-civilians-in-the-face-of-moral-failure>; ICRC, *Israel and the occupied territories: President of the ICRC arrives in Gaza, calls for the protection of civilians* (4 December 2023), <https://www.icrc.org/en/document/israel-and-occupied-territories-president-icrc-arrives-gaza>.

<sup>105</sup> UN OCHA, *The war in Gaza must end - Statement by Martin Griffiths, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, 5 January 2024* (5 January 2024), <https://reliefweb.int/report/occupied-palestinian-territory/war-gaza-must-end-statement-martin-griffiths-under-secretary-general-humanitarian-affairs-and-emergency-relief-coordinator-5-january-2024-enhear>.

with the symbol of the Red Crescent, where five Palestinians — including a five-day old baby — had just been killed: “The world should be absolutely horrified. The world should be absolutely outraged . . . There is no safe space in Gaza and the world should be ashamed”.<sup>106</sup>

## CONCLUSION

32. Madam President, Members of the Court, in conclusion I share with you two photographs. The first is of a white board at a hospital — in Northern Gaza<sup>107</sup> — one of the many Palestinian hospitals targeted, besieged, bombed by Israel over the course of the past three brutal months. The white board is wiped clean of no longer possible surgical cases, leaving only a hand-written message by a Médecins Sans Frontières doctor which reads:

“We did what we could. Remember us”.

33. The second is of the same whiteboard, after an Israeli strike on the hospital on 21 November 2023 that killed the author of the message, Dr Mahmoud Abu Nujaila, along with two of his colleagues.<sup>108</sup>

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<sup>106</sup> Gemma Connell, Team Leader of UN OCHA, in UN Humanitarian, @UNOCHA, Tweet (9:09 pm, January 2, 2024), <https://twitter.com/UNOCHA/status/1742276915707211811?s=20>.

<sup>107</sup> Médecins sans frontières (MSF), *Gaza: “It must all stop now”*, Letter to UN Security Council (4 December 2023), <https://www.msf.org/letter-gaza-un-security-council>; MSF UK, @MSF\_uk, Tweet (3:16 pm, December 6, 2023), [https://twitter.com/MSF\\_uk/status/1732403598007435695](https://twitter.com/MSF_uk/status/1732403598007435695).

<sup>108</sup> MSF, *Gaza: MSF doctors killed in strike on Al-Awda Hospital* (21 November 2023), <https://www.doctorswithoutborders.org/latest/gaza-msf-doctors-killed-strike-al-awda-hospital>; MSF, *Gaza: “It must all stop now”*, Letter to UN Security Council (4 December 2023), <https://www.msf.org/letter-gaza-un-security-council>.

34. Just over a month later, in a powerful Christmas Day sermon, delivered from a church in Bethlehem — on the same day Israel had killed 250 Palestinians,<sup>109</sup> including at least 86 people, many from the same family, massacred in a single strike on Maghazi Refugee Camp<sup>110</sup> — Palestinian Pastor Munther Isaac addressed his congregation and the world. He said:

“Gaza as we know it no longer exists. This is an annihilation. This is a genocide. We will rise. We will stand up again from the midst of destruction, as we have always done as Palestinians, although this is by far maybe the biggest blow we have received.” But he said: “No apologies will be accepted after the genocide . . . What has been done has been done. I want you to look at the mirror and ask, ‘where was I when Gaza was going through a genocide’.”<sup>111</sup>

35. South Africa is here before this Court, in the Peace Palace. It has done what it could. It is doing what it can, by initiating these proceedings, by seeking interim measures against *itself* as well as against Israel.

36. South Africa now respectfully and humbly calls on this honourable Court to do what is in its power to do, to indicate the provisional measures that are so urgently required to

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<sup>109</sup> Gaza Ministry of Health, Facebook Post (25 December 2023), <https://www.facebook.com/MOHGaza1994/>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #77* (26 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-77>.

<sup>110</sup> UN OHCHR, *Comment by UN Human Rights Office spokesperson Seif Magango on continued bombardment of Middle Gaza* (26 December 2023), <https://www.un.org/unispal/document/un-human-rights-office-is-gravely-concerned-about-the-continued-bombardment-of-middle-gaza-ohchr-press-release/>

<sup>111</sup> “‘Christ in the Rubble’: Watch Palestinian Pastor Deliver Powerful Christmas Sermon from Bethlehem”, *Democracy Now* (26 December 2023), [https://www.democracynow.org/2023/12/26/christ\\_in\\_the\\_rubble\\_christmas\\_sermon](https://www.democracynow.org/2023/12/26/christ_in_the_rubble_christmas_sermon).



prevent further irreparable harm to the Palestinian people in Gaza, whose hopes — including for their very survival — are now vested in the Court.

**Introduction of following presentation**

37. Madame la présidente, Mesdames et Messieurs les juges, je vous remercie de votre bienveillante attention. Je vous invite à demander au Professeur Lowe KC de prendre le podium pour décrire les mesures conservatoires revendiquées par l’Afrique du Sud de la part du peuple palestinien.

**11 January 2024**