

**DECLARATION OF INTERVENTION OF SPAIN
UNDER ARTICLE 63 OF THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE**

For the attention of the Registrar of the International Court of Justice, the undersigned being duly authorized by the Government of Spain:

1. It is my honour to submit to the Court, on behalf of the Government of Spain, a declaration of intervention in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, under Article 63(2) of the Statute of the Court.

2. Paragraphs 1 and 5 of Article 82 of the Rules of Court stipulate that a State which desires to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall file a declaration to that effect, specifying the case and the convention to which it relates, and containing:

- (a) particulars of the basis on which the declarant State considers itself a party to the convention;
- (b) identification of the particular provisions of the convention the construction of which it considers to be in question;
- (c) a statement of the construction of those provisions for which it contends;
- (d) a list of the documents in support, which documents shall be attached.

3. These matters are addressed below, in order, following some observations concerning the proceedings.

I. LEGAL PROCESS BACKGROUND AND PRELIMINARY OBSERVATIONS

4. On 29 December 2023, South Africa filed with the Registry of the Court an Application Instituting Proceedings against the State of Israel alleging violations by the latter, in the Gaza Strip, of its obligations under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter, the Genocide Convention).

5. Following South Africa's requests, the Court adopted provisional measures on 26 January, 28 March and 24 May 2024.

6. By an order of 5 April 2024, the Court fixed 28 October 2024 and 28 July 2025 as the respective time-limits for the filing of the Memorial of the Republic of South Africa and the Counter-Memorial of the State of Israel.

7. On 6 February 2024, the Registrar of the Court duly notified the Government of Spain that South Africa's application invoked the 1948 Genocide Convention "both as a basis of the Court's jurisdiction and as a substantive basis of the Applicant's claims on the merits. In particular, the Applicant seeks to found the Court's jurisdiction on the

compromissory clause contained in Article IX of the Genocide Convention and alleges violations of Articles I, III, IV, V and VI of the Convention. It therefore appears that the construction of this instrument will be in question in the case". It is in this context that Spain is exercising its right to intervene under Article 63(2) of the Statute of the Court.

8. It is not Spain's intention to become a party in the proceedings, and it accepts that the interpretation of the Genocide Convention given by the judgement will be equally binding upon it.

9. This declaration of intervention has been submitted, as stipulated in Article 82 of the Rules of Court, "as soon as possible, and not later than the date fixed for the filing of the last written pleading." Spain requests that it be provided with copies of all of the submissions by South Africa and Israel, including any annexes, pursuant to Article 85(1) of the Rules of Court.

10. This interpretation may be further developed in any written statements submitted by Spain following the ruling of the Court on the admissibility of this declaration of intervention.

11. Finally, this Declaration of Intervention is without detriment to Spain's unequivocal condemnation of the brutal, indiscriminate and unjustified terrorist attacks committed by Hamas against Israel on October 7, 2023. Spain firmly condemns the targeting of Israeli and foreign civilians by Hamas and the taking of hostages on that date.

II. BACKGROUND OF SPAIN'S ACCESSION TO THE CONVENTION

12. Spain acceded to the Genocide Convention and deposited its instrument of accession pursuant to Article XI, paragraph 4 of the Convention, on 13 September 1968, with a reservation in respect of the whole Article IX (Jurisdiction of the International Court of Justice); Spain withdrew the reservation on 31 July 2009, with effect from 24 September 2009.

III. PROVISIONS OF THE CONVENTION IN QUESTION AND PROPOSED INTERPRETATION

13. Spain considers that the provisions of the Genocide Convention that are being queried in the case put to the Court are Articles I, II, III, IV, V, VI and IX. Spain's interpretation of said articles is divided into the following sections:

- General comments on the Genocide Convention
- Jurisdiction of the International Court of Justice (Article IX)
- The concept of Genocide (Article II in connection with Article III)

- Obligations of Contracting Parties (Articles I, III, IV, V and VI, in connection with Article II)

1. General comments on the Genocide Convention

14. Spain considers the Genocide Convention a crucial instrument in international law to prevent and punish genocide. According to it, any act committed with an intent to destroy, in whole or in part, a national, ethnical, racial or religious group constitutes a crime under international law. The Court has recognized this prohibition against genocide as a peremptory (*jus cogens*) norm, a view supported by both the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). The same conclusion has been reached recently by the International Law Commission in its work on “Peremptory norms of International Law (*jus cogens*)”. The rights and obligations enshrined by the Convention are owed to the international community as a whole (*erga omnes* rights and obligations), as the Court established in its 1951 Advisory Opinion¹ as well as in its subsequent jurisprudence².

15. Spain would like to emphasize that, under this interpretation, the Genocide Convention is not only a criminal law treaty. It also contains elements clearly linked to the protection and safeguarding of fundamental values and principles of international law, including the protection of human dignity and the principle of accountability, and imposes substantive obligations on Contracting Parties that go beyond ensuring the criminal prosecution of the crime of genocide. As the Court has said in the present case, “[t]he provisions of the Convention are intended to protect the members of a national, ethnical, racial or religious group from acts of genocide or any other punishable acts enumerated in Article III. The Court thus considers that there is a correlation between the rights of members of groups protected under the Genocide Convention, the obligations incumbent on States parties thereto, and the right of any State party to seek compliance therewith by another State party”.³

16. It is also important to distinguish between the international responsibility of the State for violation of obligations under the Convention, on the one hand, and individual criminal responsibility for committing a crime of genocide, on the other. While individual criminal responsibility derives solely from perpetration of the crime of genocide as defined in the Convention and other international instruments, the international responsibility of a State may arise from violation of a broader set of obligations

¹Reservations to the Convention on Genocide, Advisory Opinion: I.C.J. Reports 1951, p. 23.

²Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment, I.C.J. Reports 2022, p. 42, para. 107.

³Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024, p. 15, para. 43. See also 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. 21, para. 52.

established by the Convention itself, which include obligations to prevent and punish genocide. As the Court has noted, this distinction is crucial to properly defining the scope and meaning of the Convention.⁴

2. Jurisdiction of the International Court of Justice (Article IX).

17. Article IX of the Genocide Convention reads as follows:

"Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

18. As the Court noted in the case *Ukraine v. Russia*, two elements are required to determine whether Article IX is a basis for its jurisdiction: a) the existence of a dispute between the two parties existing prior to the filing of the complaint; b) that the actions or omissions of the respondent complained of by the claimant fall within the scope of the Genocide Convention, the sole basis of jurisdiction claimed⁵. The Court has already put forward its view that both conditions are met *prima facie* in the present case. Spain reserves its right to further elaborate on the interpretation of Article IX, if this declaration of intervention is declared admissible.

3. The concept of Genocide (Article II in connection with Article III)

19. The fundamental components of the crime of genocide are:

- a) *the legally protected good*: the legally protected subject is a "national, ethnical, racial or religious group, as such".
- b) the wilful nature of the act: the *mens rea* or *dolus specialis*, which is to say the intent to destroy a protected group in whole or in part.
- c) the act itself: the *actus reus*, or the acts that constitute genocide.

- a) *The legally protected good: the national, ethnical, racial or religious group, as such*

⁴ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, pp. 115–116, paras. 170–174.

⁵ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States Intervening)*, Preliminary Objections, Judgment, I.C.J. Reports 2024, pp. 32 and 54, paras. 40 and 136.

20. Genocide aims to destroy, in whole or in part, a national, ethnical, racial or religious group, as such, which has the legally protected good⁶. As the Court noted in 1951 and recalled in 2007 and 2015, one of the purposes of the Convention is the safeguarding of “the very existence of certain human groups”⁷. This characteristic separates genocide from war crimes or crimes against humanity⁸, the prohibition of which protects individuals and not groups. This is why it is important, first and foremost, to determine whether a group exists.

21. It is the opinion of Spain that “the Palestinians” constitute a national, ethnical, racial or religious group in the sense of Article II of the Genocide Convention, as they meet the criteria established by jurisprudence: they are a stable or permanent group⁹, members belong automatically by birth¹⁰, individuals cannot belong through individual commitments¹¹, and the status of member is unalterable¹², among other criteria. Furthermore, the “Palestinians in Gaza” are unquestionably “a part” of the group of “the Palestinians”, as they also meet all of the requirements established in jurisprudence: they constitute a substantial part of a particular group¹³, they are located in a geographically limited area¹⁴, they are in an area controlled by the alleged perpetrator of the crime¹⁵ and they may be distinguished from the rest of the group, which is to say that the perpetrators can identify them as a separate entity to be destroyed as such¹⁶.

⁶ As stated by the ICTR in the Akayesu judgment: “In concrete terms, for any of the acts charged under Article 2 (2) of the Statute to be a constitutive element of genocide, the act must have been committed against one or several individuals, because such individual or individuals were members of a specific group, and specifically because they belonged to this group. Thus, the victim is chosen not because of his individual identity, but rather on account of his membership of a national, ethnical, racial or religious group. The victim of the act is therefore a member of a group, chosen as such, which, hence, means that the victim of the crime of genocide is the group itself and not only the individual.” (*Prosecutor v. Akayesu*, (Case No. ICTR-96-4-T), Judgment, 2 September 1998, para. 521).

⁷ *Reservations to the Convention on Genocide, Advisory Opinion: I.C.J. Reports 1951*, p. 23; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 125, para. 194; and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 64, para. 139.

⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 62, para. 132.

⁹ ICTR, *Prosecutor v. Rutaganda*, (Case No. ICTR-96-3-T), Judgment of 6 December 1999, para. 57.

¹⁰ ICTR, *Prosecutor v. Akayesu* (Case No. ICTR-96-4-T), Judgment of 2 September.

¹¹ ICTY, *Prosecutor v. Goran Jelisić* (Case, No. IT-95-10-T), Judgment, 14 December 1999.

¹² ICTR, *Prosecutor v. Akayesu* (Case No. ICTR-96-4-T), Judgment of 2 September 1998.

¹³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I) pp. 126-127, para. 198 and 201; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 65, para. 142.

¹⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 126, para. 199; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 65, para. 142.

¹⁵ *Ibid.*

¹⁶ ICTY, *Prosecutor v. Krstić* (Case IT-98-33-T), Judgment of 02 August 2001, para. 590.

In fact, the Court, in its orders on provisional measures, has always used the expression “the Palestinians in Gaza”.

b) *mens rea*

22. As has previously been unanimously ruled by the Court and by international criminal courts, it is not sufficient solely for the acts described in Article to be perpetrated, they must be perpetrated with the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”.

23. It is challenging to prove that this requirement has been met, and thus identify “the process whereby such an intent may be inferred from the individual conduct of perpetrators of the acts contemplated in Article II of the Convention”¹⁷. It is logical to seek *dolus specialis*, first, in the State’s policy, although such intent will seldom be expressly stated. Alternatively, the *dolus specialis* may be established by indirect evidence, i.e., deduced or inferred from certain types of conduct¹⁸.

24. In Spain’s opinion, precisely because direct evidence of genocidal intent is rare, it is crucial to interpret the *dolus specialis* requirement with a balanced approach that recognizes the singular gravity of the crime of genocide, without rendering the threshold for inferring genocidal intent so difficult to meet so as to make findings of genocide near-impossible.

25. In this regard, Spain considers that the standard adopted by the Court in *Croatia v. Serbia* provides the basis for such a balanced approach. The Court highlights the central importance of reasonableness by observing that “[t]he notion of ‘reasonableness’ must necessarily be regarded as implicit in the reasoning of the Court,”¹⁹ not least to avoid an approach that would make it “impossible to reach conclusions by way of inference.”²⁰ Thus, when determining whether specific intent can be inferred from conduct or not, one must weigh the evidence, and filter out inferences that are not reasonable. Put differently, the “only reasonable inference” test applies only between alternative explanations that have been found to be reasonably supported by the evidence. Furthermore, it is important to note that the Court stated that the “only reasonable inference” test should be used with respect to drawing an inference of specific intent from a “pattern” of conduct only. This cannot be the threshold of the test when other methods of inference are also present, such as when examining the scope and severity of a perpetrator’s conduct to evidence specific intent.

¹⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p. 66, para. 145.

¹⁸ *Ibid.* para. 143.

¹⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p. 67, para. 148.

²⁰ *Ibid.*

26. When assessing whether specific intent can be inferred, one must assess the available evidence comprehensively and holistically. The jurisprudence of international criminal courts demonstrates that this approach is not only desirable, but also an important element of sound administration of justice. In this respect, Spain draws attention to the approach of the ICTY Appeals Chamber, which required trial chambers to assess “whether all of the evidence, taken together, demonstrated a genocidal mental state,” while noting that a “compartmentalized mode of analysis [would] obscur[e] the proper inquiry.”²¹ In this sense, the gravity and intensity of the acts included in the material element of genocide may also help to establish specific intent.

27. Lastly, when assessing the *dolus specialis* in this case, the Court may find it useful to refer to statements and declarations of members of the government of Israel, such as, for example, the statement made by the Israeli Defence Minister, Yoav Gallant, on 9 October 2023, that was broadcast by several television outlets, and documented in numerous written media: “We are imposing complete siege on Gaza. There will be no electricity, no food, no water, no fuel. Everything will be closed. We are fighting against human animals and we are acting accordingly”, or the televised address by the Israeli Minister for National Security, Itamar Ben-Gvir, on 10 November 2023: “[t]o be clear, when we say that Hamas should be destroyed, it also means those who celebrate, those who support, and those who hand out candy — they’re all terrorists, and they should also be destroyed.” Spain recalls that on 28 December 2023, a group of former senior members of Israel’s diplomatic corps, academics, journalists, former members of Knesset and social activists addressed a letter to Israel’s Attorney General and other judicial authorities to demand their action to stop what they define as “extensive and blatant incitement to genocide, expulsion, and ethnic cleansing in Gaza by public figures”²². The letter contains a list of statements by Israeli officials that the signatories thereof consider the Israeli judiciary should act upon, because they believe they breach both Israeli and international law.

c) *actus reus*

28. According to Article II, the acts that may constitute genocide are: “(a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group”.

²¹ *Prosecutor v. Stakic (Case No. IT-97-24-A)*, Appeals Judgment of 22 March 2006, para. 55.

²² “Israeli public figures accuse judiciary of ignoring incitement to genocide in Gaza”, *Jewish Voice for Labour*, 6 January 2024, <https://www.jewishvoiceforlabour.org.uk/article/israeli-public-figures-accuse-judiciary-of-ignoring-incitement-to-genocide-in-gaza/> and “Israeli public figures accuse judiciary of ignoring incitement to genocide in Gaza”, *The Guardian*, 3 January 2024, <https://www.theguardian.com/world/2024/jan/03/israeli-public-figures-accuse-judiciary-of-ignoring-incitement-to-genocide-in-gaza>.

29. The Court has established that, in order to constitute genocide, all acts must be carried out with the intention to destroy, in whole or in part, a protected group as such²³. When the intention is not explicitly stated, the dimension of these acts, their gravity and their indiscriminate nature when targeting the members of the group, might be interpreted as indications of such an intention.

30. Spain considers that, when assessing whether the acts described in Article II of the Convention have been committed, the International Court of Justice, as the primary judicial body of the United Nations, should take into account the data, facts and reports produced by the United Nations, its agencies and bodies, and by other reliable sources with authoritative knowledge of the situation in Gaza. In Spain's view, examining the results of independent investigations under the auspices of the United Nations before qualifying a situation as genocide is a good practice that should be applied to the present case²⁴.

31. In its 2020 Resolution on Prevention of Genocide, the Human Rights Council recognized this good practice when it reaffirmed the role that the United Nations system, including the Council itself as well as relevant special procedures and treaty bodies, and regional organizations, can play in "the early detection and prevention of massive, serious and systematic violations of human rights that, if not halted, could lead to genocide"²⁵.

32. Spain considers that it would be particularly valuable for the Court to carefully examine the issue of the lack of access for humanitarian assistance to the Gaza Strip, despite the various times that the Court has referred to this matter in the provisional measures indicated with respect to this case. Spain considers that the blockade of humanitarian assistance is leading to conditions of life in the Gaza Strip that could fall under paragraph c) of Article II of the Convention; Spain will elaborate on this point at a later stage if its declaration is declared admissible.

²³ In the words of the Court; "the serious bodily or mental harm within the meaning of Article II (b) of the Convention must be such as to contribute to the physical or biological destruction of the group, in whole or in part" (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 70, para. 157); the "Deliberate infliction on the group of conditions of life calculated to bring about its physical destruction in whole or in part, within the meaning of Article II (c) of the Convention, covers methods of physical destruction, other than killing, whereby the perpetrator ultimately seeks the death of the members of the group" (*Ibid.* p. 71, para. 161); or even that the measures intended to prevent births within the group "the circumstances of the commission of those acts, and their consequences, are such that the capacity of members of the group to procreate is affected" (*Ibid.* p. 73, para. 166).

²⁴ See for example the reliance of The Gambia on the reports of the Independent International Fact-Finding Mission on Myanmar established by the United Nations Human Rights Council before bringing a case to the Court. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Judgment of 22 July 2022, pp. 25-27, paras 65-69.

²⁵ United Nations Human Rights Council, Resolution 43/29 on the prevention of genocide of 22 June 2020 (A/HRC/RES43/29), paras. 4, 5, 10 and 11.

33. The provisional measures ordered by the Court with respect to this case (26 January, 28 March, 24 May 2024) require Israel to take measures to allow humanitarian assistance to enter the area. On 26 January, the Court, with 16 votes in favour and one against, ordered 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”²⁶. On 28 March, the Court unanimously ruled that Israel must “take all necessary and effective measures to ensure, without delay, in full co-operation with the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance, including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians throughout Gaza, including by increasing the capacity and number of land crossing points and maintaining them open for as long as necessary”²⁷. Lastly, on 24 May, the Court stated that “the catastrophic situation in Gaza confirms the need for the immediate and effective implementation of the measures indicated in its Orders of 26 January 2024 and 28 March 2024, which are applicable throughout the Gaza Strip, including in Rafah. In these circumstances, the Court finds it necessary to reaffirm the measures indicated in those Orders. In so doing, the Court wishes to emphasize that the measure indicated in paragraph 51 (2) (a) of its Order of 28 March 2024, requiring the ‘unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance’, necessitates that the Respondent maintain open land crossing points, and in particular the Rafah crossing”²⁸. Accordingly, the Court decided, by thirteen votes to two, to order Israel to “maintain open the Rafah crossing for unhindered provision at scale of urgently needed basic services and humanitarian assistance”²⁹.

34. With regard to this same matter, Spain considers that the destruction of basic infrastructure in the Gaza Strip is contributing to an unprecedented humanitarian crisis and a severe worsening of living conditions for the Palestinian population in Gaza. According to the Gaza Strip Interim Report Damage Assessment, “Hospitals, schools, UN facilities, and other protected sites continue to be severely impacted by the conflict, as a result service delivery as well as the delivery of humanitarian aid is impeded or halted. The acute shortage of electricity supply or fuel for backup electricity generators has had a severe impact on patient care, including for newborns. A sharp increase in infectious diseases has been observed, due to overcrowding in hospitals, destruction of water and

²⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024*, p. 24 para 86 (3).

²⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 28 March 2024*, p. 12 para. 51 (2)(a).

²⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 24 May 2024*, p. 13 para 52.

²⁹ *Ibid.* p.14 para. 57(2)(b).

sanitation systems, and decreased availability of health services. The minimal availability of food, drinking water, and cooking gas across Gaza is causing severe levels of food insecurity as families run out of ways to cope while living in extremely dire conditions”³⁰.

35. The same report estimates that around US\$18.5 billion in direct damages had been caused to the built infrastructure of the Gaza Strip by the end of January 2024, which amounted to around 97% of the total 2022 gross domestic product (GDP) of the West Bank and the Gaza Strip. According to the report, “the physical and the corresponding monetary impacts caused by the conflict are dominated by damages to residential buildings (72% of the total), followed by damages to the physical assets of the Commerce, Industry, and Services sector (9% of the total), while effects on other critical infrastructure such as education, WASH, health, energy, ICT, municipal services, transport account for the remaining 19%”.³¹ The findings of the report include that, by the end of January 2024, the ongoing conflict had damaged or destroyed approximately 62% of all homes in Gaza equivalent to 290,820 housing units and 84% of all health facilities at a cost of US\$554 million, severely impacting Gaza’s health system; had brought the education system to a complete halt, with damage to education infrastructure amounting to US\$341 million; had destroyed or severely damaged numerous sites of significant heritage value, representing diverse historical periods and cultures; had affected nearly four in five commerce, industry, and services sector establishments, which in turn had forced economic activities to a halt, and had driven a more than 50% rise in unemployment. Also, the agricultural sector showed substantial levels of destruction, with overall estimated damages of US\$629 million, threatening livelihoods and aggravating food insecurity of the entire population. The report also showed that energy, water and municipal sectors had been affected by damages estimated at nearly US\$800 million, forcing basic service delivery to a halt and hindering relief activities with rapidly increasing multi-dimensional poverty as a result. Damages to the transport and information and communications technology (ICT) sectors were estimated at US\$448 million, affecting communication, mobility, and the provision of humanitarian aid to the population. Finally, environmental damages were estimated at US\$411 million, adversely affecting physical assets such as coastal areas, water, soil, agricultural fields, and the Wadi Gaza Nature Reserve, along with vital ecosystem services³².

36. Given that, as established by the jurisprudence of the Court, each of the acts listed in Article II of the Convention must be accompanied by the intention to destroy a group, in whole or in part, Spain considers, as already stated in paragraph 27, that the Court may find it useful also in this respect to refer to statements and declarations of members

³⁰ *Gaza Strip - Interim Damage Assessment: Summary Note*, World Bank, European Union and United Nations, 29 March 2024.

³¹ *Ibid.* p. 6.

³² *Ibid.* pp. 11–16.

of the government of Israel, such as, for example, the statement made on 12 October 2023 by the then Minister of Energy and Infrastructure of Israel, Israel Katz, on his X account, which read: “The line has been crossed. We will fight the terrorist organization Hamas and destroy it. All the civilian population in Gaza is ordered to leave immediately. We will win. They will not receive a drop of water or a single battery until they leave the world.”

37. The Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory of 27 May 2024 includes information on the order signed by Minister Katz on 7 October 2023 to cut all electricity supplies to the Gaza Strip, followed by the cutting off of all water supply from Mekorot through the three connection pipelines to the Gaza Strip, as well as the complete halt, between 8 October and 14 November, of any fuel entering the territory. According to the International Commission’s report, “The impact of these measures on the availability of electricity and water was immediate. By 14 October, the three water desalination plants, which had previously produced 21 million liters of drinking water a day, were reported to have halted operations due to the lack of electricity and fuel. Israel’s cutting of water supply immediately affected more than 650,000 people. The Gaza Power Plant ceased operation on 11 October after fuel transportation through the Kerem Shalom Crossing was stopped.”³³

38. Finally, a number of acts not provided for explicitly in Article II may ultimately result in genocidal acts. Thus, for example, although forced displacement of persons does not in and of itself amount to a listed underlying act of genocide, it may, depending on the facts, lead to the underlying acts of genocide set out in Article II(b)³⁴ and Article II(c)³⁵ of the Genocide Convention. Similarly, under current conventional and customary

³³ *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel: Advance Unedited Version (A/HRC/56/26)*, United Nations, 27 May 2024, p. 11 para. 51.

³⁴ In relation to Article II(b), ICTY noted that “forced displacement may — depending on the circumstances of the case — inflict serious mental harm, by causing grave and long-term disadvantage to a person’s ability to lead a normal and constructive life so as to contribute or tend to contribute to the destruction of the group as a whole or a part thereof.” (ICTY, *Prosecutor v. Tolimir (Case No. IT-05-88/2-A)*, *Appeal Judgment of 8 April 2015*, p. 86 para. 209). Similarly, in *Prosecutor v. Karadzic* the ICTY Trial Chamber held that “while forcible transfer does not of itself constitute an act of genocide, depending on the circumstances of a given case, it may cause such serious bodily or mental harm as to constitute an act of genocide under Article 4(2)(b)” (ICTY, *Prosecutor v. Karadzic (Case No. IT-95-5/18-T)*, 24 March 2016 para. 545).

³⁵ In relation to Article II(c), the Court has held that deliberate infliction on the group of conditions of life calculated to bring about its physical destruction in whole or in part, covers methods of physical destruction, other than killing, whereby the perpetrator ultimately seeks the death of the members of the group, such as via their expulsion from their homes (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, *Judgment, I.C.J. Reports 2015*, p. 71 para. 161. See also ICTR, *Prosecutor v. Akayesu (Case No. ICTR-96-4-T)*, *Judgment of 2 September 1998*, para. 506). Importantly, the opportunity to destroy a protected group is not based solely on the immediate effects of a perpetrator’s acts. A perpetrator may allow some group members to flee, but if those members are subsequently subjected to conditions of life calculated to bring about their physical destruction, these acts may fall within the scope of Article II(c) of the Genocide Convention.

international law, the intentional destruction of cultural heritage does not fall within the categories of acts of genocide set out in Article II of the Genocide Convention, as expressly stated by this Court. Nonetheless, the Court has endorsed the ICTY observation made in the Krstić case whereby “where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of an intent to physically destroy the group.”³⁶ Spain considers this approach to express current international law and accurately interpret Article II of the Genocide Convention.

4. Obligations of Contracting Parties (Articles I, III, IV, V, and VI, in connection with Article II)

39. Specifically determining the scope of these articles is crucial to ensuring respect for the Convention and its full implementation. As the Court previously stated, interpretation must take into account the interpretation criteria set out in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, paying due attention to the object and purpose of the Genocide Convention, which are expressions of the moral value that the States wish to attribute to them at the time of adoption.³⁷ The following paragraphs set out Spain’s interpretation of the obligations arising from the Convention, which may be elaborated on in any written statements ultimately submitted.

40. As established in the jurisprudence of the Court, the Convention sets out three substantive obligations for Contracting Parties: i) the obligation not to commit acts of genocide or the acts listed in Article III; ii) the obligation to prevent the perpetration of acts of genocide or the acts listed in Article III; and iii) the obligation to punish acts of genocide and the other acts listed in Article III. These obligations may apply separately or jointly to a specific case; therefore, examination of their scope should take into account the specific circumstances in each case.³⁸

41. Determination of the scope of these obligations calls for consideration of the fact that —as previously stated— they are all *erga omnes* obligations and the prohibition of genocide is a peremptory norm (*jus cogens*)³⁹. Similarly, it must be taken into account that these obligations apply in times of war and in times of peace and that they are applicable to Contracting Parties irrespective of where acts of genocide are committed, with the sole exception of the obligation to apply criminal law, which is limited to crimes of genocide perpetrated within a Contracting Party’s territory.

³⁶ ICTY, *Prosecutor v Krstić (Case IT-98-33-T)*, *Judgement of 02 August 2001*, para. 580.

³⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, *Judgment*, *I.C.J. Reports 2007*, p. 43, paras. 160 *et seq.*

³⁸ *Ibid.* paras. 382 and 383.

³⁹ See Section III.1, paragraph 14 hereof.

a) *The obligation to not commit genocide (Article I, in relation to Articles II and III)*

42. Although the obligation of States to not commit genocide is not explicitly set out in the Genocide Convention, the Court has expressed its opinion that it exists as an obligation arising from the Convention, as “taking into account the established purpose of the Convention, the effect of Article I is to prohibit States from themselves committing genocide”.⁴⁰ The Court has clearly and unmistakably indicated “that Contracting Parties to the Convention are bound not to commit genocide, through the actions of their organs or persons or groups whose acts are attributable to them. That conclusion must also apply to the other acts enumerated in Article III. Those acts are forbidden along with genocide itself in the list included in Article III”.⁴¹

43. Spain agrees with the Court’s interpretation that there is an obligation to not commit genocide, arising from the Genocide Convention, which is binding for all Contracting Parties. In light of this obligation, States must abstain from committing any of the acts listed in Articles II and III.

b) *The obligation to prevent (Articles I and V, in connection with Articles II and III)*

44. Under Article I of the Convention, Contracting Parties “undertake to prevent and to punish” “genocide, whether committed in time of peace or in time of war”. Under Article V, the “Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in article III”.

45. In this case, the provisional measures adopted by the Court on 26 January, 28 March and 24 May 2024 offer clear instructions on how Israel must meet its obligation of prevention. As the Court itself has stated “it is not possible, when considering the way [a Contracting Party] discharge[s] its obligation of prevention under the Convention, to fail to take account of the obligation incumbent upon it, albeit on a different basis, to implement the provisional measures indicated by the Court”.⁴² This is particularly important in this case, as in the Order of the Court of 26 January 2024, on provisional measures, the Court explicitly ordered Israel “in accordance with its obligations under the Genocide Convention”, to adopt “all measures within its power to prevent the commission” of acts of genocide (Article II), acts of direct and public instigation to commit genocide (Article III), as well as to “prevent the destruction and ensure the

⁴⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 113 para. 166.

⁴¹ *Ibid.* pp. 114 and 118–119, paras 167 and 179.

⁴² *Ibid.* p. 184 para 435.

preservation of evidence related to the allegations of acts within the scope of Article II and Article III of the Genocide Convention against members of the Palestinian group in the Gaza Strip”.⁴³ The provisional measures were reiterated by the Court in its orders of 28 March and 24 May.

46. Spain considers that these provisional measures, which are binding for Israel and contain specific instructions relating to the obligation to prevent acts of genocide, should be taken into account when examining whether it has fulfilled its obligation to prevent genocide, as a Contracting Party to the Convention.

c) *The obligation to punish (Articles I, III, IV, V and VI, in connection with Article II)*

47. Under Article I of the Convention, Contracting Parties “undertake to prevent and to punish” “genocide, whether committed in time of peace or in time of war”. This general obligation is elaborated on in Articles III, IV, V and VI. The obligation to punish is more clearly defined in the Convention than the obligation to prevent and comprises elements such as enacting legislation to define the crime of genocide and related crimes at the national level; establishing punishments that are appropriate for the severity of these crimes; establishing jurisdiction of national courts over crimes of genocide and other acts committed within national territories; and effectively applying penal jurisdiction, including investigating, prosecuting and trying persons who may have committed such crimes. Without prejudice to the possibility of submitting further clarifications at a later point in the proceedings, Spain considers that the Court should pay particular attention to the obligation to punish, in connection with the obligation arising from Article III of the Convention to punish “direct and public incitement to commit genocide”. In this regard, Spain refers to the observations outlined in paragraph 27 of this declaration of intervention.

IV. CONCLUSIONS

48. On the basis of the above, Spain avails itself of the right conferred by Article 63(2) of the Statute of the Court to intervene in the proceedings of the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*. Spain believes that this declaration meets the requirements set out in Article 63 of the Statute and Article 82 of the Rules and respectfully submits that the Court declare it admissible.

⁴³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024*, pp. 23–26 paras. 78, 79, 81 and 86.

49. Spain reserves the right to supplement or amend this declaration, and any written statements submitted with respect to it, as it considers necessary in response to subsequent developments in these proceedings.

V. DOCUMENTS IN SUPPORT OF THE DECLARATION

50. The documents submitted in support of this declaration and annexed hereto are:

- (a) Letter of 6 February 2024 from the Registrar of the International Court of Justice to the Contracting Parties of the Convention on the Prevention and Punishment of the Crime of Genocide, of 9 December 1948.
- (b) The instrument of accession of Spain to the Convention on the Prevention and Punishment of the Crime of Genocide.
- (c) Withdrawal of the reservation submitted by Spain to Article IX of the Convention.

Yours Faithfully,



Consuelo Femenía Guardiola,
Ambassador of Spain in the Netherlands
Co-agent of the Government of Spain

Annex A: Letter of 6 February 2024 from the Registrar of the International Court of Justice to the Contracting Parties of the Convention on the Prevention and Punishment of the Crime of Genocide, of 9 December 1948.

Annex B: The instrument of accession of Spain to the Convention on the Prevention and Punishment of the Crime of Genocide.

Annex C: Withdrawal of the reservation submitted by Spain to Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide.



By email only

161308

6 February 2024

Excellency,

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

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

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

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

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

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

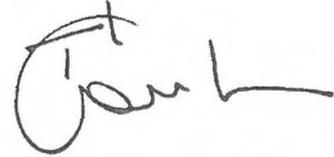
In the above-mentioned Application, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the “Genocide Convention”) is invoked both as a basis of the Court’s jurisdiction and as a substantive basis of the Applicant’s claims on the merits. In particular, the Applicant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

./.

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

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

Accept, Excellency, the assurances of my highest consideration.

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

Philippe Gautier
Registrar

FERNANDO MARIA CASTIELLA Y MAIZ

MINISTRO DE ASUNTOS EXTERIORES DE ESPAÑA

Cumplidos los requisitos exigidos por la legislación española, extendiendo el presente Instrumento de Adhesión de España al Convenio para la Prevención y la Sanción del delito de Genocidio aprobado por la Asamblea General de las Naciones Unidas el 9 de diciembre de 1948 -con una reserva a la totalidad del Artículo IX (jurisdicción del Tribunal Internacional de Justicia)- a efectos de que, mediante su depósito previo y de conformidad con lo dispuesto en el párrafo 3º de su Artículo XI, España entre a ser Parte del Convenio.

En fe de lo cual firmo el presente en Madrid, a veintiseis de junio de mil novecientos sesenta y ocho.



JUAN CARLOS I
REY DE ESPAÑA

POR CUANTO el día 13 de septiembre de 1968, el Estado español depositó en la Secretaría General de las Naciones Unidas (Nueva York) el Instrumento de Adhesión al Convenio para la prevención y la sanción del delito de genocidio, hecho en Nueva York el 9 de diciembre de 1948, incluyendo empero una Reserva a la totalidad del artículo IX (jurisdicción del Tribunal Internacional de Justicia),

Habiendo cambiado las circunstancias que motivaban esta Reserva y cumplidos los requisitos exigidos por la Legislación española,

VENGO EN APROBAR la retirada de dicha Reserva, a cuyo efecto MANDO expedir el presente Instrumento firmado por Mí, debidamente sellado y refrendado por el infrascrito Ministro de Asuntos Exteriores y de Cooperación.

Dado en Madrid, a treinta y uno de julio de dos mil nueve



EL MINISTRO DE ASUNTOS EXTERIORES Y DE COOPERACION.



Miguel Ángel Moratinos

UNITED NATIONS  NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.635.2009.TREATIES-2 (Depositary Notification)

CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME
OF GENOCIDE

NEW YORK, 9 DECEMBER 1948

SPAIN: WITHDRAWAL OF THE RESERVATION IN RESPECT OF THE WHOLE OF ARTICLE IX
(JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE)

The Secretary-General of the United Nations, acting in his capacity as depositary,
communicates the following:

The above action was effected on 24 September 2009.

24 September 2009



Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are currently issued in both hard copy and electronic format. Depositary notifications are made available to the Permanent Missions to the United Nations at the following e-mail address: missions@un.int. Such notifications are also available in the United Nations Treaty Collection on the Internet at <http://treaties.un.org>, where interested individuals can subscribe to directly receive depositary notifications by e-mail through a new automated subscription service. Depositary notifications are available for pick-up by the Permanent Missions in Room NL-300.

UNITED NATIONS  NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Référence : C.N.635.2009.TREATIES-2 (Notification dépositaire)

CONVENTION POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE
GÉNOCIDE

NEW YORK, 9 DÉCEMBRE 1948

ESPAGNE : RETRAIT DE LA RÉSERVE CONCERNANT LA TOTALITÉ DE L'ARTICLE IX
(COMPÉTENCE DE LA COUR INTERNATIONALE DE JUSTICE)

Le Secrétaire général de l'Organisation des Nations Unies, agissant en sa qualité de dépositaire, communique :

L'action susmentionnée a été effectuée le 24 septembre 2009.

Le 24 septembre 2009



Attention : Les Services des traités des Ministères des affaires étrangères et des organisations internationales concernés. Les notifications dépositaires sont actuellement publiées en formats papier et électronique. Les missions permanentes auprès des Nations Unies peuvent consulter les notifications dépositaires à l'adresse électronique suivante : missions@un.int. Ces notifications sont également disponibles sur le site Internet de la Collection des traités des Nations Unies à l'adresse <http://treaties.un.org>, où les personnes intéressées peuvent souscrire au nouveau service automatisé d'abonnement pour recevoir directement des notifications dépositaires par courriel. Les missions permanentes sont invitées à se procurer les notifications dépositaires mises à leur disposition au bureau NL-300.