

INTERNATIONAL COURT OF JUSTICE

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

(SOUTH AFRICA v. ISRAEL)

**DECLARATION OF INTERVENTION BY
THE FEDERATIVE REPUBLIC OF BRAZIL**

**Pursuant to Article 63 of the
Statute of the International Court of Justice**

September 2025

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DECLARATION OF INTERVENTION BY THE FEDERATIVE REPUBLIC OF BRAZIL

1. The Government of the Federative Republic of Brazil has the honour to submit to the International Court of Justice a declaration of intervention pursuant to Article 63 of the Statute of the Court, in the Case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*.

2. This declaration is filed in due course, within the time fixed for the filing of the Counter Memorial. In the present case, in its Order dated 15 April 2025, the Court extended to 12 January 2026 the time limit for the filing of the Counter-Memorial of the State of Israel, which is also to be considered the time limit for declarations of intervention pursuant to Article 63 of the Statute.

3. Under Article 82 of the Rules of the Court, a Declaration of Intervention submitted pursuant to Article 63 of the Statute shall state the name of an agent, specify the case and the convention to which it relates, and shall contain:

(a) particulars of the basis on which the declarant State considers itself a party to the convention;

(b) identification of the particular provisions of the convention the construction of which it considers to be in question;

(c) a statement of the construction of those provisions for which it contends;

(d) a list of the documents in support, which documents shall be attached.

4. These matters are addressed in sequence below.

5. Brazil acknowledges the Court's clarification in *Gambia v. Myanmar*, according to which interventions under Article 63 of the Statute should not intend to use facts as having evidentiary value or to address the application of the Convention to the facts of the case¹. In compliance of such interpretation, which does not prohibit the mentions to facts when used exclusively as contextual material, Brazil notes that any references made in the present intervention to reports of UN bodies, special procedures or other international organizations are not put forward as evidence of conduct attributable to a party and are solely referred to as background material relevant to the interpretation of the Convention's provisions.

¹ ICJ, *Gambia v. Myanmar: 7 States intervening*, Order of 25 July 2025, para. 60.

I - PARTICULARS OF THE BASIS ON WHICH BRAZIL IS A PARTY TO THE CONVENTION

6. On 15 April 1952, Brazil deposited its instrument of ratification to the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the “Genocide Convention”) with the Secretary-General of the United Nations, in accordance with Article XI of the Convention. Its accession took effect on 14 July 1952². From that date onwards, Brazil has consistently upheld its obligations under the Convention both internationally and domestically, criminalizing genocide under Law No. 2.889/1956³.

7. Brazil has not filed any reservations or interpretative declarations to the Genocide Convention.

8. Brazil objected to the reservations⁴ made to the Convention by Bulgaria, the Byelorussian Soviet Socialist Republic, Czechoslovakia, the Philippines, Poland, Romania, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics. The Brazilian Government considered the said reservations as incompatible with the object and purpose of the Convention. The position taken by the Government of Brazil was grounded in the Advisory Opinion of the International Court of Justice of 28 May 1951 and the resolution adopted by the sixth session of the General Assembly on 12 January 1952⁵, on reservations to multilateral treaties.

II - THE PROVISIONS THE CONSTRUCTION OF WHICH IT APPEARS TO BE IN QUESTION

9. Brazil considers that the construction of Articles I, II and III of the Genocide Convention is in question in these proceedings.

III - CONSTRUCTION OF ARTICLE I FOR WHICH BRAZIL CONTENDS

10. Article I of the Convention provides:

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

² United Nations Depository Notification confirming Brazil’s ratification of the Genocide Convention, dated 30 April 1952.

³ Law No. 2.889 of 1 October 1956 (Lei do Genocídio), Diário Oficial da União, 3 October 1956.

⁴ ICJ, *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, 28 May 1951, ICJ Reports 1951 [the “Genocide Convention Reservations Advisory Opinion”], p. 15.

⁵ UN General Assembly, Resolution 598 (VI), *Reservations to Multilateral Conventions*, adopted on 12 January 1952.

11. Brazil notes the dual nature of responsibility for the crime of genocide, which entails both individual and State responsibility, as recognized by the Court⁶. The dual nature of responsibilities for a same internationally wrongful act is clearly set out by international legal instruments, *inter alia*, in Article 25 (4) of the Rome Statute of the International Criminal Court⁷ and in article 58 of United Nations International Law Commission (ILC) 2001 Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA)⁸.

12. The Genocide Convention is an international treaty that establishes binding obligations for its States Parties, the breach of which entails the international responsibility of the State concerned⁹. Consistent with these *erga omnes partes* obligations, emanating from the Genocide Convention, Brazil considers that, by intervening in the present case, it contributes to the uniform interpretation and effective enforcement of the Convention, while promoting prevention and punishment of genocide.

13. Although not expressly articulated in Article I, Brazil concurs with the Court's view 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"¹⁰, inasmuch as "the obligation to prevent genocide necessarily implies the prohibition of the commission of genocide"¹¹.

14. Therefore, Article I of the Genocide Convention imposes upon States Parties the obligations (i) to refrain from committing genocide, (ii) to prevent genocide, and (iii) to punish those responsible for its commission.

15. The first obligation provides that States Parties must refrain from committing acts of genocide, or any other acts listed in Article III, through persons or groups acting directly under their authority or control. In addition to entailing individual criminal responsibility, such acts also give rise to the international responsibility of the State on whose behalf they are committed¹².

16. In this context, Brazil contends that the commission of genocide under Article I, or of any other acts listed in Article III, can be attributed to a State under international law if carried out by "any State organ", "whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character

⁶ ICJ, *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 [the "Bosnia Judgment"], para 173.

⁷ "No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law".

⁸ "These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State".

⁹ ARSIWA, Articles 1 and 2. As stated by Judge Cançado Trindade, "[t]he determination of State responsibility under the Convention against Genocide is well-founded, not only because this was intended by the draftsmen of the Convention, as its *travaux préparatoires* show [...], but also because such determination is in line with the rationale of the Convention, as well as its object and purpose. Today, 66 years after its adoption, the Convention against Genocide counts on 146 States parties; and the States which have not yet ratified, or acceded to it, are also aware that the prohibition of genocide is one likewise of general or customary international law. It is not conditioned by alterations in State sovereignty or vicissitudes of State succession; it is an absolute prohibition, belonging to the realm of *jus cogens*". ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Dissenting Opinion, para 92.

¹⁰ *Bosnia Judgment*, para 167.

¹¹ *Bosnia Judgment*, para 166.

¹² ARSIWA, Articles 4–11.

as an organ of the central Government or of a territorial unit of the State.”¹³ This includes, but is not limited to, acts committed by a State’s armed forces. Brazil also submits that acts amounting to the commission of genocide may be attributed to a State if they are carried out by a person or group of persons “acting on the instructions of, or under the direction or control of, that State”¹⁴.

17. International law attributes responsibility to States for the conduct of their armed forces operating under their effective control, including for issuing clear and unequivocal instructions to refrain from systematic and widespread attacks against the civilian population under occupation. In its Advisory Opinion of 19 July 2024, the Court found in paragraph 93 that “Israel remained capable of exercising, and continued to exercise, certain key elements of authority over the Gaza Strip, including control of the land, sea and air borders, restrictions on movement of people and goods, collection of import and export taxes, and military control over the buffer zone, despite the withdrawal of its military presence in 2005. This is even more so since 7 October 2023”. The Court further found in paragraph 94 that “Israel’s withdrawal from the Gaza Strip has not entirely released it of its obligations under the law of occupation. Israel’s obligations have remained commensurate with the degree of its effective control over the Gaza Strip”¹⁵.

18. In this context, media accounts and reports of independent experts, including the *Anatomy of a Genocide* Report¹⁶, and the document compiled by South Africa to the Security Council¹⁷, which highlight repeated statements by Israeli officials – including calls for the “total annihilation” of Gaza, to “blotting out the memory of Amalek from under heaven,”¹⁸ and declarations about “erasing the Gaza Strip off the face of the Earth” – are relevant contextual material to the interpretation of the Genocide Convention, in particular Article III(c) on direct and public incitement to commit genocide.

19. In addition to the obligation to refrain from committing genocide, Article I of the Convention establishes the obligation of the States Parties to prevent acts of genocide and other

¹³ ARSIWA, Article 4.

¹⁴ ARSIWA, Article 8.

¹⁵ ICJ, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*. Advisory Opinion of 19 July 2024.

¹⁶ The following statements by Israeli high-ranking officials are reproduced in the ‘*Anatomy of a Genocide* Report’, p. 13: (a) President Isaac Herzog stated that “an entire nation out there ... is responsible” for the 7 October attack and that Israel would “break their backbone”; (b) Prime Minister Benjamin Netanyahu referred to Palestinians as “Amalek” and “monsters”; (c) Minister of Defense, Yoav Gallant, referred to Palestinians as “human animals”, and announced a “full offense” on Gaza, having “released all the restraints”, and that “Gaza will never return to what it was”; (d) Israel Forces Spokesperson Daniel Hagari stated that focus should be to “maximize damage”; (e) Minister of Agriculture Avi Dichter referred to Israeli action as “the Gaza Nakba”; (f) Minister of Heritage Amihai Eliyahu called for striking Gaza with “nuclear bombs”; (g) Member of the Knesset for the Likud party, Revital Gottlieb, wrote on her social media post: “Bring down buildings!! Bomb without distinction!!... Flatten Gaza. Without mercy! This time, there is no room for mercy!”.

¹⁷ Public dossier of openly available evidence on the State of Israel’s acts of genocide against the Palestinians in Gaza as at 4 February 2025, circulated under the symbol S/2025/130.

¹⁸ “Statement By Israel’s Minister of Finance Bezalel Smotrich at Mimouna In Ofakim / Sponsored by B.M. Tech LTD.”, Beer Sheva Times (30 April 2024), <https://www.youtube.com/watch?v=poyayz7b6jI>; Noa Shpigel, “Israel’s Far-right Minister Smotrich Calls for ‘No Half Measures’ in the ‘Total Annihilation’ of Gaza”, Haaretz (30 April 2024), <https://www.haaretz.com/israelnews/2024-04-30/tyarticle/.premium/smotrich-calls-for-no-half-measures-in-the-total-annihilation-of-gaza/0000018f-2f4c-d9c3-abcf-7f7d25460000>. See also MK Nissim Vaturi, @nissimv, Tweet (6:33 pm, 7 October 2023), <https://twitter.com/nissimv/status/1710694866009596169>.

acts referred to in Article III. This duty extends to acts committed by individuals or groups not in fact acting on the instructions of, or under the direction or control of, States Parties¹⁹.

20. With regard to the obligation to prevent genocide, Brazil concurs with the Court's finding that "the obligation in question is one of conduct and not one of result", and that the obligation of States parties is "to employ all means reasonably available to them, so as to prevent genocide so far as possible"²⁰. Accordingly, a State incurs responsibility if it "manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide"²¹.

21. In its Order of 26 January 2024, the Court indicated provisional measures, stating that "the State of Israel shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to Palestinians in Gaza, take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention"²². The obligations recognized by the Court based on the situation on the ground may indicate not only a failure to prevent genocide, but also the specific intent to commit it.

22. Finally, Article I also imposes on States Parties the obligation to punish the crime of genocide. In this regard, Brazil concurs with the Court in noting that the duty to repress and punish is autonomous and additional to the obligation not to perpetrate and to the obligation to prevent. In these circumstances, it is "perfectly possible for a State to incur responsibility at once for an act of genocide (or complicity in genocide, incitement to commit genocide, or any of the other acts enumerated in Article III) committed by a person or organ whose conduct is attributable to it, and for the breach by the State of its obligation to punish the perpetrator of the act: these are two distinct internationally wrongful acts attributable to the State, and both can be asserted against it as bases for its international responsibility."²³

IV - CONSTRUCTION OF ARTICLE II FOR WHICH BRAZIL CONTENDS

23. Article II of the Genocide Convention provides:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (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.*

24. Pursuant to this provision, and as articulated by the Court, "genocide contains two constituent elements: the physical element, namely the act perpetrated or *actus reus*, and the

¹⁹ *Bosnia Judgement*, para 166.

²⁰ *Bosnia Judgment*, para 430.

²¹ *Bosnia Judgment*, para 430.

²² *Bosnia Judgment*, para 383.

²³ *Bosnia Judgment*, para 383.

mental element, or *mens rea*. Although analytically distinct, the two elements are linked. The determination of *actus reus* can require an inquiry into intent. In addition, the characterization of the acts and their mutual relationship can contribute to an inference of intent²⁴. Brazil emphasizes that the existence of *dolus specialis*, or the specific intent to destroy a protected group as such, remains the distinctive hallmark of genocide.

25. Brazil recalls that the object and purpose of the Convention is to safeguard “the very existence of certain human groups”²⁵, and “genocide requires a positive identification of the group”, “with specific distinguishing characteristics”²⁶. In this regard, Brazil notes that the International Court of Justice has already recognized the Palestinian people as a distinct people entitled to self-determination (*Wall Advisory Opinion, 2004*, paras 118-122)²⁷, and has accepted *prima facie* that Palestinians in Gaza constitute a protected group under Article II of the Genocide Convention (*South Africa v. Israel*, Order of 26 January 2024, para 54)²⁸. It is, therefore, evident that the Palestinian population in Gaza is encompassed within the categories listed in Article II — national, ethnic, racial, and religious — and as such constitutes a protected group under the Conventions.²⁹

26. Brazil further observes that “it is widely accepted that genocide may be found to have been committed where the intent is to destroy the group within a geographically limited area”³⁰. In the *cas d’espèce*, the Gaza Strip — a part of the Palestinian territory under occupation, as acknowledged by the International Court of Justice (*Wall Advisory Opinion, 2004*, paras 83-87)³¹.

27. In this context, Brazil underscores that the construction of Article II must be carried out in a manner that preserves the Convention’s *effet utile*. Narrow interpretations that artificially exclude territorially targeted destruction would deprive the Convention of its protective object and purpose. As such, Brazil considers that the interpretation adopted by the Court in these proceedings will be of fundamental importance in guiding States Parties’ obligations to identify and prevent genocidal conduct.

A. Genocide as a composite act

28. Brazil acknowledges that the Elements of Crimes of the International Criminal Court (ICC) provide that the conducts that may amount to genocide either must “take place in the context of a manifest pattern of similar conduct” directed against a protected group or must be of a kind that “could itself effect” the destruction of that group.³²

²⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, [the “Croatia Judgment”], I.C.J. Reports 2015, para 130.

²⁵ *Genocide Convention Reservations Advisory Opinion*, p. 23.

²⁶ *Bosnia Judgment*, para 193 and 194.

²⁷ ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, *ICJ Reports* 2004 [the “Wall Advisory Opinion”], paras 118–122

²⁸ ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order on Provisional Measures, 26 January 2024, para 54

²⁹ Besides Israelis and Palestinians regarding themselves as belonging to distinct groups — national, ethnic, racial, religious —, the Israeli government treats Palestinians as a distinct “group” within the meaning of the Genocide Convention. Furthermore, there are records of Israeli officials referring to Palestinians as a group by using hateful terms such as “human animals” and “Amalek”, among others (footnotes 16-18 above).

³⁰ *Bosnia Judgment*, para 199.

³¹ *Wall Advisory Opinion*, paras 83-87

³² International Criminal Court, *Elements of Crimes*, pp. 2-3.

29. In its commentaries to the ARSIWA, the ILC illustrates the prohibition of genocide as a “composite” obligation, consisting of a series of actions defined in aggregate as wrongful. Accordingly, “[g]enocide is not committed until there has been an accumulation of acts of killing, causing harm, etc., committed with the relevant intent, so as to satisfy the definition in article II”. In relation to the constituent elements of the crime, the ILC recognized that “[b]oth limbs of the definition contain systematic elements”³³.

30. The systematic pattern of extreme violence and the systematic and reiterated declarations – extensively discussed in reports of independent experts and compiled in the Security Council’s document S/2025/130 – are cited here not as evidence of conduct attributable to any party but solely as contextual material relevant to the interpretation of elements of the Genocide Convention, including *actus reus* and *mens rea*.

31. As articulated by Judge Cançado Trindade in his dissenting opinion in the Croatia Judgment: “[i]t was not exactly a war (...). It was not only ‘a plurality of common crimes’ (...); it was rather an onslaught, a plurality of atrocities, which, in itself, by its extreme violence and devastation, can disclose the intent to destroy (*mens rea* of genocide)”³⁴.

B. Genocidal intent (*dolus specialis*)

32. The specific intent to destroy a group as such “is the essential characteristic of genocide, which distinguishes it from other serious crimes”³⁵.

33. In light of the dual nature of responsibility for genocide, Brazil acknowledges that international courts and tribunals may adopt different approaches in determining individual criminal responsibility and State responsibility for serious violations of human rights, such as the prohibition of genocide.

34. As noted by Judge Gaja in his separate opinion in the Croatia Judgment “there are reasons for the international criminal tribunals to adopt a restrictive approach to the definition which are not applicable when one considers State responsibility”³⁶. Under the Rome Statute, for instance, for the purpose of establishing individual responsibility, “[t]he definition of a crime shall be strictly construed”³⁷. For Judge Gaja, “[t]he main difference between international criminal responsibility and State responsibility for genocide concerns the *standard of proof*”³⁸.

35. Likewise, in his dissenting opinion in the Croatia Judgement, Judge Cançado Trindade highlighted that “a high standard of proof finds justification in international individual criminal responsibility, facing incarceration, but not in international State responsibility, (...) where a simple balance of evidence would be appropriate, with a lower standard of proof than for international crimes by individuals”³⁹.

³³ Yearbook of the International Law Commission, 2001, vol. II, Part Two, p. 62.

³⁴ *Croatia v. Serbia*, Dissenting Opinion of Judge Cançado Trindade, para 237.

³⁵ *Croatia Judgment*, para 130.

³⁶ *Croatia v. Serbia*, Separate Opinion of Judge Gaja, para 2.

³⁷ Rome Statute, article 22(2).

³⁸ *Croatia v. Serbia*, Separate Opinion of Judge Gaja, para 4.

³⁹ *Croatia v. Serbia*, Dissenting Opinion of Judge Cançado Trindade, para 136.

36. Judge Cançado Trindade further observed that the case law of the Inter-American Court of Human Rights “is particularly rich in respect of the standard of proof in cases disclosing a systematic pattern of serious violations of human rights”⁴⁰. Such case law, grounded in the protection of victims, demonstrates a more flexible evidentiary threshold when confronted with widespread or systematic violations.

37. Bearing in mind both the dual nature of responsibility and the jurisprudence of international criminal courts and human rights tribunals, Brazil submits that the Court should adopt a correspondingly balanced approach to *dolus specialis*, one that reflects not only the criminal law dimension but also the Convention’s overarching humanitarian object and purpose.

i) Genocidal intent attributable to the State

38. Provided that acts of genocide are attributed to a State, Brazil agrees that the *dolus specialis* is to be sought, first and foremost, in statements of its officials and inferred from factual circumstances, and may also be reflected in State policies. According to the Court’s jurisprudence, however, the existence of a formal plan or policy is not required for demonstrating genocidal intent⁴¹.

39. As reported by UN agencies and compiled by South Africa in its submission to the Security Council in February 2025⁴², numerous public declarations of Israeli officials include calls for the annihilation of cities and refugee camps, suggestions that there would be no innocents or “uninvolved” in Gaza, and calls for Israeli soldiers to wipe out the memory of Amalek from Earth. These references are not invoked as evidence of specific conduct, but rather as contextual material that may inform the interpretation of the scope of obligations under the Genocide Convention.

40. Considering that the intent to commit genocide is rarely overt, Brazil notes that Article 49 of the Statute of the Court sets out that “[t]he Court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal”.

41. As stated by the Court in the Corfu Channel Case, “the victim of a breach of international law, is often unable to furnish direct proof of facts giving rise to responsibility. Such a State should be allowed a more liberal recourse to inferences of fact and circumstantial evidence. This indirect evidence is admitted in all systems of law, and its use is recognized by international decisions. It must be regarded as of special weight when it is based on a series of facts linked together and leading logically to a single conclusion”⁴³.

42. Brazil concurs with the Court that “if an organ of the State, or a person or group whose acts are legally attributable to the State, commits any of the acts proscribed by Article III of the Convention, the international responsibility of that State is incurred”⁴⁴.

⁴⁰ *Croatia v. Serbia*, Dissenting Opinion of Judge Cançado Trindade, para 100.

⁴¹ *Bosnia Judgment*, para 374; ICTR, *Prosecutor v. Jean-Paul Akayesu*, Judgment, Case No. ICTR-96-4-T, Trial Chamber I, 2 September 1998, para. 557.

⁴² Public dossier of openly available evidence on the State of Israel’s acts of genocide against the Palestinians in Gaza as at 4 February 2025, circulated under the symbol S/2025/130. See also footnotes 16-18 above.

⁴³ ICJ, *Corfu Channel (United Kingdom v. Albania), Merits, Judgment*, I.C.J. Reports 1949 [the “Corfu Channel Judgment”], p. 18.

⁴⁴ *Bosnia Judgment*, para 179.

43. At the same time, Brazil contends that establishing individual intent is not a prerequisite for determining State intent, in light of the dual nature of responsibilities. As aptly observed by Judge Gaja “[d]etermining the existence of the mental element of genocide may lead to different conclusions with regard to individuals and the State for which they may be acting”. In the present case, Brazil believes that “a number of State organs or other individuals acting for a State may produce a pattern of conduct from which a governmental policy concerning the destruction of a group could be inferred”⁴⁵.

ii) The only reasonable inference test

44. Brazil recalls that the Court “accepted the possibility of genocidal intent being established indirectly by inference”⁴⁶ and that, “for a pattern of conduct to be accepted as evidence of intent to destroy the group, in whole or in part, it must be such that it could only point to the existence of such intent”⁴⁷. This approach underscores that *dolus specialis*—by its very nature a mental element—may be proven through circumstantial evidence and patterns of conduct, rather than direct admissions of intent, which are exceedingly rare.

45. In further developing this standard of proof, the Court has adopted the “only reasonable inference” standard of proof for *dolus specialis* in line with the case law of the International Criminal Tribunal for the former Yugoslavia (ICTY): “it is permissible to infer the existence of genocidal intent based on ‘all of the evidence taken together’, as long as this inference is ‘the only reasonable [one] available on the evidence’”⁴⁸. The adoption of this evidentiary threshold reflects the recognition, common to both institutions, that patterns of systematic violence can reveal the *mens rea* of genocide with sufficient clarity, even absent direct elements of evidence.

46. Accordingly, in line with its consistent case law, the Court has clarified that “intent to destroy the group, in whole or in part, must be the only reasonable inference which can be drawn from the pattern of conduct”⁴⁹. This “only reasonable inference” test ensures both fidelity to the exceptional gravity of genocide and effectiveness in giving concrete expression to the Convention’s object and purpose: to prevent and punish the destruction of human groups, even when intent is manifested indirectly through conduct that admits of no other plausible explanation.

a) No requirement of exclusive intent

47. In Brazil’s view, it does not follow therefrom that the existence of additional goals, such as military ones, would automatically exclude genocidal intent as the “only reasonable inference” which can be drawn from a pattern of conduct.

48. Such an interpretation would fail to recognize that human beings – and States alike – often have more than one motive or objective for their conduct. By setting an excessively restrictive standard of proof, it would also be incompatible with the principle *ut res magis valeat quam pereat*, and would deprive the Convention of its appropriate effects (*effet utile*).

⁴⁵ *Croatia v. Serbia*, Separate Opinion of Judge Gaja, para 3.

⁴⁶ *Croatia Judgment*, para 148.

⁴⁷ *Bosnia Judgment*, para 373.

⁴⁸ ICTY, *Tolimir*, IT-05-88/2-T, Trial Chamber, Judgment of 12 December 2012, para. 745.

⁴⁹ *Croatia Judgment*, para 417.

49. Furthermore, any interpretation of Article II in its context⁵⁰ should take into consideration that Article I of the Convention sets out that genocide may be committed in time of war, when it would be reasonable to infer the simultaneous existence of military goals.

50. The massacre of Srebrenica, for instance, recognized as genocide by the Court, occurred in time of war, and was in part motivated by the strategic advantage of uniting a “Greater Serbia”. As recalled by Judge Bhandari in his separate opinion in the Croatia Judgement: “[n]ever was it suggested that this tactical motivation precluded the attack from possessing genocidal intent”⁵¹.

51. Judge Cançado Trindade stressed in his dissenting opinion that “[o]ne cannot characterize a situation as one of armed conflict, so as to discard genocide. The two do not exclude each other. In this connection, it has been pertinently warned that perpetrators of genocide will almost always allege that they were in an armed conflict, and their actions were taken ‘pursuant to an ongoing military conflict’; yet, ‘genocide may be a means for achieving military objectives just as readily as military conflict may be a means for instigating a genocidal plan’”⁵².

52. Therefore, Brazil contends that the “only reasonable inference test” should not be construed as if the destruction of a group is the only intent or goal behind a pattern of conduct. Rather, it should be construed as the “beyond a reasonable doubt” standard, the only reasonable inference being that the specific intent to destroy in whole or in part the protected group existed, not necessarily as the sole intent of a certain conduct.

53. Indeed, in the Bosnia Judgement, the Court recognized that a perpetrator may have simultaneous motives for a certain conduct, and that “[t]he specific intent is also to be distinguished from other reasons or motives the perpetrator may have”⁵³. As stressed by Judge Bhandari, “genocidal intent may exist simultaneously with other, ulterior motives”⁵⁴.

54. Article II of the Genocide Convention does not require exclusivity of genocidal intent; rather, it requires that *dolus specialis* exist.

b) Distinction between intent and motive

55. Brazil contends that the presence of various potential motives behind a particular pattern of conduct does not exclude the existence of *dolus specialis*. In this context, it is important to distinguish between the legal concepts of motive and intent.

56. The ICTY Appeals Chamber has repeatedly recalled “the necessity to distinguish specific intent from motive. The personal motive of the perpetrator of the crime of genocide may be, for example, to obtain personal economic benefits, or political advantage or some form of power. The existence of a personal motive does not preclude the perpetrator from also having

⁵⁰ Vienna Convention on the Law of Treaties (1969), Article 31.

⁵¹ *Croatia v. Serbia*, Separate Opinion of Judge Bhandari, para 50.

⁵² *Croatia v. Serbia*, Dissenting Opinion of Judge Cançado Trindade, para 144.

⁵³ *Bosnia judgment*, para 189.

⁵⁴ *Croatia v. Serbia*, Separate Opinion of Judge Bhandari, para 50.

the specific intent to commit genocide. In the Tadic appeal judgment, the Appeals Chamber stressed the irrelevance and ‘inscrutability of motives in criminal law’⁵⁵.

57. Likewise, the International Criminal Tribunal for Rwanda (ICTR) Appeals Chamber has reiterated “that criminal intent (*mens rea*) must not be confused with motive and that, in respect of genocide, personal motive does not exclude criminal responsibility providing that the acts proscribed in Article 2(2)(a) through to (e) were committed ‘with intent to destroy, in whole or in part a national, ethnical, racial or religious group’⁵⁶. It has also stressed that “motive, as opposed to *mens rea*, is not an element of any crime”⁵⁷.

58. In the present case, Israel, while conducting an unlawful occupation of the Palestinian territory, may, without legal basis, invoke self-defense or counter terrorism as motives to justify its actions in Gaza. Yet, while a State cannot allege security reasons to legitimize an illegal occupation, references to self-defense and counter terrorism, whether invoked as motives or not, cannot displace the Court’s central task under the Genocide Convention: to determine whether genocidal intent is present.

c) The only reasonable inference is that genocidal intent is present

59. The definition of genocide under Article II of the Convention does not necessitate that *dolus specialis* be the sole intent behind a particular *actus reus*. While the standard of proof must not undermine the constituent elements of the crime, the Court should be unequivocally satisfied that genocidal intent is present.

60. Brazil agrees that “claims against a State involving charges of exceptional gravity must be proved by evidence that is fully conclusive”⁵⁸. Therefore, the Court must “be fully convinced that allegations made in the proceedings, that the crime of genocide or the other acts enumerated in Article III have been committed, have been clearly established”⁵⁹. This standard applies to the proof of *actus reus*, *dolus specialis* and attribution for such acts.

61. Brazil considers that the “only reasonable inference” test relates to the high standard of proof necessary to identify the genocidal intent. It follows that the Court should be convinced that the *dolus specialis* is present beyond a reasonable doubt.

62. In Brazil’s view, Judge Keith’s separate opinion in the Croatia Judgement appears to clarify the “only reasonable inference” test as applied by the Court. Rather than rejecting genocidal intent simply because other intents or motives may coexist and be reasonably inferred from a State’s pattern of conduct, the test suggests that, for genocide to be proven, specific intent must be established beyond a reasonable doubt⁶⁰.

63. In that case, Croatia’s claims were rejected not because there could be alternative objectives behind the atrocities committed against the Croats, such as the creation of an ethnically

⁵⁵ ICTY, *Kvočka et al.* (IT-98-30/1-A), para 106; see also Jelesić Appeal Judgement, para. 49, referring to Tadić Appeal Judgement, para. 269; and Krnojelac Appeal Judgement, para. 102.

⁵⁶ ICTR, *Kayishema & Ruzindana* (ICTR-95-1-A), para 161.

⁵⁷ ICTR, *Gaspard Kanyarukiga* (ICTR-02-78-A), para 262.

⁵⁸ *Corfu Channel Judgment*, p. 17.

⁵⁹ *Bosnia Judgment*, para 209.

⁶⁰ *Croatia v. Serbia*, Separate Opinion of Judge Keith, paras 12; 18.

homogeneous Serb State, but because the Applicant, in the Court's view, failed to establish the essential element of specific intent.

64. Therefore, Brazil submits that the Court's jurisprudence should not be construed as if the genocidal intent must be the sole reasonably inferred one. Rather, the Court's jurisprudence must be interpreted in the sense that the only reasonable inference to be drawn is that genocidal intent exist.

iii) Particular factors to be considered when establishing the existence of a pattern of conduct revealing genocidal intent

65. In the Croatia Judgement, the Court considered that, "of the 17 factors suggested by Croatia to establish the existence of a pattern of conduct revealing a genocidal intent, the most important are those that concern the scale and allegedly systematic nature of the attacks, the fact that those attacks are said to have caused casualties and damage far in excess of what was justified by military necessity, the specific targeting of Croats and the nature, extent and degree of the injuries caused to the Croat population"⁶¹.

66. Brazil notes that it is not necessary for the entire military operation to be conceived with genocidal intent. References to security concerns cannot, however, in themselves justify violations of international humanitarian law or actions that systematically target the Palestinian population. According to the established jurisprudence of the Court, "the specific intent to destroy the group in whole or in part must be convincingly demonstrated by reference to particular circumstances"⁶².

67. In this regard, Brazil asserts that certain specific circumstances are particularly relevant when applying the "only reasonable inference" test in the present case.

a) The systematic targeting of children and women

68. The intent to destroy in part the protected group relates to a substantial part of that group. In evaluating whether the targeted part of a protected group is substantial in relation to the overall group, the Court takes into account "the quantitative element as well as evidence regarding the geographic location and prominence of the allegedly targeted part of the group"⁶³.

69. The survival of children is often regarded in international law as essential to the continuity and protection communities. In this regard, numerous reports, which are cited below solely as contextual material and not as evidence of conduct attributable to any party, have expressed concerns regarding the impact of hostilities of children in Gaza, highlighting circumstances that may be relevant to the interpretation of Article II of the Genocide Convention.

70. According to the latest report of the Secretary-General on Children and Armed Conflicts, more than 20% of all serious violations against children worldwide in 2024 were verified in Israel and the Occupied Palestinian Territory. The United Nations verified 8,554 serious violations against 2,959 children, of whom 15 were Israeli and 2,944 Palestinian. 2,789 serious violations that occurred in 2023 in the Gaza Strip (2,788) and in Israel (1) were verified in

⁶¹ *Croatia Judgment*, para 413.

⁶² *Bosnia Judgment*, para 373.

⁶³ *Croatia Judgment*, para 142.

2024. In addition, the United Nations received reports of the killing of 4,470 children in the Gaza Strip in 2024, which are pending verification.⁶⁴

71. The Independent International Commission of Inquiry on the Occupied Palestinian Territory reported in 2025 that Israeli Security Forces (ISF) “intentionally attacked and destroyed in December 2023 the Basma IVF clinic which was the main fertility centre in Gaza” and “destroyed all of the reproductive material that was stored for the future conception of Palestinians”, as “a measure intended to prevent births among Palestinians in Gaza” and despite the absence of “any evidence that this IVF clinic was a legitimate military target at the time that it was attacked”⁶⁵. The Commission further noted that Al-Basma IVF Centre was Gaza’s largest fertility clinic and its shelling resulted in the destruction of around 4,000 embryos, as well as 1,000 sperm samples and unfertilized eggs⁶⁶. It also stated that “the ISF intentionally and systematically attacked and destroyed reproductive and maternal health facilities across Gaza, including maternity hospitals and maternity wings of hospitals”⁶⁷, while also “deliberately stopped humanitarian assistance which included items essential for pregnant women, new mothers and newborns from reaching Gaza, both through direct attacks and through the imposition of a total siege”⁶⁸.

72. The Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, estimated that over 15,000 children had been confirmed as killed since 7 October 2023⁶⁹. According to UNICEF, over 50,000 Palestinian children have reportedly been killed or maimed in Gaza over the same period⁷⁰, out of one million Palestinian children struggling to live there.

73. The Independent International Commission includes accounts by medical professionals who have reportedly treated children with direct gunshot wounds⁷¹. According to the public evidence compiled by South Africa in its communication to the Security Council, dozens of “doctors, nurses and paramedics reported treating multiple instances of pre-teen children having been shot in the head or chest — this evidence having been confirmed by independent experts. The material compiled by South Africa state that doctors have also testified that children have been targeted by quadcopters while injured and by snipers. It also notes that children have been targeted leaving shelters and enroute to hospitals; as well as attempting to follow evacuation orders and enroute to ‘safe zones’”⁷². It finally underscores that “Israeli

⁶⁴ Report of the UN Secretary-General on Children and Armed Conflicts, 17 June 2025 (A/79/878-S/2025/247).

⁶⁵ UN Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, A/HRC/58/CRP.6, March 2025, para 175.

⁶⁶ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, para 41.

⁶⁷ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, para 176.

⁶⁸ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, para 177.

⁶⁹ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 6 May 2025, A/HRC/59/26, para 28.

⁷⁰ Statement by UNICEF Regional Director for the Middle East and North Africa, Edouard Beigbeder on 27 May 2025, <https://www.un.org/unispal/document/unimaginable-horrors-more-than-50000-children-reportedly-killed-or-injured-in-the-gaza-strip-unicef/>.

⁷¹ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel. 11 September 2024 (A/79/232), para 36.

⁷² Public dossier of openly available evidence on the State of Israel’s acts of genocide against the Palestinians in Gaza as at 4 February 2025, circulated under the symbol S/2025/130, p. 21.

soldiers repeatedly post photographs of themselves ‘playing’ with the toys of displaced or dead Palestinian children”⁷³.

74. On 17 July 2025, the UN Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, reiterated findings from her June report to the Human Rights Council, stating that “Israel is deliberately killing Palestinian women and girls with the intent to destroy them and the continuity of the Palestinian people”. According to estimates, women and girls accounted for 67 percent of the 57,680 Palestinians killed by 9 July 2025⁷⁴.

b) *The policy of acute hunger, food and nutritional insecurity and starvation*

75. The latest Integrated Food Security (IFS) provides context to the situation of famine in Gaza and is cited here not as evidence of conduct attributable to any party, but as background material relevant to the interpretation of the Convention, under Article II(c). It reports that famine (IPC Phase 5) has been confirmed in Gaza Governorate and is expected to spread to Deir al-Balah and Khan Younis governorates in the coming weeks. The assessment also warns that 132,000 children under five risk dying from acute malnutrition by June 2026, including 41,000 in severe condition, twice as many as the figures reported in May 2025⁷⁵.

76. In the *travaux préparatoires* of the Genocide Convention, the “subjection to conditions of life which, by lack of proper house, clothing, food, hygiene and medical care, or excessive work or physical exertion, are likely to result in the debilitation or death of the individual” was described as “slow death”. It was recognized in the commentaries to the Draft Convention that “[o]bviously, if members of a group of human beings are placed in concentration camps where the annual death rate is thirty per cent to forty per cent, the intention to commit genocide is unquestionable”⁷⁶.

77. Cited solely as contextual material and not as evidence of conduct attributable to any party, the IPC Famine Review Committee Alert highlights that it is “unprecedented to make an entire civilian population go hungry this completely and quickly. Israel is destroying Gaza’s food system and using food as a weapon against the Palestinian people”⁷⁷.

78. The aforementioned ISF report, cited solely as contextual material and not as evidence of conduct attributable to any party, further refers to the displacement of Palestinians from the most fertile agricultural areas and the devastation of lands for food production. It reported that “only 1.5% of the original cropland remained undamaged and accessible for cultivation in late July 2025, which would not provide benefits at scale nor in the short term”⁷⁸. It further notes that “current efforts, including airdrops, the Gaza Humanitarian Fund, and humanitarian aid operations, remain far from adequate even to achieve temporary improvement, given the

⁷³ Public dossier of openly available evidence on the State of Israel’s acts of genocide against the Palestinians in Gaza as at 4 February 2025, circulated under the symbol S/2025/130, p. 24.

⁷⁴ Press release by the UN Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, 17 July 2025, <https://www.ohchr.org/en/press-releases/2025/07/gaza-un-expert-denounces-genocidal-violence-against-women-and-girls>.

⁷⁵ Integrated Food Security Phase Classification (IPC), *Famine confirmed in Gaza City and projected to expand to Deir al-Balah and Khan Younis*, 22 August 2025.

⁷⁶ Draft convention on the crime of genocide prepared by the Secretary-General in pursuance of the Economic and Social Council resolution 47 (IV) (E/447, 26 June 1947).

⁷⁷ IPC Famine Review Committee Alert, Gaza Strip, 8 November 2024.

⁷⁸ Integrated Food Security Phase Classification (IPC), *Famine confirmed in Gaza City and projected to expand to Deir al-Balah and Khan Younis*, 22 August 2025, p. 9.

extreme lack of access to food among the most vulnerable populations, such as those in northern Gaza” and that “only a full-scale and sustained humanitarian aid programme can prevent further mass suffering and loss of life”⁷⁹.

c) *The systematic denial of humanitarian aid and the withholding of essential goods necessary for sustaining life in Gaza*

79. Brazil recalls that, in line with the Court’s interpretation in *The Gambia v. Myanmar*⁸⁰, the references below are cited solely as contextual material relevant to the interpretation of the Convention and are not put forward as evidence of conduct attributable to any party. In this regard, various UN reports and independent experts⁸¹ have raised concerns about the systematic withholding of lifesaving aid and basic services from Palestinians in Gaza. Such practices have been reported to result in severe deprivation, and media reports have conveyed testimonies from displaced Palestinians describing the dire situation in Gaza as a form of “slow death”⁸². These accounts raise concerns about conditions of life which, under Article II(c) of the Genocide Convention, may be relevant to the interpretation of conditions of conducive to what was referred to as “slow death” of a population.

80. According to United Nations sources⁸³, Israel has declared a “total siege” on Gaza at different moments of the conflict, allowing no electricity, no fuel, no food, and no water to enter the Strip. These reports further indicate that the entry of aid was denied through the closure of crossing points, arbitrary rejections, delays, and onerous inspections protocols⁸⁴. Moreover, it also has been reported that a hostile environment for aid distribution was created, halting UNRWA’s lifesaving operations, and that desperate unarmed Palestinians seeking food were subject to attack or fatal violence. Estimates cited in the UN news suggest that nearly 1,400 Palestinians have been killed while seeking food as of 1 August 2025⁸⁵.

81. Reports have also referred to unprecedented attacks that specifically targeted individuals and institutions tasked with aiding and protecting Palestinians, humanitarian workers (including United Nations staff) and healthcare professionals (along with their activities, facilities, vehicles, and property), who have all been reportedly subjected to deliberate and

⁷⁹ Integrated Food Security Phase Classification (IPC), 22 August 2025, p. 28.

⁸⁰ ICJ, *Gambia v. Myanmar: 7 States intervening*, Order of 25 July 2025, para. 60.

⁸¹ F. Albanese, *Genocide as colonial erasure*, 1 October 2024, <https://www.un.org/unispal/document/genocide-as-colonial-erasure-report-francesca-albanese-01oct24>.

⁸² As reported by the BBC, a displaced women in Khan Younis stated: “We’ve never lived next to rubbish before,” Asmahan al-Masri, a displaced woman in Khan Younis, told the UK’s BBC. “I cry just like any other grandmother would over her grandchildren being sick and having scabies. This is like a slow death. There is no dignity”, EURONEWS, *This is like a slow death: Environmental toll of Gaza war laid bare in first UN assessment*, 19 June 2024, <https://www.euronews.com/green/2024/06/19/this-is-like-a-slow-death-environmental-toll-of-gaza-war-laid-bare-in-first-un-assessment>.

⁸³ Press release by a group of independent human rights experts, 6 March 2025, <https://www.un.org/unispal/document/gaza-un-human-rights-experts-condemn-israeli-decision-to-re-open-gates-of-hell-and-unilaterally-change-conditions-of-truce-deal/>; UNRWA Situation Report # 176 on the Humanitarian Crises in the Gaza Strip and the West Bank, Including East Jerusalem, 20 June 2025, <https://www.unrwa.org/resources/reports/unrwa-situation-report-176-situation-gaza-strip-and-west-bank-including-east-jerusalem>; UNRWA Situation Report # 180 on the Humanitarian Crises in the Gaza Strip and the West Bank, Including East Jerusalem, 18 July 2025, <https://www.un.org/unispal/document/unrwa-situation-report-180-on-the-humanitarian-crisis-in-the-gaza-strip-and-the-west-bank-including-east-jerusalem/>.

⁸⁴ UN News, *Fuel for Gaza is a matter of life and death, UN warns*, 25 June 2025, <https://news.un.org/en/story/2025/06/1164946>.

⁸⁵ UN News, *Gaza: Nearly 1,400 Palestinians killed while seeking food, as UN warns airdrops are no solution*, 1 August 2025, <https://news.un.org/en/story/2025/08/1165552>.

ongoing attacks⁸⁶. There are also reports of journalists also been killed. According to the Commissioner-General of UNRWA, “more journalists, more medical personnel, and more United Nations staff have been killed than anywhere in the world during a conflict”⁸⁷.

d) Systematic expulsion from homes and forced displacement

82. Brazil concurs with the Court in considering that forced displacements amount to genocide when they deliberately inflict conditions of life calculated to bring about the physical destruction of the group, in whole or in part⁸⁸. Forcible transfer could therefore be an additional means by which to ensure the physical destruction, i.e., a manifestation of the specific intent to commit genocide. It is worth mentioning the context, cited here not as evidence of conduct attributable to any party, provided by the Spokesperson for the UN High Commissioner for Human Rights, indicating that “[t]he increasing issuance by Israeli Forces of ‘evacuation orders’ – which are, in effect, displacement orders – have resulted in the forcible transfer of Palestinians in Gaza into ever shrinking spaces where they have little or no access to life-saving services, including water, food and shelter, and where they continue to be subject to attacks”⁸⁹.

e) Destruction of civilian infrastructure leading to lack of proper housing, clothing and hygiene

83. In the *Brđanin* case, Trial Chamber II of the International Criminal Tribunal for the Former Yugoslavia ruled that “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” (Article II(c) of the Convention) includes “the creation of circumstances that would lead to a slow death, such as lack of proper housing, clothing and hygiene or excessive work or physical exertion”.⁹⁰

84. Brazil recalls that, in line with the Court’s interpretation in *The Gambia v. Myanmar*⁹¹, the references below are cited solely as contextual material relevant to the interpretation of the Convention and are not put forward as evidence of conduct attributable to any party. In this regard, OCHA and UNEP reports, referred to below, which indicate the widespread and systematic destruction of civilian infrastructure, raise concerns that such destruction may create circumstances conducive to the “slow death” of affected populations.

⁸⁶ Press release by the United Nations Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, 14 November 2024, <https://www.ohchr.org/en/press-releases/2024/11/un-special-committee-finds-israels-warfare-methods-gaza-consistent-genocide>; Press Release by the UN Human Rights Office in OPT, 16 July 2025, <https://www.un.org/unispal/document/ohchr-press-release-16jul25/>; UN Human Rights Office in OPT, @OHCHR_Palestine, X (9:22 am, 3 August 2025) https://x.com/OHCHR_Palestine/status/1951982038581465235; Press release by UN experts, 13 August 2025, <https://www.ohchr.org/en/press-releases/2025/08/un-experts-appalled-relentless-israeli-attacks-gazas-healthcare-system>.

⁸⁷ UNRWA, Statement of the Commissioner-General of UNRWA to the General Assembly, 4 March 2024, <https://www.unrwa.org/newsroom/official-statements/statement-commissioner-general-unrwa-general-assembly>.

⁸⁸ *Croatia Judgment*, para 163.

⁸⁹ *Gaza: Increasing Israeli “evacuation orders” lead to forcible transfer of Palestinians*. Briefing note of the Spokesperson for the UN High Commissioner for Human Rights, Ravina Shamdasani, as of 11 April 2025, <https://www.ohchr.org/en/press-briefing-notes/2025/04/gaza-increasing-israeli-evacuation-orders-lead-forcible-transfer>.

⁹⁰ ICTY, *Brđanin*, IT-99-36-T, Trial Chamber II, Judgment of 1 September 2004, para 691. See also *Croatia Judgment*, para 161.

⁹¹ ICJ, *Gambia v. Myanmar: 7 States intervening*, Order of 25 July 2025, para. 60.

85. For example, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) has reported that 78% of all structures and 92% of housing units in Gaza are destroyed or damaged; 1,35 million people are in need of emergency shelter items – while around 1,4 million are estimated to require essential household items –; and 96% of households have experienced water insecurity⁹².

86. Similarly, the United Nations Environment Programme (UNEP) has also pointed out that, by May 2024, the amount of debris resulting from the destruction of buildings and roads in Gaza since November 2023 (over 39 million tons) was already “13 times more than the combined sum of all debris generated by other conflicts in Gaza since 2008” and “more than five times the quantity of debris generated from the 2017 conflict in Mosul, Iraq”⁹³. UNEP has further highlighted that “(t)he water, sanitation, and hygiene systems are almost entirely defunct” and that “Gaza’s five wastewater treatment plants have shut down, with sewage contaminating beaches, coastal waters, soil, and freshwater with a host of pathogens, nutrients, microplastics, and hazardous chemicals”, posing “immediate and long-term threats to the health of Gazans, marine life, and arable lands”⁹⁴.

f) Destruction of culture and identity as evidence of intent to physically destroy the group

87. While the notion of cultural genocide or memoricide is not codified as a separate crime under the Genocide Convention, the ICTY recognized that “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”⁹⁵. Therefore, the systematic targeting of sites of knowledge, culture, religion, and education – integral to the intergenerational transmission of identity and collective survival – may serve as probative evidence of the *means rea* required for the crime of genocide, when considered alongside other acts enumerated in Article II of the Genocide Convention.

88. In this light, Brazil highlights, as a contextual material and not as evidence of conduct attributable to any party, UNESCO’s assessment that, as of 27 May 2025, there has been damage to “110 sites since 7 October 2023 – 13 religious sites, 77 buildings of historical and/or artistic interest, 3 depositories of movable cultural property, 9 monuments, 1 museum and 7 archeological sites”⁹⁶. In the same light, Brazil highlights that the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, stated that “Israeli attacks in Gaza since October 2023 have effectively destroyed the education system, with significant detrimental long-term repercussions for children and youth in Gaza and for the identity of the Palestinian people as a group” and that “[s]ince October 2023, Israeli security forces have caused damage to more than half of all

⁹² Office for the Coordination of Humanitarian Affairs – Occupied Palestinian Territory (OCHA-oPt), *Reported impact snapshot: Gaza Strip*, 13 August 2025, <https://www.ochaopt.org/content/reported-impact-snapshot-gaza-strip-13-august-2025>.

⁹³ UNEP, *Environmental impact of the conflict in Gaza: Preliminary assessment of environmental impacts*, 18 June 2024, https://wedocs.unep.org/bitstream/handle/20.500.11822/45739/environmental_impact_conflict_Gaza.pdf?sequence=3&isAllowed=y.

⁹⁴ UNEP, Press release, 18 June 2024, <https://www.unep.org/news-and-stories/press-release/damage-gaza-causing-new-risks-human-health-and-long-term-recovery>.

⁹⁵ ICTY, *Radislav Krstic*, Trial Judgement, 2 August 2001, para 580.

⁹⁶ UNESCO, *Gaza Strip: Damage assessment*, 5 September 2025, <https://www.unesco.org/en/gaza/assessment?hub=102070>.

religious and cultural sites in the Gaza Strip as part of their wider campaign of devastation of civilian targets and infrastructure”⁹⁷. The Independent International Commission of Inquiry also stated the following: “Israeli attacks in Gaza since October 2023 have effectively destroyed the education system, with significant detrimental long-term repercussions for children and youth in Gaza and for the identity of the Palestinian people as a group”⁹⁸.

iv) The only reasonable inference from the particular circumstances

89. Given these particular circumstances, Brazil is of the view that the Court has before it sufficient elements to find that it would be only reasonable to infer that genocidal intent exists. In addition, although not necessary for the determination of genocidal intent, the Court is bound to consider whether it is reasonable to infer other intents or motives behind the particular circumstances of the case.

90. Brazil acknowledges that its intervention should be confined to the construction of the Genocide Convention and should not extend to other areas of international law, such as international humanitarian law or the right to use force in self-defense. In determining whether *dolus specialis* is the “only reasonable inference” from the pattern of conduct, Brazil stresses that alleged claims of self-defense are legally irrelevant in situations of occupation and rejects that self-defense could be regarded as a reasonable inference for the *actus reus* in question. According to the Court’s established jurisprudence, security arguments based on self-defense cannot justify measures adopted by an occupying Power in the territory it occupies⁹⁹. Therefore, the Court is bound to consider the applicability of any alleged claims of self-defense in this situation, as well as whether such claims displace the analysis of specific intent to destroy the Palestinian people, in whole or in part.

91. The inherent right to self-defense is enshrined in Article 51 of the United Nations Charter and in customary international law. The use of force in self-defense must meet, *inter alia*, the following criteria: (i) it must respond to an armed attack by another State; (ii) it must be proportionate; and (iii) it must be reported to the Security Council.

92. In the Wall Advisory Opinion, the Court recognized “the existence of an inherent right of self-defense in the case of armed attack by one State against another State. However, Israel does not claim that the attacks against it are imputable to a foreign State”¹⁰⁰. The Court, therefore, concluded that Article 51 has no relevance in this case, given that the attacks that Israel faces originate within, and not outside, the territory under its control¹⁰¹. Moreover, the Court, in the same Opinion, declared the occupation of the Palestinian territory contrary to international law¹⁰², a finding repeatedly condemned by the General Assembly (e.g., Res. ES-10/15, 2004)¹⁰³. Accordingly, claims of security cannot justify measures taken in furtherance of an unlawful occupation.

⁹⁷ Human Rights Council, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem and Israel (A/HRC/59/26)*, Geneva: United Nations, 6 May 2025, paras 76 and 87, <https://docs.un.org/en/A/HRC/59/26>.

⁹⁸ A/HRC/59/26, 6 May 2025, para 76.

⁹⁹ *Wall Advisory Opinion*, para 139.

¹⁰⁰ *Wall Advisory Opinion*, para 139.

¹⁰¹ *Wall Advisory Opinion*, paras 139 and 147-149.

¹⁰² *Wall Advisory Opinion*, para 163.

¹⁰³ United Nations General Assembly. *Advisory opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, including in and around East Jerusalem*. Resolution ES-10/15, 20 July 2004.

93. As for the criterion of proportionality, the acts perpetrated by Israel in Gaza since 7 October 2023 – some of which referred to above – have been characterized as “violations of the customary rules of distinction, proportionality, and precaution”, bearing in mind that “indiscriminate attacks, which do not distinguish military targets from protected persons and objects, cannot be proportionate and are always unlawful.”¹⁰⁴ More recently, the president of the International Committee of the Red Cross stated that “[t]here is no excuse for what is happening in Gaza. The scale of human suffering and the stripping of human dignity have long exceeded every acceptable standard – both legal and moral”.¹⁰⁵

94. Pursuant to Article 51 of the UN Charter, “[m]easures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council”, and according to the Court’s case law, “the absence of a report may be one of the factors indicating whether the State in question was itself convinced that it was acting in self-defense”¹⁰⁶. The Court has never held that the mere submission of reports to the Security Council under Article 51 of the Charter suffices, by itself, to establish the lawfulness of measures taken in alleged self-defense, nor that such reports are determinative of legality¹⁰⁷. More importantly, the Court concluded that Article 51 has no relevance in the case of Israel’s measures in the Occupied Palestinian Territory¹⁰⁸. Accordingly, Israel cannot rely on Article 51 to justify its conduct, and any claims of self-defense in this context are legally irrelevant.

95. Brazil considers that the Court has before it sufficient elements that militate against the reasonableness of inferring that such patterns of conduct are intended for self-defense¹⁰⁹.

96. As reprehensible as the terrorist attacks perpetrated by Hamas in October 2023 are, the Court is bound to reaffirm its case law that any suggestion, when translated into policy or military practice, that the entire population of Gaza – including women, children, journalists, and UN officials – consists solely of terrorists capable of threatening the State of Israel is inconsistent with international humanitarian law. The prohibition on collective punishment is absolute under international humanitarian law, as established in Article 33(1) of the Fourth Geneva Convention. Similarly, indiscriminate attacks are categorically prohibited under Article 51(4) and (5) of Additional Protocol I, and both rules reflect customary international law. Consequently, measures targeting an entire population cannot be justified by claims of security, and any characterization of the population of Gaza as a collective threat cannot be regarded as a reasonable inference, but rather as evidence pointing to unlawful conduct. Public statements by Israeli officials equating the entire population of Gaza with Hamas raise concerns about deliberate attempts at dehumanization and justification of violations, highlighting

¹⁰⁴ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, presented to the Human Rights Council, 1 July 2024, A/HRC/55/73 [*Anatomy of a Genocide Report*], para 56.

¹⁰⁵ Statement by the president of the International Committee of the Red Cross, Mirjana Spoljaric, on the humanitarian situation in Gaza, 25 July 2025, <https://www.icrc.org/en/statement/israel-and-occupied-territories-icrc-president-calls-urgent-collective-action-states-end-suffering>.

¹⁰⁶ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. *Merits, Judgment*. I.C.J. Reports 1986 [the “Nicaragua Judgment”], para 200.

¹⁰⁷ *Nicaragua Judgment*, para 200.

¹⁰⁸ *Wall Advisory Opinion*, para 139.

¹⁰⁹ In this regard, while lamenting that at least 242 journalists have been killed in Gaza since October 2023, the United Nations Secretary-General underscored, on 11 August 2025, that journalists and media workers “must be protected and they must be allowed to carry out their work freely, free from fear and free from harassment”, UN News, *Gaza: Guterres urges probe into killing of journalists, as child malnutrition deaths rise*, 11 August 2025, <https://news.un.org/en/story/2025/08/1165628>.

circumstances that may be relevant to the interpretation of the Genocide Convention, in particular Articles III(c), II(a), and II(b). Furthermore, the fact that Israel is not allowing the entry of journalists and media professionals into Gaza may be regarded as inconsistent with its allegations of engaging in lawful activity there.

97. Israeli authorities have publicly expressed the wish to expel Palestinians from the Gaza Strip. Expelling population by force is a measure which itself would constitute a serious breach of international law, including Article 49 of the Fourth Geneva Convention, which prohibits individual or mass forcible transfers and deportations of protected persons from occupied territory regardless of motive. Such statements, which directly contemplate the removal of the Palestinian population to other countries, raising concerns about policies of forcible transfer directed against the Palestinian population, which may be relevant to the interpretation of Article II(c) of the Genocide Convention. While the Court must assess concrete circumstances on the ground able to provide a reasonable inference of the commission of genocide, these calls for expulsion cannot be neutralized by reference to any other alleged objectives invoked by Israel.

C. The standard of reasoning and the good administration of justice

98. Brazil is mindful of the responsibilities of the Court as the principal judicial organ of the United Nations, and acknowledges that its contentious judgments constitute a significant contribution to the principles of the UN Charter and to the international rule of law.

99. In the present case, the gravity of the humanitarian situation in Gaza must be considered alongside the alleged breaches of peremptory norms of general international law (*jus cogens*) – norms that “reflect and protect fundamental values of the international community”¹¹⁰, and “give rise to obligations owed to the international community as a whole (obligations *erga omnes*), in relation to which all States have a legal interest”¹¹¹.

100. The case involves charges of exceptional gravity implicating the fundamental interests of the international community, safeguarding the very existence of protected human groups and ensuring the effectiveness of the Genocide convention, one of the pillars of international human rights law.

101. Brazil submits that claims involving charges of exceptional gravity should be accepted or rejected through fully conclusive reasoning, which is necessary for the proper administration of justice.

102. In discharging its responsibilities, the Court should conclusively state whether genocidal intent is established. In this regard, it should be demonstrated – on the totality of evidence – that the *only reasonable inference* is that genocidal intent exists or, conversely, that the *only reasonable inference* is that there is no genocidal intent in the systematic attacks against the Palestinian people in the Gaza Strip.

103. The elevated standard of proof previously established by this Court with regard to the demonstration of intent in cases concerning allegations of genocide imposes upon the parties a

¹¹⁰ ILC Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) 2022, Conclusion 2.

¹¹¹ ILC Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) 2022, Conclusion 17.

correspondingly heightened burden on the parties. In view of the exceptional gravity of genocide, Brazil respectfully submits that a correlative responsibility is incumbent upon this Court to apply that standard with particular rigor and to articulate its application with commensurate precision, mindful of the *erga omnes* nature of the obligations at stake.

104. As Judge Yusuf has aptly remarked, “pursuant to Article 56 of the Statute of the Court, a judgment shall state the reasons on which it is based. This obligation stems from the inherently judicial character of the Court. It contributes not only to greater transparency in the Court’s decision-making function, but also to the authority and persuasiveness that its Judgments command in the field of international law¹¹²”.

105. In this regard, the unique circumstances of the present case, which significantly differ from the precedents previously considered by the Court in matters of genocide, demand not only a stringent application of the standard of proof but also a clear and reasoned explanation of the grounds on which the Court may determine whether the specific intent (*mens rea*) required under the Genocide Convention has or has not been established, hereby ensuring the Convention’s *effet utile* and vindicating the fundamental interests of the international community.

V - CONSTRUCTION OF ARTICLE III FOR WHICH BRAZIL CONTENDS

106. Article III of the Genocide Convention provides:

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

107. In light of the dual nature of responsibility, Brazil concurs with the interpretation that the provision not only imposes an obligation on States to punish individuals not under State instructions, direction or control who have committed these acts, but also establishes a duty for States to refrain from committing them.

108. Although "complicity" appears to depend on the actual commission of genocide, Brazil notes that "conspiracy," "incitement," and "attempt" are not contingent upon its occurrence. Therefore, a State may be held responsible for the crimes outlined in Article III (b)-(d), even if no act of genocide has been committed as a result of these actions¹¹³.

109. Brazil underscores that direct and public incitement to commit genocide constitutes a distinct crime under Article III(c) of the Genocide Convention and “an inchoate offence (“*crime formel*” in civil law), consummated simply by the use of a means or process calculated

¹¹² *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Reparations, Judgment*, I.C.J. Reports 2022, Separate opinion of Judge Yusuf, para. 28.

¹¹³ *Croatia Judgment*, para 517.

to produce a harmful effect, irrespective of whether that effect is produced”¹¹⁴. Indeed, in relation to the crime of direct and public incitement to commit genocide, the ICTR has established that “such a crime must be punished as such, even where such incitement failed to produce the result expected by the perpetrator”¹¹⁵.

110. The *actus reus* of the autonomous crime of incitement to commit genocide necessitates that it meet two key criteria: (i) it must be direct; and (ii) it must be public. According to the International Law Commission, the “[e]lement of public incitement requires communicating the call for criminal action to a number of individuals in a public place or to members of the general public at large. Thus, an individual may communicate the call for criminal action in person in a public place or by technical means of mass communication, such as by radio or television”¹¹⁶, or, more recently, social media.

111. The “direct” element of incitement, as articulated by the ICTR, “implies that the incitement assume a direct form and specifically provoke another to engage in a criminal act, and that more than mere vague or indirect suggestion goes to constitute direct incitement”¹¹⁷. Incitement must therefore be distinguished from other forms of hate speech.

112. Brazil recalls that, in line with the Court’s interpretation in *The Gambia v. Myanmar*¹¹⁸, the references below are cited solely as contextual material relevant to the interpretation of the Convention and are not put forward as evidence of conduct attributable to any party. In this regard, public statements delivered by Israeli authorities, both from the Executive and the Legislative branch, as per report submitted by South Africa to the Security Council, may raise concern of direct and public incitement to commit genocide¹¹⁹. The report includes remarks such as “[e]rase Gaza. Nothing else will satisfy us”¹²⁰; “[t]he 10-year-old boy there now, that’s the boy who will murder our boy a few years from now. This story will never end. You understand? You don’t keep the seed of Amalek alive; you need to kill every one of them”¹²¹; “I said to ‘burn Gaza. ‘What does it mean to burn? To go in and rip them apart. There should be no thoughts, no considerations (...) Whoever is left there needs to be eliminated, period”¹²².

¹¹⁴ ICTR, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, Appeal Judgment (ICTR-99-52-A), 28 November 2007, para. 720.

¹¹⁵ ICTR, Trial Chamber I, *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Judgement, 2 September 1998, para. 562.

¹¹⁶ Draft Code of Crimes Against the Peace and Security of Mankind, art. 2(3)(f); Report of the International Law Commission to the General Assembly, 51 U.N. ORGA Supp. (No. 10), at 26, U.N. Doc. A/51/10(1996).

¹¹⁷ ICTR, Trial Chamber I, *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Judgement, 2 September 1998, para. 557.

¹¹⁸ ICJ, *Gambia v. Myanmar: 7 States intervening*, Order of 25 July 2025, para. 60.

¹¹⁹ Republic of South Africa, *Public dossier of openly available evidence on the State of Israel’s acts of genocide against the Palestinians in Gaza as at 4 February 2025*, S/2025/130; submitted in: *Letter to the President of the Security Council*, 29 May 2025. United Nations, New York.

¹²⁰ MK Nissim Vaturi, @nissimv, Tweet (8:04 am, 9 October 2023), <https://x.com/nissimv/status/1711261388809568458>.

¹²¹ Vaturi: ‘Giving the Gaza Strip to the Palestinian Authority – This is Oslo 2’”, 93fm (5 November 2023), <https://www.93fm.co.il/radio/954562/> [5:05-09:02]. See also the “Statement By Israel’s Minister of Finance Bezalel Smotrich at Mimouna In Ofakim / Sponsored by B.M. Tech LTD.”, Beer Sheva Times (30 April 2024), <https://www.youtube.com/watch?v=poyayz7b6jI>; Noa Shpigel, “Israel’s Far-right Minister Smotrich Calls for ‘No Half Measures’ in the ‘Total Annihilation’ of Gaza”, Haaretz (30 April 2024), <https://www.haaretz.com/israelnews/2024-04-30/tyarticle/.premium/smotrich-calls-for-no-half-measures-in-the-total-annihilation-of-gaza/0000018f-2f4c-d9c3-abc-f7f7d25460000>.

¹²² “MK Vaturi: ‘Burn Gaza - there are no more innocents left there’”, Israel National News (10 January 2024), <https://www.israelnationalnews.com/news/383357>; “Ahead of Hague hearing, Likud MK doubles down on call to ‘burn Gaza’”.

113. Brazil underscores that direct and public statements calling for Palestinians' extermination and their mass expulsion from Gaza, the deprivation of conditions of life essential to the survival of Palestinians, and the total destruction of Gaza have not ceased since South Africa referred the matter to the Court on 29 December 2023. The most recent compilation of such statements was submitted to the United Nations in a letter addressed to the President of the Security Council by South Africa on 28 February 2025¹²³.

114. Brazil further recalls that “[t]he conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State¹²⁴. In this case, the incitement to genocide is attributable to the State itself, as under international law a State is responsible for the acts of its agents undertaken in their official capacity¹²⁵. If, at a subsequent stage, agents acting on behalf of the State (such as members of the Armed Forces) commit any acts enumerated in Article II (*actus reus*), the genocidal conduct must likewise be attributed to the State itself.

115. Furthermore, as articulated by the ICTR Trial Chamber, “the direct element of incitement should be viewed in the light of its cultural and linguistic content. Indeed, a particular speech may be perceived as ‘direct’ in one country, and not so in another, depending on the audience”¹²⁶.

116. In this regard, the Court should consider public statements delivered by many Israeli authorities with reference to biblical references that could have a direct impact on Israeli soldiers, such as “the memory of Amalek must be erased¹²⁷”. The Court should consider the cultural significance of Amalek within Jewish culture and assess whether these references could be interpreted as incitement to commit crimes against Palestinians in Gaza, including children.

117. The use of dehumanizing language can also play a crucial role in determining whether a speech constitutes direct and public incitement to commit genocide. During the Rwandan Genocide, for example, perpetrators frequently referred to Tutsis as “cockroaches”. In the present case, Israeli authorities have systematically refer to the Palestinian population in Gaza as “human animals”, “terrorists”, and “Amalek”, while systematically suggesting that there would be no innocents or “uninvolved” in Gaza.

118. Considering that incitement is an autonomous crime, which does not depend on the actual commission of genocide, the Court is bound to consider whether the same standard of proof for establishing the intent of the perpetrator applies. In this light, the Court is required to determine whether the content of these public statements satisfies (i) the public element of

¹²³ Republic of South Africa, *Public dossier of openly available evidence on the State of Israel's acts of genocide against the Palestinians in Gaza as at 4 February 2025*, S/2025/130; submitted in: *Letter to the President of the Security Council*, 29 May 2025, United Nations, New York.

¹²⁴ ARSIWA, Article 4.

¹²⁵ ILC Commentaries to the ARSIWA, Yearbook of the International Law Commission, 2001, vol. II, Part Two, pp. 40-2. Regarding public statements by Israeli officials, see also footnotes 16-18 above.

¹²⁶ ICTR, Trial Chamber I, *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 557.

¹²⁷ MK Boaz Bismuth (Likud), @BismuthBoaz, Tweet (9:02 am, 16 October 2023), <https://twitter.com/BismuthBoaz/status/1713812686784311358>.

incitement, as they were disseminated to a broad audience through mass media; (ii) the direct element, as they explicitly call for the extermination of the Palestinian people through recurring references to the erasure, elimination, and burning of Gaza; and (iii) the cultural-linguistic element, as the biblical reference to “Amalek” in the Israeli context bears an unequivocal connotation to extermination¹²⁸.

119. Brazil contends that the *mens rea* required for the crime of direct and public incitement constitutes a distinct crime irrespective of the commission of genocide itself. When the genocidal intent is openly and directly expressed, including through culturally coded language, by a State official, it is attributable to the State under the rules governing the attribution of responsibility¹²⁹. Such attribution does not require the demonstration of a general plan or policy, since direct and public incitement to commit genocide is an autonomous crime under Article III(c) of the Genocide Convention, punishable irrespective of whether the crime of genocide is subsequently carried out.

VI - DOCUMENTS IN SUPPORT OF THE DECLARATION OF INTERVENTION

120. In addition to the readily available documents referred to above, the following documents are appended hereto in support of this Declaration of Intervention:

Annex 1: United Nations Depository Notification confirming Brazil’s ratification of the Genocide Convention, dated 30 April 1952.

Annex 2: Letter No. 161308 from the Registrar to States Parties to the Genocide Convention, sent pursuant to Article 63, paragraph 1, of the Statute of the Court, dated 6 February 2024.

VII - CONCLUSION

121. On the basis of the information set out above, the Federative Republic of Brazil avails itself of the right conferred upon it by Article 63, paragraph 2, of the Statute to intervene in the proceedings in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*.

122. Brazil’s intervention is strictly confined to matters of interpretation of the Genocide Convention, particularly Articles I, II and III. By exercising this procedural right, Brazil seeks to ensure the uniform interpretation of the Convention, in accordance with its *erga omnes partes* obligations. The proper construction of these provisions is indispensable to safeguarding the Convention’s *effet utile* and ensuring the effectiveness of the international legal order against genocide.

¹²⁸ ICTR, *Prosecutor v. Jean-Paul Akayesu*, Judgment, Case No. ICTR-96-4-T, Trial Chamber I, 2 September 1998, para. 555-557.

¹²⁹ ARSIWA, Article 4.

123. This intervention also reflects Brazil's long-standing commitment, under both its international and domestic legal orders, to the prevention and punishment of genocide. Genocide has been criminalized under Brazilian law since 1956 (Law No. 2.889/1956).

124. Brazil further recalls that the determination of genocidal intent requires careful assessment of both direct and circumstantial evidence. Patterns of conduct, systematic nature of attacks, and public statements by State officials are all relevant indicators from which *dolus specialis* may be inferred. Taken together, the acts described meet the composite requirements of Article II of the Convention, including the presence of specific intent. Accordingly, all conditions established by the Convention for the legal characterization of genocide are, in Brazil's submission, fulfilled.

125. Furthermore, Brazil stresses that arguments of self-defence must not be considered applicable to measures taken by an occupying Power within occupied territory. The Court has consistently held that security concerns cannot displace its central task under the Convention: to assess whether the acts in question reveal the intent to destroy, in whole or in part, a protected group.

126. Finally, as stressed before, the obligations emanating from the Genocide Convention of an *erga omnes partes* character are owed to all States Parties. This means that every State has a legal interest in ensuring that the Convention is given a faithful and effective interpretation. In the present case, that duty requires the Court not only to reaffirm the prohibition of genocide as a peremptory norm, but also to clarify its scope and to ensure its enforcement against conduct attributable to a State. Only by doing so can the Convention fulfil its ultimate purpose – safeguarding the very existence of human groups.

127. For Brazil, the integrity of this Convention is inseparable from the protection of human groups whose very existence is threatened. In these proceedings, the Court's role in safeguarding the Convention's object and purpose is therefore of fundamental importance.

128. The Federative Republic of Brazil reserves the right to amend or supplement this Declaration in the course of the written and oral proceedings and, if need be, by filing a further Declaration with the Court.

129. The Federative Republic of Brazil appoints H.E. Mr. Fernando Simas Magalhães, Ambassador of the Federative Republic of Brazil to the Kingdom of the Netherlands as Agent in the present proceedings.

130. The Registrar of the Court is kindly requested to transmit all communications with respect to these proceedings to the following address: "*Embassy of the Federative Republic of Brazil - Mauritskade 19, 2514 HD The Hague, Kingdom of the Netherlands*".


FERNANDO SIMAS MAGALHÃES
*Ambassador of the Federative Republic of Brazil
to the Kingdom of the Netherlands*

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FILE NO.: C.N.56.1952.TREATIES

30 April 1952

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

RATIFICATION BY BRAZIL

Sir,


I am directed by the Secretary-General to inform you that, on 15 April 1952, the instrument of ratification by the Government of Brazil of the Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature at Paris on 9 December 1948, was deposited with the Secretary-General of the United Nations in accordance with the provisions of Article XI of the Convention.

In accordance with the provisions of Article XIII of the Convention, the ratification by Brazil will become effective on 14 July 1952, that is to say, on the ninetieth day following the deposit of the instrument of ratification with the Secretary-General.

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

..... I also have the honour to transmit to you, in accordance with Resolution 598 (VI) of the General Assembly, a copy of a letter from the Alternate Representative of Brazil to the United Nations concerning the reservations made by certain States to the said Convention.

Accept, Sir, the assurances of my highest consideration.


Ivan S. Kerno
Assistant Secretary-General
Legal Department

New York, April 9, 1952.

43.

Sir,

I have the honour to transmit to Your Excellency for deposit the instrument of ratification by the Brazilian Government of the Convention on the Prevention and Punishment of the Crime of Genocide, signed on December 11, 1948.

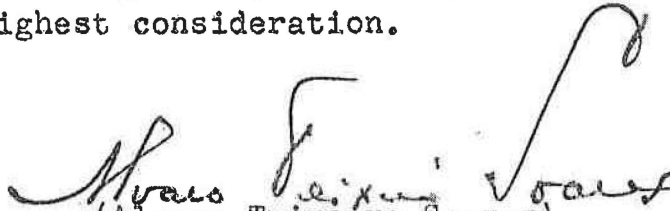
2. At the same time, my Government wishes to inform Your Excellency that it objects to the reservations made to the Convention on Genocide by the Union of Socialist Soviet Republics, Byelorussia and Ukraine, on December 16, 1949; by Czechoslovakia on December 28, 1949; by Bulgaria, on July 27, 1950; by Rumania, on November 2, 1950; by Poland on November 14, 1950, and by the Republic of the Philippines on July 6, 1950. The Brazilian Government considers the above mentioned reservations as incompatible with the object and purpose of the Convention on the Prevention and Punishment of the Crime of Genocide.

Genocide.

3. The position taken by my Government is founded on the Advisory Opinion of the International Court of Justice of May 28, 1951, and on the Resolution adopted by the VI Session of the General Assembly on January 12, 1952, on reservations to multilateral conventions.

4. The Brazilian Government reserves the right to draw any such legal consequences as it may deem fit from its formal objection to the reservations listed above.

I avail myself of this opportunity to present to you, Sir, renewed assurances of my highest consideration.


(Alvaro Teixeira Soares)
Alternate Representative of Brazil
to the United Nations

UNITED NATIONS



NATIONS UNIES

COPY

New York, April 9, 1952

43.

Sir,

I have the honour to transmit to Your Excellency for deposit the instrument of ratification by the Brazilian Government of the Convention on the Prevention and Punishment of the Crime of Genocide, signed on December 11, 1948.

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4. The Brazilian Government reserves the right to draw any such legal consequences as it may deem fit from its formal objection to the reservations listed above.

I avail myself of this opportunity to present to you, Sir, renewed assurances of my highest consideration.

signed:

Alvaro Teixeira Soares
Alternate Representative of Brazil
to the United Nations



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.

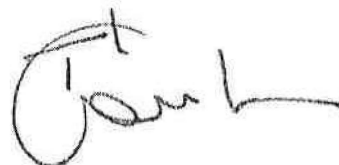
In the above-mentioned Application, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the “Genocide Convention”) is invoked both as a basis of the Court’s jurisdiction and as a substantive basis of the Applicant’s claims on the merits. In particular, the Applicant 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.

J.

[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