

**OBSERVATIONS OF THE STATE OF ISRAEL ON THE REQUEST FILED BY THE REPUBLIC OF SOUTH AFRICA ON 6 MARCH 2024 FOR THE INDICATION OF ADDITIONAL PROVISIONAL MEASURES AND/OR THE MODIFICATION OF MEASURES PREVIOUSLY INDICATED**

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**1 INTRODUCTION**

1. On 6 March 2024, the Republic of South Africa (“South Africa”) made its *third* request for provisional measures within the span of less than ten weeks. Not only is this fresh request highly unusual in its timing, so close to the earlier requests, but it is also unusual in its bellicose and offensive tone. The accusations made therein are outrageous and categorically denied. Much like South Africa’s Application that instituted the present proceedings, they are wholly unfounded in fact and law, morally repugnant, and represent an abuse both of the Genocide Convention and of the Court itself.

2. The chronology of the case to date reveals much about South Africa’s belligerent and disingenuous approach. On 29 December 2023, South Africa filed an Application instituting proceedings against Israel, alleging violations of provisions of the Genocide Convention (“the Convention”). The Application contained a request for the Court to indicate nine provisional measures,<sup>1</sup> the most extreme of which constituted a legally and morally untenable attempt to prevent Israel from exercising its inherent right to defend itself against the unprecedented terrorist onslaught it has faced since the atrocities of 7 October 2023 and to secure the release of the hostages held in Gaza. On 26 January 2024, after oral hearings held on 11-12 January, the Court issued its Order on provisional measures (“the Order”), in which it declined to indicate the excessive measures that South Africa had requested and indicated six other provisional measures.<sup>2</sup> The Court called upon Israel to submit a report within one month on all measures taken to give effect to the Order, which Israel has now done.

3. In the Order, the Court made it clear that its decision did not prejudge questions of jurisdiction and admissibility nor the issue of the merits.<sup>3</sup> It also emphasised that it was “gravely concerned about the fate of the hostages abducted during the attack in Israel on 7 October 2023 and held since then by Hamas and other armed groups, and call[ed] for their immediate and unconditional release”.<sup>4</sup> This call has gone entirely unheeded. To date, 134 hostages—women, men, and children, including infants—remain in brutal captivity in Gaza. The lack of any discernible steps on the part of South Africa to use its influence with its ally Hamas to facilitate their release speaks volumes as to the motivations behind South Africa’s actions and the nature of its purported concern for human life.

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<sup>1</sup> South Africa’s Application Instituting Proceedings, para. 144.

<sup>2</sup> *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, para. 86.

<sup>3</sup> *Ibid.*, para. 84; see also paras. 15, 30, and 62.

<sup>4</sup> *Ibid.*, para. 85.

4. On 12 February 2024, a mere three weeks after the Court had issued its Order, South Africa made a further request for provisional measures, citing a “significant development”.<sup>5</sup> This claim of a “significant development”, which South Africa misleadingly depicted as an “unprecedented military offensive”,<sup>6</sup> relied on an announcement from the Office of the Prime Minister of Israel that in fact made clear that any potential military operation in Rafah is intended to target Hamas battalions entrenched there and requires the preparation and approval of plans concerning the protection of civilians.

5. It is telling that South Africa’s request of 12 February 2024 invoked Article 75(1) of the Rules of Court, under which the Court can indicate provisional measures *proprio motu*. This was an apparent acknowledgement by South Africa that it could not show any “change in the situation” within the meaning of Article 76(1) of the Rules of Court, under which the Court can modify an existing decision concerning provisional measures where there has been a change in the situation. In effect, South Africa was merely seeking to reopen and to relitigate what had already been decided by the Court in its Order three weeks earlier. On 16 February 2024 the Court decided that further measures were not required and reaffirmed that the Order of 26 January 2024 remained in force.<sup>7</sup>

6. Ten days later, on 26 February 2024, Israel submitted to the Court a report pursuant to paragraph 86(6) of the Order of 26 January 2024 (“the Report”).

7. On 6 March 2024, less than three weeks after the Court’s decision of 16 February 2024 not to indicate further provisional measures, and barely one week after the submission of Israel’s Report, South Africa filed the present request for the indication of further provisional measures and/or the modification of the provisional measures indicated in the Order of 26 January 2024.<sup>8</sup> At the time of filing the present request on 6 March 2024, South Africa could hardly have had sufficient time to consider seriously Israel’s Report and its Annexes. Although any modification of the Order on provisional measures would require a change in the situation within the meaning of the Rules of Court, South Africa’s request of 6 March 2024 shows nothing more than a continuation of elements already considered by the Court when issuing the Order of 26 January 2024. This will be discussed in greater detail below.

8. On 11 March 2024, less than one week after the submission of this third provisional measures request, South Africa provided the Court with its Observations on the Report of Israel. This is not the place for a refutation of the allegations made in that document, justified though that may be. The point being made here is that South Africa is engaged in a constant barrage of documentation, seeking to relitigate yet again issues that have already been considered and decided by the Court or are properly the subject of the merits phase. It is a barely sustainable tactic.<sup>9</sup>

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<sup>5</sup> South Africa’s Request of 12 February 2024, para. 2.

<sup>6</sup> *Ibid.*, para. 7.

<sup>7</sup> See the Court’s Press Release of that date, No. 2024/16.

<sup>8</sup> South Africa’s Request of 6 March 2024, para. 2.

<sup>9</sup> Israel fully reserves its position with regard to the contents of South Africa’s Observations.

9. Indeed, South Africa is engaged in an abusive exploitation of the Court’s procedures. It ignores inconvenient facts and distorts others in an offensive and tendentious manner as request follows request with barely time to draw breath. It apparently hopes that incessant requests will eventually lead the Court to relent and to grant it what it seeks. What is clear is that the making of repeated requests for the modification of provisional measures, without a proper basis for doing so, is unacceptable conduct on the part of a party to international judicial proceedings.

10. Taken together, South Africa’s shrill and repeated submissions also suffer from a more fundamental flaw. They are simply unable to explain how significant measures undertaken continuously by Israel throughout the present hostilities—including various humanitarian initiatives and the ongoing coordination of access to humanitarian supplies, extensive efforts to mitigate civilian harm, a willingness to compromise operational advantage for the benefit of Palestinian civilians (for instance, by advance warning and close quarters combat), humanitarian pauses in fighting, specific directives by the War Cabinet and Israeli Defence Forces addressing the humanitarian situation, and much more—can possibly be reconciled with a genocidal intent to destroy a group in whole or in part. Put differently, which State that is engaged in genocide, or is indifferent to the commission of acts within the scope of Article II of the Convention, works to coordinate humanitarian convoys and airdrops, or facilitates constantly the provision of medical supplies to hospitals, the establishment of field hospitals, and the repair of critical infrastructure damaged in the course of hostilities?

11. None of this is to say that there are no pressing challenges in seeking to address the humanitarian suffering in Gaza. There are also tragic and agonizing civilian casualties in this war. These realities are the painful result of intensive armed hostilities that Israel did not start and did not want. They are the harsh effects of urban warfare against a genocidal terrorist organization whose strategy is to maximize civilian harm in utter contempt for life and for the law, and which continues to hold hostages and openly declares its intention to repeat the horrors of 7 October. Israel is doing a great deal to alleviate such suffering in these very challenging circumstances.

12. Israel has engaged in the present proceedings seriously and in good faith. It remains committed to the observance of its international legal obligations, including those prescribed by the Convention and international humanitarian law, and those reflected in the Court’s Order of 26 January 2024. As elaborated below, nothing in South Africa’s present request establishes that the provisional measures already indicated in that Order would no longer be sufficient. It is respectfully submitted, therefore, that the request should be rejected.

13. The remainder of Israel’s observations is structured as follows. Section 2 addresses the blatant misrepresentations in South Africa’s request. Section 3 points to additional flaws in South Africa’s arguments. Section 4 demonstrates that the requirements for modification of the existing provisional measures, or introduction of additional ones, are not met. For completeness, Section 5 explains that the terms of the proposed provisional measures are wholly inappropriate. As before, these Observations are presented without prejudice to Israel’s position with respect to

jurisdiction, admissibility, and the merits of the case. Furthermore, while Israel does not here respond to all of the inaccuracies with which the request submitted by South Africa is replete, this omission is not an admission or acceptance thereof, and Israel reserves fully its position in relation to those matters.

## **2 SOUTH AFRICA FUNDAMENTALLY MISREPRESENTS THE REALITY, ITS CAUSES, AND THE EFFORTS UNDERTAKEN BY ISRAEL TO ADDRESS IT**

14. South Africa’s line of argument in its request of 6 March 2024 follows a familiar pattern of misrepresenting the reality; falsely attributing that purported reality to Israeli wrongdoing; and libellously assigning to Israel a malign intent that is simply not there.

15. The request makes outrageous and unsubstantiated accusations against Israel. Among these are the claims of “massacring desperate, starving Palestinians”,<sup>10</sup> “deliberately starving” Palestinians,<sup>11</sup> “deliberately killing and targeting humanitarian workers”,<sup>12</sup> and “us[ing] humanitarian aid as a ‘bargaining chip in negotiations’”.<sup>13</sup> Such characterization of Israel’s conduct is manifestly untrue and is emphatically denied.

16. One glaring example of South Africa’s misrepresentation of reality concerns its depiction of the tragic incident that occurred during aid distribution in Gaza City on 29 February 2024. South Africa, purporting to attribute to Israel genocidal intent, outrageously calls the incident the “flour massacre”.<sup>14</sup> In fact, Israeli forces were escorting an aid convoy at the time of the incident in an effort to facilitate its safe movement and deter looters, given that earlier humanitarian convoys had been unsuccessful in reaching their destination in northern Gaza. At present, the events that followed are still under examination by the General Staff’s Fact-Finding and Assessment Mechanism, including the cause of the tragic deaths and injuries, some of which may have been caused by trampling. Determinative findings are still pending. However, a preliminary inquiry conducted by the Commander of the IDF Southern Command and presented to the Chief of General Staff indicates that thousands of Gazan residents blocked the movement of the convoy and began looting the aid it was delivering. When the crowd began advancing towards IDF forces, warning shots were fired by the troops. When these proved insufficient, live fire was eventually discharged towards those who were considered to pose imminent danger.<sup>15</sup>

17. While the incident was a serious and tragic one, the allegation that Israel acted with the intent to harm those seeking aid and posing no threat to IDF soldiers is malicious and totally rejected. The distribution of humanitarian aid in combat zones is a challenge frequently encountered by active militaries and can, when involving large numbers of civilians, quickly

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<sup>10</sup> Ibid., para. 11.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid., para. 9.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid., para. 11.

<sup>15</sup> IDF Spokesperson, “Following the events during the humanitarian operation to insert a food convoy into Northern Gaza: An examination of the incident has been completed and its findings were submitted to the Chief of General Staff” (translated from Hebrew) (8 March 2024), <https://shorturl.at/avyNR>.

descend into chaos.<sup>16</sup> Moreover, terrorist groups such as Hamas do not hesitate to exploit a crowd of civilians to create such disorder in order to target troops and prevent them from asserting control over the distribution of aid. Regardless, Israel deeply regrets any harm caused to civilians in the course of hostilities, and the incident of February 29 is no exception.

18. South Africa continues to ignore the fact that Israel is currently engaged in a war with a genocidal terrorist organization, and that the ongoing hostilities create various operational and logistical challenges that are intentionally exacerbated by Hamas's strategy of warfare. This strategy centres on the unlawful exploitation of civilians and civilian infrastructure, as well as utter disdain for civilian suffering, whether Israeli or Palestinian. South Africa would have the Court believe that the humanitarian situation in the Gaza Strip is a result of Israel's actions and these alone. And it goes further to shockingly claim that there is even a deliberate intent to produce the difficulties faced by civilians. This is false. Israel has real concern for the humanitarian situation and innocent lives, as demonstrated by the actions it has and is taking. It categorically rejects the argument that it is the driving cause of the humanitarian suffering or that it ever wills it.

19. Food insecurity in Gaza, especially in northern Gaza, is a serious challenge. But the reality is that, contrary to South Africa's position, the provision of humanitarian assistance to the civilian population in Gaza is not a straightforward matter and Israel is committed, together with a host of relevant stakeholders, to consistent and extensive efforts to address this challenge. This commitment to alleviate the humanitarian situation and overcome existing obstacles demonstrates the very opposite of genocidal intent or any attempt to starve the population. Such efforts include the continuous facilitation of entry of humanitarian relief consignments into Gaza; putting into use additional routes for this purpose and bolstering the capacity of existing ones; actively engaging with health officials in Gaza in order to assess and accommodate their needs; facilitating repairs and expansion of civilian infrastructure; and working constantly with international actors, including UN entities, in order to scale up aid and improve its distribution to those in need. All this in the midst of fighting a war forced upon it and while its own citizens are subject to repeated attacks and no less than 134 of them are still held captive in Gaza in inhumane conditions.

20. The challenges in facilitating humanitarian relief to Gaza that Israel, together with other actors, is actively seeking to overcome, are manifold. Some of these challenges are inherent to any theatre of active hostilities, particularly one that is densely populated and heavily dependent on international aid. Other difficulties are a direct result of Hamas's despicable strategy, which seeks to use civilians as human shields and to exacerbate and exploit the already difficult situation. An additional challenge stems from the fact that international organizations in Gaza are required to coordinate their activities with a terrorist organization that controls all governmental ministries in the area. This creates dependence on Hamas when delivering and distributing humanitarian aid. This has enabled Hamas to take control of humanitarian supplies,

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<sup>16</sup> See Lazar Berman, "In Gaza, as elsewhere, aid missions are dangerous for soldiers", *Times of Israel* (11 March 2024), <https://www.timesofisrael.com/in-gaza-as-elsewhere-aid-missions-are-dangerous-for-soldiers/>.

after their access into Gaza has been facilitated by Israel, and to divert them from their intended civilian destination. Moreover, there have been incidents of looting of aid from trucks, storage facilities, and distribution points by criminal gangs. To further compound the challenges, Hamas has reportedly threatened Palestinian groups and individuals that they will be “handled with an iron fist” if they cooperate with Israel to provide security for aid convoys.<sup>17</sup>

21. The Court has before it the information presented by Israel in its Report regarding the efforts being undertaken to overcome these many challenges consistent with Israel’s commitment under international law to allow and facilitate humanitarian relief so as to address the adverse conditions faced by Palestinian civilians in the Gaza Strip. Developments of the last few days further attest to these ongoing efforts and to the absurdity of South Africa’s claims. These developments add to the numerous acts and initiatives undertaken by Israel since the start of the conflict in Gaza and indeed since the Court’s Order of 26 January and Decision of 16 February 2024.

22. For instance, following intensive bilateral discussions held over the past few months between Israel and Cyprus, which included a field visit in Larnaca by an Israeli delegation, the Governments of both States agreed on the establishment of a maritime corridor that will allow aid delivery directly to Gaza following security inspections.<sup>18</sup> The UN Senior Humanitarian and Reconstruction Coordinator for Gaza, Ms. Sigrid Kaag, welcomed this development as “bring[ing] ... much needed additionality [to the overall humanitarian effort]” and “commend[ed] the leadership of Cyprus and the support extended by the European Commission, Qatar, United Arab Emirates, the United Kingdom, the United States and others”.<sup>19</sup> On 13 March 2024, a ship carrying 200 tonnes of food left Cyprus in order to reach Gaza by the maritime corridor.<sup>20</sup>

23. On 7 March 2024, President Biden announced that United States forces will begin establishing a floating pier off the Gaza coast in order to deliver increased amounts of

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<sup>17</sup> Hamas has reportedly warned Palestinian individuals or groups against cooperating with Israel to provide security for aid convoys: see: “Hamas-linked website warns Palestinians against cooperating with Israel to secure aid convoys”, *Times of Israel* (11 March 2024), [https://www.timesofisrael.com/liveblog\\_entry/hamas-linked-website-warns-palestinians-against-cooperating-with-israel-to-secure-aid-convoys/](https://www.timesofisrael.com/liveblog_entry/hamas-linked-website-warns-palestinians-against-cooperating-with-israel-to-secure-aid-convoys/). See also: “Hamas-linked website warns Palestinians not to work with Israel”, *Reuters* (11 March 2024), <https://www.reuters.com/world/middle-east/hamas-linked-website-warns-palestinians-not-work-with-israel-2024-03-11/>. See also the report according to which Hamas has executed a “prince” of a clan in Gaza City, as a message to those considering cooperating with Israel: “Hamas executes Gaza clan ‘prince’ in message to potential ‘collaborators’”, *JNS* (14 March 2024), <https://www.jns.org/hamas-executes-gaza-clan-prince-in-message-to-potential-collaborators/>.

<sup>18</sup> “Israel, Cyprus discuss ‘fast track’ maritime lane for aid to Gaza”, *Reuters* (20 December 2023), <https://www.reuters.com/world/middle-east/israel-cyprus-discuss-fast-track-maritime-lane-aid-gaza-2023-12-20/>.

<sup>19</sup> UNOPS, “Joint statement on the opening of a maritime corridor to Gaza – UN Senior Humanitarian and Reconstruction Coordinator” (12 March 2014), <https://www.un.org/unispal/document/joint-statement-on-the-opening-of-a-maritime-corridor-to-gaza-12mar24/>.

<sup>20</sup> “First Sea Shipment of Aid Departs for Gaza”, *New York Times* (12 March 2024), <https://www.nytimes.com/live/2024/03/12/world/israel-hamas-war-gaza-news>.

humanitarian aid by sea.<sup>21</sup> The IDF is involved in the process of constructing the pier and in finalizing the details concerning security arrangements for its operation and the supply route leading from the pier. A US Navy ship carrying the equipment necessary for constructing the pier has already set sail from Virginia.<sup>22</sup>

24. Humanitarian airdrops into Gaza have continued to grow in number. In addition to the parachuting on 21 February 2024 of four tonnes of supplies donated by the United Kingdom and Jordan,<sup>23</sup> between 26 February and 9 March, Israel facilitated the airdrop into Gaza of approximately 1,138 aid packages, in cooperation with Egypt,<sup>24</sup> Jordan,<sup>25</sup> the United Arab Emirates,<sup>26</sup> Qatar, Belgium,<sup>27</sup> France, and the Netherlands.<sup>28</sup> The United States carried out nine airdrop operations between 2-13 March in coordination with Israel, parachuting into Gaza more than 35,000 meal equivalents and 28,000 bottles of water.<sup>29</sup>

25. Israel continues to facilitate the entry of aid through land routes, too, bearing in mind that they are essential to the present humanitarian effort. As demonstrated by official data presented on the website of COGAT, the unit in the Ministry of Defence in charge of monitoring the humanitarian situation, since the submission of Israel's Report, the number of trucks entering the Gaza Strip through Israel and Egypt via land crossings has increased significantly, to approximately 200 trucks each day over the last two weeks. The utilization of the Allenby Bridge route, bringing aid from Jordan, has increased significantly as well. Israel has made clear that it is amenable to undertaking measures to further increase capacity on the Israeli side of land crossings, such as adding scanners and personnel.

26. In order to address the particular challenge of distributing aid in northern Gaza, Israel put into use a new land route directly from Israel into northern Gaza. On 12 March 2024, food

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<sup>21</sup> Remarks by President Biden in State of the Union Address (8 March 2024), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/03/08/remarks-by-president-biden-in-state-of-the-union-address-3/>.

<sup>22</sup> United States Central Command, @CENTCOM, Tweet (2:35 pm, 10 March 2024), <https://twitter.com/CENTCOM/status/1766623783857836091>.

<sup>23</sup> UK Government, Press Release, "UK and Jordan drop life-saving aid to Gaza hospital", (21 February 2024), <https://www.gov.uk/government/news/uk-and-jordan-drop-life-saving-aid-to-gaza-hospital>.

<sup>24</sup> "UAE And Egypt Airdrop 42 Tonnes of Aid In Gaza", *DubaiEye* (11 March 2024), <https://www.dubaieye1038.com/news/local/uae-and-egypt-airdrop-42-tonnes-of-aid-in-gaza/>.

<sup>25</sup> "US and Jordanian forces airdrop aid into Gaza", *CNN* (2 March 2024), <https://edition.cnn.com/2024/03/02/politics/us-airdrops-aid-gaza/index.html>.

<sup>26</sup> "UAE And Egypt Airdrop 42 Tonnes Of Aid In Gaza", *DubaiEye* (11 March 2024), <https://www.dubaieye1038.com/news/local/uae-and-egypt-airdrop-42-tonnes-of-aid-in-gaza/>; "UAE, Egypt implement seventh humanitarian aid airdrop in Gaza", *Emirates News Agency-WAM* (10 March 2024), <https://www.wam.ae/en/article/b22o3pb-uae-egypt-implement-seventh-humanitarian-aid>.

<sup>27</sup> Kingdom of Belgium, Press Release, "B-FAST – First airdrop of emergency aid carried out over Gaza", (7 March 2024), <https://diplomatie.belgium.be/en/news/b-fast-first-airdrop-emergency-aid-carried-out-over-gaza>.

<sup>28</sup> "Netherlands and Jordan jointly air drop relief aid, hospital supplies in Gaza", *NL Times* (4 February 2024), <https://nltimes.nl/2024/02/04/netherlands-jordan-jointly-air-drop-relief-aid-hospital-supplies-gaza>.

<sup>29</sup> United States Central Command, @CENTCOM, Tweet (9:13 pm, 13 March 2024), <https://twitter.com/CENTCOM/status/1767992289463279679>.

was delivered via this route in coordination with the World Food Programme (“WFP”).<sup>30</sup> The latter agreed to assume responsibility for flour shipments originally intended for UNRWA that were stalled at the Ashdod Port in Israel, thus enabling their release and distribution in Gaza. In seeking to increase the delivery of humanitarian assistance in northern Gaza in a safe and effective way, Israel has also been coordinating not only with international organizations, but also directly with the private economic sector in the area (for example, bakeries and grocery stores). As a result, between 24 February and 9 March 2024, the movement of 273 additional food trucks to northern Gaza was facilitated by Israel.

27. Israel is presently considering with the UN the provision of security services by third parties to further enable aid convoys to travel securely and deliver supplies effectively throughout Gaza.

28. Israel is also working with UN agencies on the construction of a 525-meter-long wall and a 720-meter-long wall for protection against looting of the UN warehouse complex in Gaza and the Qatari warehouse complex at the Rafah crossing, respectively.

29. Beyond these specific measures designed to address the food security challenges in Gaza, additional humanitarian measures are also being undertaken. In particular, the availability of medical care in Gaza continues to be a priority. Israel coordinates closely with international actors, including the World Health Organization (‘WHO’), in order to facilitate the operation of medical facilities in Gaza, not least by enabling the entry into Gaza (and distribution within it) of large amounts of medical supplies. Since the start of the war, more than 19,740 tonnes of medical supplies have entered the Gaza Strip.

30. Whereas at the time of the oral hearing of 11-12 January there were four field hospitals in operation in Gaza, two additional field hospitals whose establishment was coordinated with Israel are soon due to begin operating, one being set up by the ICRC and the other on the initiative of the United Kingdom.<sup>31</sup> Between 8 and 11 March 2024, 8 trucks carrying equipment for the UK-MED hospital entered the Gaza Strip; this hospital is expected to begin operating fully on 17 March 2024, but is already providing primary care. In addition, on 26 February 2024, a UAE floating hospital docked at the El-Arish port in Egypt and began treating patients from Gaza.<sup>32</sup> COGAT is currently in discussions with other international organizations about the establishment of yet another field hospital.

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<sup>30</sup> “UN uses new land route from Israel to reach northern Gaza”, *Times of Israel* (12 March 2024), [https://www.timesofisrael.com/liveblog\\_entry/un-uses-new-land-route-from-israel-to-reach-northern-gaza/](https://www.timesofisrael.com/liveblog_entry/un-uses-new-land-route-from-israel-to-reach-northern-gaza/).

<sup>31</sup> Israel Defence Forces, “Medical Aid and Field Hospitals in the Gaza Strip” (22 January 2024), <https://www.idf.il/en/mini-sites/hamas-israel-war-24/all-articles/medical-aid-and-field-hospitals-in-the-gaza-strip/>; UK Government, Press Release, “Major humanitarian push as 150 tonnes of UK aid enter Gaza” (13 March 2024), <https://www.gov.uk/government/news/major-humanitarian-push-as-150-tonnes-of-uk-aid-enters-gaza>.

<sup>32</sup> COGAT, @cogatonline, Tweet (2:45 pm, 26 February 2024), <https://twitter.com/cogatonline/status/1762096423791964248?t=a34hruZe7BW87r74pIsAxQ&s=19>.

31. On 5 March 2024, COGAT officials met with the Jerusalem-based St. John Eye Hospital with regard to the establishment of an ophthalmology department that will operate in Gaza within the International Medical Corps ('IMC') field hospital. Moreover, on 7 March 2024, IMC representatives toured a possible location for the establishment of an additional field hospital. On the same day, 14 trucks with medical equipment for the UAE field hospital entered the Gaza Strip.

32. The supply of additional medical equipment continues to be facilitated. On 3 March 2024, 50 incubators from UNICEF designated for the Shifa Hospital, Kamal Adwan Hospital, the European Hospital, Nassar Hospital, and the Aqsa Hospital entered the Gaza Strip.<sup>33</sup> The supply of more ambulances to Gaza has also been facilitated to improve first-response capabilities. Additional ambulances have already undergone inspection this week at the Nitzana Crossing, and are expected to enter Gaza in the upcoming days.

33. Delivery of vaccinations to Gaza has been extensive throughout the present hostilities. Most recently, on 12 March 2024, vaccinations intended for the territory arrived at the Al-Arish Port, including 44,900 Hepatitis B vaccines; 134,500 Tetanus+Diphtheria+Pertussis+Hepatitis B+Hemophiles Influenza vaccines; and 30,000 Diphtheria+Tetanus+Perussis vaccines. The shipment has already been coordinated with Israel and its entry to the Gaza Strip is expected within several days through the Kerem Shalom crossing.

34. Fuel also continues to be delivered to hospitals in the Gaza Strip. Most recently, on 9 March 2024, UNICEF and WHO missions delivered fuel to the Ahli Hospital in coordination with Israel. A UN convoy that included a fuel tanker designated for the Shifa Hospital was also coordinated. In late February 2024, COGAT coordinated the repair of a generator at Nassar Hospital; in addition, at the request of hospital staff, COGAT coordinated the transfer of a number of patients to other hospitals in the Gaza Strip. The transfer of an additional generator from the European Hospital to Nassar Hospital is being coordinated by COGAT.

35. Israel moreover continues to assist the UN and specialized agencies inside the Gaza Strip to improve their operational capabilities, by facilitating the supply of items such as forklifts, trucks, satellite phones, and protective gear. On 1 March 2024, 30 pairs of vests and helmets entered Gaza for the use of ICRC personnel. This week, additional protective gear for the use of WFP and UNICEF entered the Gaza Strip as well, and more protective gear and equipment intended for UNICEF, WFP, UK-MED, OCHA and the World Central Kitchen is expected to arrive in the coming days.

36. Cooperation with the UN Senior Humanitarian and Reconstruction Coordinator for Gaza, Ms. Sigrid Kaag, continues as well. So do daily meetings convened by COGAT with representatives of the United States, Egypt, and the UN in order to solve specific logistical

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<sup>33</sup> COGAT, @cogatonline, Tweet (7:31 pm, 3 March 2024), <https://twitter.com/cogatonline/status/1764342786088702079?t=pbOnvI5P-EOf615o6fNoLQ&s=19>.

difficulties, as also meetings with representatives of other actors in order to find ways and means to increase the scope and capacity of humanitarian assistance for the Gaza Strip.

37. Given this extensive record of Israeli efforts in the humanitarian sphere to alleviate the suffering of the civilian population in general and to address the challenge of food insecurity in particular, South Africa's malicious allegations are patently absurd. Israel remains unwavering in its commitment to its humanitarian obligations and the charge that it seeks to deliberately harm the Palestinian civilian population must be rejected outright.

### 3 ADDITIONAL FLAWS IN SOUTH AFRICA'S ARGUMENT

38. Beyond the fundamental misrepresentation by South Africa of the reality on the ground and of Israel's efforts and intentions in responding to that reality, its arguments suffer from further flaws that merit attention.

39. One such flaw concerns South Africa's claim that "Israel's concerted attempts since 26 January 2024 to ensure the defunding of UNRWA" constitutes a violation of the Genocide Convention.<sup>34</sup> This argument neglects to engage with the fact that Israel has evidence showing that a number of UNRWA employees took an active part in the horrific attacks of October 7 and that over a thousand of UNRWA's employees have direct links to Hamas or other terrorist groups in Gaza.<sup>35</sup> Israel has moreover identified extensive abuse by Hamas for military purposes of UNRWA facilities, including the organization's Gaza Headquarters as well as numerous schools. For example, the IDF discovered a tunnel shaft near an UNRWA school that led to an underground terror tunnel that served as a significant asset of Hamas's military intelligence and also passed under UNRWA's Headquarters, which supplied the tunnel with electricity.<sup>36</sup> Weapons and ammunition were found hidden in numerous other UNRWA facilities.<sup>37</sup> Hamas has also used UNRWA's resources for its own needs, not least by commandeering critical UNRWA humanitarian supplies for its own purposes and denying it to the civilian population.<sup>38</sup>

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<sup>34</sup> South Africa's Request of 6 March 2024, para. 12.

<sup>35</sup> "Intelligence Reveals Details of U.N. Agency Staff's Links to Oct. 7 Attack", *The Wall Street Journal* (29 January 2024), <https://www.wsj.com/world/middle-east/at-least-12-u-n-agency-employees-involved-in-oct-7-attacks-intelligence-reports-say-a7de8f36>. See also: "Video is said to show U.N. relief worker taking body of Israeli shot on Oct. 7", *The Washington Post* (16 February 2024), <https://www.washingtonpost.com/investigations/2024/02/16/unrwa-video-oct-7-israel/>.

<sup>36</sup> IDF Media Center, "Inside UNRWA Facilities: Weapons and Underground Hamas Intelligence Asset", 10 February 2024, <https://www.idf.il/en/mini-sites/idf-press-releases-regarding-the-hamas-israel-war/february-24-pr/inside-unrwa-facilities-weapons-and-underground-hamas-intelligence-asset/>.

<sup>37</sup> *Ibid.*

<sup>38</sup> Tab 3 of the Judge's Folder submitted to the Court by the State of Israel during the Oral Hearing on Provisional Measures of 12 January 2024; CR 2024/2, para. 62 (Statement by Ms. Ragan).

40. These and other troubling indications have led a number of States to suspend their financial contributions to UNRWA, including the USA,<sup>39</sup> UK,<sup>40</sup> Germany,<sup>41</sup> Italy,<sup>42</sup> Finland,<sup>43</sup> the Netherlands,<sup>44</sup> France,<sup>45</sup> Japan,<sup>46</sup> Iceland,<sup>47</sup> Estonia,<sup>48</sup> Lithuania,<sup>49</sup> Austria,<sup>50</sup> Latvia,<sup>51</sup> and Romania.<sup>52</sup> An investigation of UNRWA has also been launched by the UN's Office of Internal Oversight Services (OIOS), and a full independent review of the agency is being undertaken by the UN Secretary-General.<sup>53</sup>

41. Effectively addressing the humanitarian challenge in the Gaza Strip requires ensuring that organizations involved in humanitarian assistance are not infiltrated and compromised by Hamas and other terrorist groups in ways that obstruct aid from reaching its civilian destination. Concern about Hamas's penetration of UNRWA has nothing to do with limiting humanitarian assistance to the civilian population and everything to do with ensuring that channels for distribution of aid are not abused. Israel remains committed to facilitating humanitarian assistance to the civilian population in Gaza and is seeking therefore to work in cooperation with trustworthy partners so that humanitarian aid is channelled through impartial and effective humanitarian organizations.

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<sup>39</sup> U.S. Department of State, Press Release, "Statement on UNRWA Allegations" (26 January 2024), <https://www.state.gov/statement-on-unrwa-allegations/>.

<sup>40</sup> UK Foreign, Commonwealth & Development Office, Press Release, "Allegations about UNRWA staff and 7 October attacks: FCDO Statement" (27 January 2024), <https://www.gov.uk/government/news/statement-on-allegations-about-unrwa-staff-and-7-october-attacks>.

<sup>41</sup> German Foreign Office, @GermanyDiplo, Tweet (2:34 pm, 28 January 2024), <https://twitter.com/GermanyDiplo/status/1751584613590249948?t=p49w57hkNIArXN1DM-EDWQ&s=19>.

<sup>42</sup> Italy's Minister of Foreign Affairs, @Antonio\_Tajani, Tweet (11:01 am, 27 January 2024), [https://twitter.com/Antonio\\_Tajani/status/1751168542790009207?s=20](https://twitter.com/Antonio_Tajani/status/1751168542790009207?s=20).

<sup>43</sup> Finland's Minister for Foreign Trade and Development statement, @VilleTavio, Tweet (12:29 pm, 27 January 2024), <https://twitter.com/VilleTavio/status/1751190649490059602>.

<sup>44</sup> Government of the Netherlands, News Item, "The Netherlands halts UNRWA funding" (28 January 2024), <https://www.government.nl/latest/news/2024/01/28/netherlands-halts-unrwa-funding>.

<sup>45</sup> Ministry of Foreign Affairs of France, Press Release, "Israel/Palestinian Territories – UNRWA" (28 January 2024), <https://www.diplomatie.gouv.fr/en/country-files/israel-palestinian-territories/news/2024/article/israel-palestinian-territories-unrwa-28-jan-2024>.

<sup>46</sup> Ministry of Foreign Affairs of Japan, Press Release, "Allegations about UNRWA staff members' involvement in the October 7 terror attack on Israel last year (Statement by Foreign Press Secretary KOBAYASHI Maki)" (28 January 2024), [https://www.mofa.go.jp/press/release/pressite\\_000001\\_00122.html](https://www.mofa.go.jp/press/release/pressite_000001_00122.html).

<sup>47</sup> Government of Iceland, "Financial support for UNRWA delayed" (30 January 2024), <https://www.government.is/diplomatic-missions/embassy-article/2024/01/30/Financial-support-for-UNRWA-delayed/>.

<sup>48</sup> Minister of Foreign Affairs of the Republic of Estonia, @Tsahkna, Tweet (4:57 pm, 28 January 2024), <https://twitter.com/Tsahkna/status/1751620436629049462>.

<sup>49</sup> Ministry of Foreign Affairs of Lithuania, @LithuaniaMFA, Tweet (8:56 pm, 28 January 2024), <https://twitter.com/LithuaniaMFA/status/1751680596663804248>.

<sup>50</sup> Federal Ministry Republic of Austria European and International Affairs, "Austria is suspending payments to UNRWA" (29 January 2024), <https://www.bmeia.gv.at/en/ministerium/presse/aktuelles/2024/01/austria-is-suspending-payments-to-unrwa>.

<sup>51</sup> Ministry of Foreign Affairs of Latvia, @Latvian\_MFA, Tweet (8:44 am, 29 January 2024), [https://twitter.com/Latvian\\_MFA/status/1751858904579952750](https://twitter.com/Latvian_MFA/status/1751858904579952750).

<sup>52</sup> Ministry of Foreign Affairs of Romania, @MAERomania, Tweet (1:14 pm, 29 January 2024), <https://twitter.com/MAERomania/status/1751926826841018626>.

<sup>53</sup> UNRWA, Official Statements, "Allegations Against UNRWA Staff" (8 February 2024), <https://www.unrwa.org/newsroom/official-statements/allegations-against-unrwa-staff>. Israel is conducting a dialogue with the OIOS and with the independent Review Group.

42. An additional flaw in South Africa’s request is its heavy reliance on documents produced under the auspices of the United Nations or prepared by third parties, when these cannot be said to constitute sufficient evidence of a reliable quality. Indeed, the Court has itself had occasion to observe that UN reports may only be of such quality “to the extent that they are of probative value and are corroborated, if necessary, by other credible sources”.<sup>54</sup> The Court moreover stated that “the precise evidentiary value accorded to any report, including those produced by United Nations entities, also depends on the methodology and amount of research underlying its preparation”.<sup>55</sup>

43. These words of caution are of particular significance in the present case, as the materials cited by South Africa often amount to no more than mere assertions or opinions. They are not based on in-depth investigation, but rely on unverified claims, lack methodological rigor or any discernible methodology, and blur the line between expertise and advocacy. They have been prepared without Israel’s involvement and/or without access to relevant and necessary information; frequently rely on Hamas sources or on those subject to Hamas intimidation; and have not been tested in an adversarial setting.

44. Finally, Israel rejects South Africa’s attempt to cast doubt over information presented by Israel. South African officials have pointed, for example, to a report by an organization with known ties to anti-Israel advocacy groups, in order to allege that information that was presented by Israel in the course of the oral hearing of 12 January 2024 was inaccurate.<sup>56</sup> This is not the place to enter into that report’s many faults; it suffices to say that Israel stands by what it has presented to the Court.

#### **4 THE REQUIREMENTS FOR MODIFICATION THE EXISTING PROVISIONAL MEASURES ARE NOT MET**

45. As already noted, South Africa’s fresh Request is made less than six weeks after the Court issued its provisional measures Order of 26 January 2024; just over three weeks after South Africa’s first request of 12 February 2024 for the modification of those provisional measures; and just under three weeks since the Court’s decision of 16 February 2024 in which the Court declined to modify the provisional measures. For the Court now to indicate additional provisional measures, South Africa would need to establish that there has been a change in the

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<sup>54</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Reparations, Judgment, I.C.J. Reports 2022*, p. 85, para. 215. In this case, for example, the Court was of the view that “the various reports of United Nations bodies, including the Mapping Report, provide a certain amount of information about specific incidents during the conflict, but do not provide a sufficient basis for the Court to arrive at an overall estimate of the number of deaths attributable to Uganda” (ibid., p. 66, para. 154).

<sup>55</sup> Ibid., p. 66, para. 152. See also CR 2024/12, p. 17, para. 19(5) (Statement by Mr. Sarooshi for the United Kingdom of Great Britain and Northern Ireland); see also the Written Statement by the United Kingdom in that same case (20 July 2023), at p. 34, para. 67.3.

<sup>56</sup> Vincent Magwenya, Spokesperson to the President of South Africa, @SpokespersonRSA (2:44 pm, 5 March 2024), [https://twitter.com/spokespersonrsa/status/1764995515555455401?s=46&t=D\\_O8gOFDlq7DB5\\_n-kyHg&fireglass\\_rsn=true#fireglass\\_params&tabid=a4c1d6f256dbdf71&application\\_server\\_address=fgtehilacloud-16-me-west1.prod.fire.glass&popup=true&is\\_right\\_side\\_popup=false&start\\_with\\_session\\_counter=1](https://twitter.com/spokespersonrsa/status/1764995515555455401?s=46&t=D_O8gOFDlq7DB5_n-kyHg&fireglass_rsn=true#fireglass_params&tabid=a4c1d6f256dbdf71&application_server_address=fgtehilacloud-16-me-west1.prod.fire.glass&popup=true&is_right_side_popup=false&start_with_session_counter=1).

situation, within the meaning of Article 76(1) of the Rules of Court, in the three weeks since the Court's decision of 16 February 2024.<sup>57</sup> This prerequisite is simply not met.

46. Article 76(1) of the Rules of Court provides that:

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

In accordance with the wording of this provision, the modification of a decision indicating provisional measures requires that the Court be satisfied: (a) that there has been a change in the situation since the previous decision on provisional measures; and (b) that, if so, this change in the situation justifies the requested modification.<sup>58</sup> These same two conditions must also be satisfied before the Court can indicate new provisional measures in addition to or in substitution for those indicated in a previous decision of the Court.<sup>59</sup> South Africa appears to accept this.<sup>60</sup>

47. Any request for additional provisional measures made after the initial decision on provisional measures must also be “based on new facts” within the meaning of Article 75(3) of the Rules of Court.<sup>61</sup> South Africa appears to accept this, too.<sup>62</sup>

### ***There has been no “change in the situation”***

48. The armed hostilities in Gaza between Israel and Hamas and other armed groups were in progress at the time that the Court issued its Order of 26 January 2024, and still continue now.

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<sup>57</sup> South Africa appears to accept this: South Africa's Request of 6 March 2024, para. 2, second sentence.

<sup>58</sup> See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Request for the modification of the Order of 22 February 2023 indicating a provisional measure, Order of 6 July 2023, para. 16; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Request for the Modification of the Order Indicating Provisional Measures of 7 December 2021, Order of 12 October 2022, I.C.J. Reports 2022, p. 580-581, paras. 11-12; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*; *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Order of 16 July 2013, Provisional Measures, I.C.J. Reports 2013, p. 234, paras. 16-17; *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)*, Request for the Modification of the Order Indicating Provisional Measures of 3 March 2014, Order of 22 April 2015, I.C.J. Reports 2015, pp. 558-559, paras. 11-12.

<sup>59</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993, p. 337, para. 22; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Request for the Indication of Provisional Measures, Order of 17 November 2023, p. 8, para. 27.

<sup>60</sup> See South Africa's Request of 6 March 2024, paras. 19-21.

<sup>61</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993, p. 337, para. 22 (“where a request for measures has been rejected, any fresh request must, according to Article 75, paragraph 3, of the Rules of Court, be ‘based on new facts’; ... the same applies when additional provisional measures are requested”).

<sup>62</sup> South Africa's Request of 6 March 2024 refers to “new facts” in paras. 1, 2, 12, 14, 15, 20, 27 and the heading above para. 6.

It is of course inevitable that in the course of an ongoing conflict, there will be developments in the situation. However, that does not mean that every such development can be regarded as a “change in the situation” for purposes of the Rules of Court; otherwise, new requests for additional provisional measures could be made on a daily basis.

49. For a development to constitute a “change in the situation” for purposes of Article 76(1), it must obviously be such as to bring about a material change to the considerations upon which the Court based its original decision concerning provisional measures. The claimed changes in the situation and claimed new facts now relied on by South Africa are set out in paragraphs 6 to 14 of its Request of 6 March 2024. In essence, the change in the situation is said to be that there is at present a severe shortage of food for the civilian population in Gaza.

50. While Israel disputes the legal and factual contentions made by South Africa throughout these proceedings, it is nevertheless the case, as South Africa expressly acknowledges,<sup>63</sup> that when the Court issued its Order of 26 January 2024, it had already taken account, and indeed expressly quoted, materials introduced by South Africa with respect to food insecurity.<sup>64</sup>

51. South Africa’s attempts to evade this insurmountable obstacle in its most recent request are belied by a careful reading of its Application Instituting Proceedings, the Request for Provisional Measures appended thereto and statements before the Court during the oral hearing. These included numerous allegations referring specifically to food security in the Gaza Strip and its impact on the civilian population,<sup>65</sup> which are essentially identical to the assertions now put before the Court. Thus, and notwithstanding Israel’s commitment to facilitate the continued supply of humanitarian assistance, including food and drinking water, the difficult and tragic situation in the Gaza Strip in the last weeks could not be said to materially change the considerations upon which the Court based its original decision concerning provisional measures.

52. South Africa cites to a UNCTAD report to claim that deaths from malnutrition are predicted to increase exponentially rather than linearly,<sup>66</sup> when the report concerns the prospects for economic recovery in Gaza and does not state that there have been any deaths due to malnutrition.<sup>67</sup>

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<sup>63</sup> South Africa’s Request of 6 March 2024, para. 6.

<sup>64</sup> *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. 47-48.

<sup>65</sup> See, for example, South Africa’s Application Instituting Proceedings, paras. 2, 18, 19, 30, 43, 50, 61, 64, 65, 66, 68, 70, 74, 77, 86, 87, 114(4), 117, 142.

<sup>66</sup> South Africa’s Request of 6 March 2024, para. 7, last sentence.

<sup>67</sup> In support of this statement, footnote 14 of South Africa’s Request of 6 March 2024 cites the United Nations Conference on Trade and Development (‘UNCTAD’), “Preliminary Assessment of the Economic Impact of the Destruction in Gaza and Prospects for Economic Recovery” (31 January 2024), [https://unctad.org/system/files/official-document/osginf2024d1\\_en.pdf](https://unctad.org/system/files/official-document/osginf2024d1_en.pdf), pp. 4 and 16. However, this document does not deal with deaths caused by malnutrition.

53. South Africa claims that incidents of starvation in Gaza are “a direct result of the deliberate acts and omissions of Israel”,<sup>68</sup> and that Israel is using humanitarian aid as a bargaining chip through the “creation of a hostile, inoperable environment for aid agencies”.<sup>69</sup> Israel rejects these claims in the strongest terms. As noted above, Israel shares the serious concern about food insecurity in Gaza and is actively working with stakeholders to address it.

54. It follows that the claims and material relied on by South Africa in support of its Request of 6 March 2024 are not in any way qualitatively different from the claims and material considered by the Court when it made its original provisional measures Order. They do not establish any “change in the situation” within the meaning of Article 76(1) of the Rules of Court. South Africa’s Request of 6 March 2024 should be rejected on the basis that the first of the requirements in paragraph 46 above is not satisfied.

***South Africa gives no justification for the specific measures requested***

55. Even if South Africa could establish that there has been a “change in the situation” (which it has not), it would still be necessary for South Africa to demonstrate that this change in the situation justifies the specific additional provisional measures that it now requests. However, South Africa’s Request of 6 March 2024 does not do so.

56. The first of the new provisional measures requested by South Africa would require that all fighting and hostilities come to an immediate halt.<sup>70</sup> The only justification given for this requested provisional measure is the claim by South Africa that “[i]t is predicted that [deaths by malnutrition] will increase exponentially and not linearly in the absence of a cessation of military activities and a lifting of the blockade”.<sup>71</sup> As has already been noted, South Africa has provided no evidence in support of that claim. Furthermore, South Africa’s original request for provisional measures similarly included a request for a provisional measure in terms that “The State of Israel shall immediately suspend its military operations in and against Gaza”.<sup>72</sup> At the hearing on provisional measures, Israel presented arguments as to why the Court should not grant that requested provisional measure, and in its Order of 26 January 2024, the Court declined to grant it. South Africa provides no explanation as to why it claims that a change in the situation now requires that such a provisional measure be indicated, notwithstanding that the Court previously deemed it appropriate not to do so.

57. As to the second and third of the new provisional measures requested by South Africa,<sup>73</sup> no explanation whatsoever is provided by South Africa as to why any change in circumstances since the Court’s previous decision concerning provisional measures now requires that such a provisional measure be indicated.

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<sup>68</sup> South Africa’s Request of 6 March 2024, para. 8.

<sup>69</sup> South Africa’s Request of 6 March 2024, para. 9.

<sup>70</sup> South Africa’s Request of 6 March 2024, para. 17(1), and see paragraphs 63-67 below.

<sup>71</sup> South Africa’s Request of 6 March 2024, para. 7.

<sup>72</sup> South Africa’s Application Instituting Proceedings, para. 144(1).

<sup>73</sup> South Africa’s Request of 6 March 2024, para. 17(2) and (3), and see paragraphs 68-70 below.

58. As to the fourth of the new provisional measures requested by South Africa,<sup>74</sup> it is noted that the Court’s Order of 26 January 2024 already contains a provisional measure which states that “[t]he State of Israel shall take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip”.<sup>75</sup> South Africa does not explain how the intended effect of the fourth provisional measure that it is now requesting—which, again, alarmingly seeks to deny Israel of its right and obligation to defend itself—would differ from that of the existing provisional measure dealing with humanitarian assistance. Nor does South Africa explain what purpose the requested additional provisional measure would serve that is not already served by the existing provisional measures.

59. As to the fifth of the new provisional measures requested by South Africa,<sup>76</sup> it is noted that South Africa originally requested the indication of a provisional measure that would have required an initial report after one week and thence regular periodic reporting by Israel. The Court did not consider this to be appropriate, and the provisional measures indicated in its Order of 26 January 2024 provided for a single report by Israel, a month after the Order was issued. That report was duly provided by Israel within the time limit set by the Court. South Africa does not provide any explanation as to how the claimed change in the situation would justify a requirement for a further report from Israel, let alone an “open” one.<sup>77</sup>

60. South Africa therefore does not establish that the claimed change in the situation justifies the proposed provisional measures that South Africa is now requesting. Its Request of 6 March 2024 should therefore also be rejected on the basis that the second of the requirements for the modification of a previous decision concerning provisional measures is not satisfied.

61. To this it may be added that the provisional measures already indicated by the Court in its Order of 26 January 2024 are indeed sufficiently broad in scope so as to cover the situation of hostilities in Gaza as a whole, and Israel’s legal commitments referred to above apply to any action that it may take in the context of these hostilities. South Africa presents no credible argument that there has been a change in the situation, and presents no argument at all as to why the requested new provisional measures are said to be justified by that change in circumstances. Its request should be rejected as being an improper attempt at relitigating yet again what the Court has only recently considered and twice decided.

## **5 THE TERMS OF THE PROPOSED PROVISIONAL MEASURES ARE WHOLLY INAPPROPRIATE**

62. Given that the additional provisional measures should not be granted for the reasons above, it is unnecessary to consider the particular terms of the measures that South Africa now requests. However, for completeness, Israel does so below.

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<sup>74</sup> South Africa’s Request of 6 March 2024, para. 17(4), and see paragraphs 71-74 below.

<sup>75</sup> Provisional Measures Order of 26 January 2024, para. 86(4).

<sup>76</sup> South Africa’s Request of 6 March 2024, para. 17(5), and see paragraphs 75-76 below.

<sup>77</sup> See also paras. 75-76 below.

63. *The first of the provisional measures now requested by South Africa* would state that “[a]ll participants in the conflict must ensure that all fighting and hostilities come to an immediate halt, and that all hostages and detainees are released immediately”.<sup>78</sup>

64. It is striking, to say the least, that this requested provisional measure purports to be addressed to “all participants in the conflict”, despite the fact that the only participant in the conflict that is a party to the present proceedings is Israel. That the Court only has power to indicate provisional measures addressed to the parties to the case before it must be obvious. It is inconceivable that provisional measures could create international legal obligations for a State that is not a party to the case.<sup>79</sup> It is all the more inconceivable that, in a case where the sole basis of the Court’s jurisdiction is Article IX of the Genocide Convention, provisional measures could create international legal obligations for any State over which the Court cannot exercise jurisdiction at all, such as a State that is not a party to the Genocide Convention, or a State that has made a reservation to its Article IX. Nor can provisional measures create international legal obligations for an entity other than a State, given that only States may be parties in contentious cases before the Court (Article 34, paragraph 1, of the Statute).

65. The practical effect of the first requested provisional measure, if granted, would therefore be that it would be binding only on Israel. The reference to “all participants in the conflict” appears to be intended to create a false impression of equality. Thus, the requested provisional measure is materially identical to the first of the provisional measures originally requested by South Africa in its Application Instituting Proceedings, which would have stated simply that “The State of Israel shall immediately suspend its military operations in and against Gaza”.<sup>80</sup> It is recalled that in its Order dated 26 January 2024, the Court did not grant that requested provisional measure.

66. The observations made by Israel at the hearing on 12 January 2024 about that requested provisional measure<sup>81</sup> apply equally to this provisional measure now requested by South Africa.

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<sup>78</sup> South Africa’s Request of 6 March 2024, para. 17(1).

<sup>79</sup> See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993*, p. 344, para. 40: “Whereas the list of measures which the Applicant now requests the Court to indicate ..., includes certain measures ... which would be addressed to States or entities not parties to the proceedings; whereas the Applicant has explained that it is not asking for an Order binding upon any State other than the Parties, but for a clarification of the Applicant’s rights ‘which can be used in the Security Council and the General Assembly and elsewhere’; whereas the judgment in a particular case by which disputed rights may be adjudged by the Court to belong to the Applicant or to the Respondent has, in accordance with Article 59 of the Statute of the Court, ‘no binding force except between the parties’; whereas accordingly the Court may, for the preservation of those rights, indicate provisional measures to be taken by the parties, but not by third States or other entities who would not be bound by the eventual judgment to recognize and respect those rights; whereas consequently the Court cannot, in the exercise of its power to indicate provisional measures, indicate by way of ‘clarification’ that those States or entities should take, or refrain from, specific action in relation to the acts of genocide which the Applicant alleges are being committed in Bosnia-Herzegovina.”

<sup>80</sup> South Africa’s Application Instituting Proceedings, para. 144(1).

<sup>81</sup> CR 2024/2, pp. 55-64, paras. 4-38 (Statement by Mr. Staker).

In essence, South Africa, a State not party to an ongoing conflict, applies to the Court for the indication of a provisional measure that would legally bind only one party to the conflict, requiring that party to suspend its military operations unilaterally, and leaving the other party to the conflict free to continue attacks, which it has stated repeatedly that it intends to do. Such a provisional measure would stand in stark contradiction to Israel's inherent and inalienable right and obligation to defend itself, and would cause irreparable prejudice to Israel. It would go beyond anything necessary to preserve on an interim basis the specific rights in issue, namely the observance of the Convention in military operations. It would also go beyond anything that could form the basis of a final judgment of the Court in exercise of the jurisdiction under Article IX of the Genocide Convention.<sup>82</sup> Regrettably, South Africa again seeks to use provisional measures as a sword, not a shield: it seeks a provisional measure, not to protect a plausible right that South Africa claims pending the Court's final decision in the case, but to give an advantage to one party in a conflict over another.

67. The provisional measure that South Africa now requests would also require all participants to the conflict to "ensure that ... all hostages and detainees are released immediately".<sup>83</sup> As this provisional measure would not be binding on Hamas for the reasons given above, again the obligation to "ensure that ... all hostages and detainees are released immediately" would be an obligation that would apply only to Israel. This is unthinkable.

68. Still more perplexing is that *the second and third of the provisional measures now requested by South Africa* are addressed to all Parties to the Genocide Convention. The second provisional measure sought by South Africa would state that "[a]ll Parties to the Convention on the Prevention and Punishment of the Crime of Genocide must, forthwith, take all measures necessary to comply with all of their obligations under the Convention on the Prevention and Punishment of the Crime of Genocide".<sup>84</sup> The third would state that "[a]ll Parties to the Convention on the Prevention and Punishment of the Crime of Genocide must, forthwith, refrain from any action, and in particular any armed action or support thereof, which might prejudice the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts, or any other rights in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve."<sup>85</sup>

69. However, as already noted, it is of course not within the power of the Court to indicate provisional measures that impose legal obligations on States that are not parties to the case. The

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<sup>82</sup> CR 2024/2, pp. 57, para. 13 (Statement by Mr. Staker), referring to the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, *Provisional Measures, Order of 8 April 1993*, I.C.J. Reports 1993, p. 19, para. 35; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, *Provisional Measures, Order of 13 September 1993*, I.C.J. Reports 1993, p. 346, para. 43.

<sup>83</sup> South Africa's Request of 6 March 2024, para. 17(1).

<sup>84</sup> South Africa's Request of 6 March 2024, para. 17(2).

<sup>85</sup> South Africa's Request of 6 March 2024, para. 17(3).

Court therefore cannot do so.<sup>86</sup> South Africa surely is aware of that; these requested provisional measures would therefore apply to Israel only. Yet these requested provisional measures would add nothing to the provisional measures already indicated in the Court's Order of 26 January 2024. The first, second and third of those provisional measures already require Israel to take all measures within its power to prevent the commission of all acts within the scope of Article II of the Genocide Convention, to ensure that its military does not commit any such acts, and to prevent and punish the direct and public incitement to commit genocide.<sup>87</sup>

70. South Africa does not explain the difference between the wording of the provisional measures already ordered by the Court, and the wording of these proposed provisional measures. Nor does it explain what the practical effect of that difference in wording is intended to be. Israel can only speculate as to what South Africa's motives for requesting these provisional measures may have been, though they seem intended to influence separate Court proceedings in which neither Israel nor South Africa is involved. Whether or not this is indeed the intention of South Africa, there would be no purpose in granting these requested provisional measures, since, apart from anything else, they would not be binding on any party to the Genocide Convention other than Israel. No justification for such provisional measures has been provided by South Africa in any event. Israel therefore does not propose to elaborate further reasons why the Court cannot and should not indicate provisional measures having this effect.

71. *The fourth of the provisional measures now requested by South Africa* would state that:

The State of Israel shall take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address famine and starvation and the adverse conditions of life faced by Palestinians in Gaza, by:

- (a) immediately suspending its military operations in Gaza;
- (b) lifting its blockade of Gaza;
- (c) rescinding all other existing measures and practices that directly or indirectly have the effect of obstructing the access of Palestinians in Gaza to humanitarian assistance and basic services; and
- (d) ensuring the provision of adequate and sufficient food, water, fuel, shelter, clothing, hygiene and sanitation requirements, alongside medical assistance, including medical supplies and support.<sup>88</sup>

72. Much like the first of the proposed provisional measures now requested by South Africa, this proposed provisional measure also requires Israel, in paragraph (a), to suspend its

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<sup>86</sup> See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, Provisional Measures, Order of 13 September 1993, *I.C.J. Reports 1993*, p. 344, para. 40.

<sup>87</sup> Provisional Measures Order, para. 86(1)-(3) (first to third provisional measures).

<sup>88</sup> South Africa's Request of 6 March 2024, para. 17(4).

military operations in Gaza. As has been noted above, this would be wholly inappropriate and totally unjustified. Paragraph (b) of this proposed provisional measure appears to relate to the naval blockade of Gaza, which again is a measure undertaken by Israel in accordance with international humanitarian law in order to prevent the transport of weapons and reinforcements to organized armed groups operating in Gaza.<sup>89</sup> This blockade was already in place when the Court gave its Order on provisional measures on 26 January 2024. It should be recalled, once again, that humanitarian supplies have been entering Gaza, and continue to enter, through land and air, and through the sea. Paragraph (c) of this proposed provisional measure is similar to the fifth of the provisional measures requested by South Africa at the hearing on 11 January 2024.<sup>90</sup> In its Order, the Court declined to indicate a provisional measure in those terms. It is objectionable for the same reasons as those given by Israel at the oral hearing in relation to the fifth provisional measure originally requested by South Africa. Apart from anything else, it seeks an implied finding on the merits by the Court that Israel unlawfully has measures in place at present that directly or indirectly have the effect of obstructing the access of Palestinians in Gaza to humanitarian assistance and basic services.

73. What is more, the fourth of the existing provisional measures already requires Israel to “take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip”. The chapeau to the proposed provisional measure, as also its paragraphs (c) and (d), appear to add nothing at all to the substance of this existing fourth provisional measure. Even if South Africa could establish that there has been a change in the situation since the Court issued that Order (which it has not), South Africa would still need to explain why the new circumstances and new facts require the provisional measure to be reworded in the way that South Africa now proposes.

74. As noted in Section 2 above, Israel has already been undertaking significant and continuous efforts to enable the provision of greater humanitarian relief to the civilian population of Gaza. These efforts are indeed ongoing and expanding, not least in the past few days, which saw the introduction of several new ways and means to supply and distribute in Gaza greater amounts of aid by land, sea, and air. As Israel has made clear time and again, it does not impose any limits on the amount of humanitarian aid that can be transferred into the Gaza Strip.

75. *The fifth of the provisional measures now requested by South Africa* would state that “[t]he State of Israel shall submit an open report to the Court on all measures taken to give effect to all provisional measures ordered by the Court to date, within one month as from the date of this Order”.<sup>91</sup> This provisional measure, too, is unwarranted. First, if the Court does not order

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<sup>89</sup> Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Gaza Flotilla Incident (September 2011), <https://digitallibrary.un.org/record/720841?v=pdf>, p. 4 (“The naval blockade was imposed as a legitimate security measure in order to prevent weapons from entering Gaza by sea and its implementation complied with the requirements of international law”). See also pp. 38-45; The Public Commission to Examine the Maritime Incident of 31 May 2010 (“Turkel Commission Report”), Report (6 February 2013), pp. 111, available at: [https://www.gov.il/BlobFolder/generalpage/downloads\\_eng1/en/ENG\\_turkel\\_eng\\_a.pdf](https://www.gov.il/BlobFolder/generalpage/downloads_eng1/en/ENG_turkel_eng_a.pdf).

<sup>90</sup> See Order of 26 January 2024, para. 11(5).

<sup>91</sup> South Africa’s Request of 6 March 2024, para. 17(5).

the other proposed provisional measures now requested by South Africa, this proposed provisional measure will be otiose.

76. Second, the wording of the proposed new provisional measures is open to serious objection, including by seeking an “open” report. This is contrary to the established practice of the Court, which has refrained from the publication of such reports that were submitted to it. This demand by South Africa again seeks a different standard for Israel and raises questions as to the motives of South Africa, which to a considerable measure seeks to play to the gallery.

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77. South Africa’s most recent request to add to and/or modify the provisional measures indicated in the Court’s Order of 26 January 2026 hinges on a misrepresentation of reality and a sensationalist and obsessive attempt to accuse Israel of the most egregious crimes regardless of the law or the facts. South Africa seeks to relitigate what the Court has already decided, and to have the Court micromanage the conduct of hostilities in Gaza, not because this is in any way legally justified or required, but as a way for South Africa to seek continual political attention and to demonstrate continuing solidarity with its ally Hamas.

78. Israel reaffirms its commitment to act in accordance with its obligations under international law, including those prescribed by the Genocide Convention, international humanitarian law, and those reflected in the Court’s Order of 26 January 2024, not least whilst in the midst of an armed conflict precipitated by the attack, and the atrocities committed by Hamas and associated groups, on its territory.

79. Israel has every sympathy with the difficulties that this situation has imposed upon the civilians in the Gaza Strip and will continue to do whatever it can to mitigate these difficulties, notwithstanding the ongoing conflict. It continues to hope for a better future for all, Palestinian and Israeli alike.

80. In the light of all of these considerations, it is respectfully submitted that the Court should refuse to accept South Africa’s latest request and not indicate any further provisional measures.

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