INTERNATIONAL COURT OF JUSTICE

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

(SOUTH AFRICA v. ISRAEL)

DECLARATION OF INTERVENTION BY THE REPUBLIC OF FIJI

March 2026

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INTERNATIONAL COURT OF JUSTICE

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DECLARATION OF INTERVENTION BY FIJI

To the Registrar, International Court of Justice, the undersigned being duly authorized by the Government of the Republic of Fiji ("Fiji"),

1. On behalf of the Government of Fiji, I have the honour to submit to the Court a Declaration of Intervention ("Declaration") pursuant to Article 63(2) of the Statute of the Court, in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*.

2. Article 82(1) of the Rules of Court, provides: "A State which desires to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall file a declaration to that effect, signed in the manner provided for in Article 38, paragraph 3, of these Rules. Such a declaration shall be filed as soon as possible, and no later than the date fixed for the filing of the Counter Memorial."

3. Article 82(5) of the Rules of Court provides that the declaration filed by a State wishing to avail itself of the right of intervention must specify the name of an agent, the case and the convention to which the declaration relates, and 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; and

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

4. Fiji avails itself of the right conferred by Article 63(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)*. The present Declaration meets the requirements set out in Article 63 of the Statute and Article 82 of the Rules and is, thus, admissible.

5. Fiji reserves the right to supplement or amend this Declaration, and any Written Observations submitted with respect to it, as it considers necessary in response to subsequent developments in these proceedings.

6. Fiji has appointed **H.E. Amb. Filipo Tarakinikini as Agent** for the purposes of these proceedings. It is requested that all communications to the Declarants in this case be sent to the following address:

H.E. Amb. Filipo Tarakinikini
Permanent Mission of Fiji to the United Nations
801 2nd Avenue
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NY 10017 USA
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I. FIJI IS PARTY TO THE CONVENTION

7. This Declaration is filed as Fiji's exercise of its right of intervention conferred by Article 63(2) of the *Statute of the International Court of Justice* in its capacity as Contracting Party to the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide* ("Genocide Convention"). This Declaration addresses each of the requirements under Article 82(5) of the Rules of Court and is filed at the earliest opportunity reasonably available to the Government of Fiji, in accordance with Article 82(1) of the Rules of Court. In accordance with Article 82(1), the Declaration is signed in the manner provided for in Article 38(3) of the Rules, by the Agent of Fiji.

8. The United Kingdom acceded to the Genocide Convention on 30 January 1970 and Fiji became independent from the United Kingdom on 10 October 1970. Fiji became a party to the Genocide Convention, by succession from the United Kingdom, on 11 January 1973, as registered by the UN Office of Legal Affairs on 13 January 1970. Fiji has made no reservation or declaration to the Convention, nor objected to a reservation made by any other party. Accordingly, the requirement stipulated in Article 82(2)(a) of the Rules is met.

9. The Government of Fiji contends that the case at hand raises concerning issues of the construction of provisions of the Genocide Convention, and that Fiji accordingly has a right to intervene pursuant to Article 63 of the Statute. Fiji recognises that the construction of the Genocide Convention to be rendered in the Court's judgment will be equally binding upon Fiji.

II. PARTICULARS OF THE CASE AND CONVENTION

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

11. In its Application, South Africa submitted that,

> "...the conduct of Israel — through its State organs, State agents, and other persons and entities acting on its instructions or under its direction, control or influence — in relation to Palestinians in Gaza, is in violation of its obligations under the Genocide Convention."[1]

12. South Africa's Application instituting proceedings ("Application") was accompanied by a Request to the Court for the indication of provisional measures. On 26 January 2024, in response to the Request of South Africa, the Court made an Order indicating provisional measures.[2]

13. On 6 February 2024, as provided in Article 63(1) of the *Statute of the International Court of Justice*, the Registrar notified Fiji, as party to the

[1] Application instituting proceedings submitted by South Africa on 29 December 2023.
[2] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024.*

Genocide Convention, that the Genocide Convention had been invoked (see Annex I).[3]

III. PROPOSITIONS IN THIS INTERVENTION

14. State parties to the Genocide Convention have an interest to contribute to a proper understanding of the scope of the Convention, including the meaning of the obligation to prevent genocide and the intention to commit genocide. The Court has never been called upon before to define the scope of the Convention in the context of intense urban warfare. Fiji wishes to take this opportunity to intervene to address these issues because it is our contention that this question will remain topical even after the Court delivers its judgement in the case concerning the Genocide Convention currently before it in *The Gambia v Myanmar*. The war between Hamas and Israel raises specific issues concerning combatants embedded within civilian infrastructure, the use of civilian shields, civilians directly participating in the hostilities, civil-military dual use objects and especially combatant strategies employing massively amassed civilian shields. This situation comes before the Court as a novel problem in application of the Genocide Convention. It is, therefore, important that intervening States be given the fullest opportunity to present their views on these matters. The Court's interpretation and application of the Genocide Convention in the context of urban armed conflict, and especially concerning an apparent strategy of deliberate use of civilian infrastructure for the conduct of hostilities in order to maximise civilian casualties if the opponent defends itself, will have considerable implications for the conduct of armed conflicts by States anywhere in the urbanised world. It is Fiji's concern that a more lenient and expansive interpretation of the Genocide Convention, as proposed by South Africa and certain states and NGOs, will endanger future peacekeeping operations and participation by States in legitimate urban warfare operations by diminishing the incentive for States to assist therein. For example, if a State were willing in principle to participate in an international peacekeeping force, for instance to disarm a terrorist organization, but were thereby to become

[3] Letter No. 161308 dated 6 February 2024 to States Parties to the Genocide Convention (except South Africa and Israel) from the Registrar of the International Court of Justice.

vulnerable in this scenario to genocide charges brought by the organisation's supporting States, then the peacekeeping State would be reluctant to volunteer its military forces. This outcome would impair both peacekeeping operations and could seriously impair the integrity and purpose of the Genocide Convention.

15. Fiji regularly provides armed forces for United Nations peacekeeping. Like all professional armed forces, our military utilises reporting equivalent to what would be described by many States as After-Action Reviews ('AARs'). These serve to ensure that military operations comply with domestic and international law, while providing a framework for command accountability and operational effectiveness. They are critical in evaluating adherence to international humanitarian law and the Rules of Engagement that apply to our military operations. Fiji is concerned that depreciating the weight accorded to, or even enabling disregard for, AAR-style military reports by the Court will undermine the purpose, significance and utility of post-action military reporting, thus undermining military compliance and accountability. This undermining of military reports is a legal danger posed to all professional armed forces worldwide. The experiences, concerns and perspectives of Fiji offer the Court insights that can help frame its legal considerations in this case. If the Court affords us an opportunity, we will expand on the distinctions to be drawn between military reports of different types and sources and will address the distinctions between various military report systems.

16. Finally, Fiji suggests that the Court might, in cases concerning State Responsibility for genocide, whereby an appropriately high evidentiary standard is applied, require that the criminal evidence brought before it be no less probative than in serious criminal cases. In the *Bosnia and Herzegovina v Serbia and Montenegro* and in the *Croatia v Serbia and Montenegro* genocide cases brought before this Court, an international criminal tribunal had previously conducted hearings and had established on the basis of evidence provided by prosecutors and defendants, subject to criminal procedures that provided for cross examinations and appropriate protection of defendants' and victims' rights, that criminal culpability was proved on the facts beyond a reasonable doubt. For example, the International Criminal Tribunal for Yugoslavia ("ICTY") had already rendered judgements relevant to the Bosnia

Herzegovina case before the Court, such as the ICTY *Krstic* case, on which the Court relied in 2007.[4] This Court can apply no lesser standards.

IV. CONSTRUCTION OF PROVISIONS OF THE CONVENTION

IV.A. Construction regarding Right of Intervention

17. South Africa invokes Article IX of the Convention as the basis for the Court's jurisdiction in this case. Fiji contends that, with regard to the admissibility of declarations of intervention, the Court held in its Order of 5 June 2023 in the *Ukraine v. Russia Genocide* case that:

> "The Court does not consider that it must decide on the existence and scope of the dispute between the Parties before ruling on the admissibility of the declarations of intervention. Article 63 of the Statute gives States a right to intervene whenever the construction of a multilateral convention is in question, and Article 82, subparagraph 2 (b) of the Rules of Court provides that a State seeking to intervene must identify 'the particular provisions of the convention the construction of which it considers to be in question'."[5]

Moreover, responsibilities set out in the Genocide Convention are qualified as *erga omnes*, to the international community as a whole,[6] and *erga omnes partes*, to all parties to the Genocide Convention,[7] including by South Africa and Israel to Fiji.

IV.B. Construction regarding Substantive Provisions of the Convention

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[4] *International Criminal Tribunal for Yugoslavia v Radislav Krstic* (ICTY IT-98-33), was the first case of conviction for genocide at the ICTY.

[5] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Admissibility of the Declarations of Intervention,* Order of 5 June 2023, para. 68.

[6] *Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970*, p. 32, para. 33; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p. 47, para. 87.

[7] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020*, p.17, para. 41; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment, I.C.J. Reports 2022*, pp. 515-518, pars. 107-113.

18. Fiji identifies the following provisions of the Genocide Convention the construction of which is in question in the present case, as required under Article 82(5)(b) of the Rules of Court:

- Article I – General obligations
- Article II – Definition of the crime of genocide
- Article III – Acts punishable under the Convention
- Article IV – Duty to punish persons committing genocide
- Article V – Obligation to enact legislation
- Article VI – Trial of persons charged with genocide

IV.B.1. General Criteria for Treaty Interpretation

19. In the *Bosnia Herzogovina v Serbia Montenegro* case, the Court laid down the accepted principles of treaty interpretation to be used when interpreting the provisions of the Genocide Convention to attribute State Responsibility. The international law of Treaties and of State Responsibility apply:

> "In order to determine whether the Respondent breached its obligation under the Convention, as claimed by the Applicant, and, if a breach was committed, to determine its legal consequences, the Court will have recourse not only to the Convention itself, but also to the rules of general international law on treaty interpretation and on responsibility of States for internationally wrongful acts."[8]

20. The Court in that case went on to note that Articles 31 and 32 of the *Vienna Convention on the Law of Treaties* lay down rules of treaty interpretation:

> "The Court observes that what obligations the Convention imposes upon the parties to it depends on the ordinary meaning of the terms of the Convention read in their context and in the light of its object and purpose. To confirm the meaning resulting from that process or to remove ambiguity or obscurity or a manifestly absurd or unreasonable result, the supplementary means of

[8] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007,* pp. 109-110, para. 160.

> interpretation to which recourse may be had include the preparatory work of the Convention and the circumstances of its conclusion. Those propositions, reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, are well recognized as part of customary international law."[9]

21. Fiji submits that these accepted international principles of treaty interpretation apply in the current case. There are no convincing reasons for departing from these principles, or creating additional or special principles for Treaty interpretation, or for making an exceptional case of the interpretation of the Genocide Convention. Indeed, doing so would dismantle the international law of treaty interpretation.

IV.B.2. Unacceptable Vague New Notion of Holistic Treaty Interpretation

22. Several interventions in this case urge the Court to dismantle the accepted principles of treaty interpretation by introducing the novel notion of a so-called holistic approach to treaty interpretation. In Fiji's view, that holistic approach goes considerably beyond settled law of treaty interpretation and is especially dangerous to the international rule of law when dealing with the crime of genocide. The approach departs from ordinary meaning of the terms of the Genocide Convention. It exhibits disregard for the international rules for treaty interpretation and the arrogation of a novel framework for genocide determinations, despite parties in the current case not having given the Court a discretion to depart from existing rules of treaty interpretation or to decide the dispute *ex aqueo et bono*.

23. The interventions before the Court in this case propose a 'holistic approach' that seems to reinterpret the meaning of genocidal intent. The proving of the existence of *dolus specialis*, the specific intent unique to committing of genocide, is the fundamental differentiating element of genocide. It follows that the so-called holistic approach to treaty interpretation for the Genocide Convention undermines the distinctive character of the prohibition against genocide in international law. It dismantles the distinctive intent essential to the framework and structure of the prohibition on genocide.

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[9] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*, pp. 109-110, para. 160.

24. Fiji therefore respectfully requests that this so-called holistic approach to interpretation of the Genocide Convention be disregarded.

IV.C. Questions of How to Weigh Evidence of Crimes under the Genocide Convention

25. Pursuant to Article 63(1) of the Statute of the International Court of Justice, intervenors can make submissions to the Court concerning the construction of a convention to which they are parties. Thus, interventions are confined to questions of treaty interpretation and application. Fiji understands that the Court may not consider any evidence related to the merits of a dispute offered in the submissions of intervenors. To the contrary, the Court is obliged to disregard submissions, or the parts thereof, that adduce evidence or address the merits of a case.

26. Fiji acknowledges that it may not make assertions of evidence relating to factual elements in its submission and does not seek to do so. Rather, in this section of its submission, Fiji seeks to address issues concerning how the Genocide Convention requires that evidence be considered *as a matter of law* in a manner consistent with the plain meaning of its provisions. This section discusses general, abstract or procedural questions flowing from proper interpretation of the Genocide Convention. This is distinct from merely arguing the merits and facts in evidence, as it instead concerns *judicial questions* and *issues of law governing admission and weighing of evidence* under the Genocide Convention. Fiji seeks to identify and mitigate possible *structural due process risks in the Court's fact-finding approach.* Broad issues of concern include: standard of proof, burden of proof, and the variable weights attributed to diverse sources of evidence from military reports, UN reports, NGO reports and from diplomatic relationships.

IV.C.1. Standard of Proof

27. In *Croatia v Serbia Montenegro*, the Court required a high standard of proof that is "fully conclusive"[10], adducing "persuasive and

[10] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, para 178.

consistent evidence"[11] for a pattern of facts giving rise to an inference of genocidal intent. Similarly, in the *Bosnia and Herzegovina v Serbia Montenegro* case, mention was made of the requirement for a "conclusive standard" that could "only point to the existence of such intent".[12] This requirement for absolute certainty implies a standard of proof that is at least equivalent to, and possibly exceeds, the criminal standard of proof 'beyond reasonable doubt'.

28. In the Court's 2026 hearing of the proceedings between *The Gambia v Myanmar* concerning interpretation and application of the Genocide Convention, Judge Hmoud formulated an important question concerning whether individual responsibility and State Responsibility for genocide are distinct regimes, such that the genocidal *dolus specialis* differs when attributing it to an individual or to a State. In the view of Fiji, the *Convention on the Prevention and Punishment of the Crime of Genocide* specifies that genocide is a crime, in its title, and its preamble (.." Genocide is a crime under international law "...) and in Article 1.[13] The Genocide Convention and statutes of international criminal tribunals such as the International Criminal Court each characterise genocide as a crime. Accordingly, any finding of genocide as a "state crime" by the International Court of Justice must be based upon the level of proof "beyond a reasonable doubt" similar to the assessment process undertaken by international criminal tribunals. State culpability for a crime should require proof beyond a reasonable doubt of commission of this crime, especially for a crime so grave as genocide.

29. When State conduct may be implicated under allegations of genocide, it cannot mean that a lower standard of proof applies to the State. Otherwise, international criminal jurisdiction over crimes of genocide would become functionally superfluous, if such cases can be brought instead before the International Court of Justice, where the standard of proof required in the latter is *de facto* the same or even lower than would be required in international

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[11] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, para 242.

[12] *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,* paras. 188, 195, 219.

[13] Article 1, *Convention on the Prevention and Punishment of the Crime of Genocide*: "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."

criminal tribunals. This legal question in the interpretation of the Genocide Convention is fundamental to this Court, now that it faces more genocide cases of this kind.

30. Only when criminal culpability for genocide is established 'beyond a reasonable doubt', can State Responsibility then be assessed to determine, whether there can be attribution of the acts to the responding State and a failure by the responding State to fulfil its Genocide Convention obligations. The prerequisite criminal conduct, however, as proscribed under the Genocide Convention, is clearly graver and more condemnable than liabilities for breach of treaty obligations; indeed, it is explicitly criminal, which reasoning implies the highest evidentiary threshold. That threshold must be crossed prior to a determination of State Responsibility.

IV.C.2. Burden of Proof

31. In the view of Fiji, the implication of the foregoing difference between the burden of proof for criminal responsibility and for civil responsibility should be considered by the Court when assessing the evidence tendered to prove commission of the crime of genocide. In cases concerning individual criminal culpability for committing genocide, the burden rests upon the prosecution to prove beyond a reasonable doubt. The defendant has the presumption of innocence. Similarly, when an applicant before the Court produces circumstantial evidence as the basis for inferring genocidal *dolus specialis*, that inference can be rebutted by the production of other reasonable motives or objectives that explain legitimate military action as distinct from 'genocidal' conduct. It then falls upon the applicant to refute beyond a reasonable doubt that there were no other reasonable motives or objectives.

32. The production of proper military reports, equivalent to AARs, by the respondent could serve to refute an initial accusation and to shift the burden of proof back to applicant. Thus, if a genocide allegation is made in an applicant's memorial, then the burden of proof should be shifted back to the applicant in the event the respondent is able to produce military reports which *prima facie* refute the genocide allegations by showing other reasonable motives or objectives which, at least in the respondent's reasonable view at the

relevant time, complied with international humanitarian law. This should shift the burden of proof back to the applicant to prove beyond a reasonable doubt an inference of genocidal *dolus specialis*. This Court has never been called upon to answer the question whether military reports produced by the respondent should be sufficient to make the burden of proof shift back to the applicant in a genocide case.

IV.C.3. Due Weight must be given to National Military Reports

33. National military legal advisers and services investigate military situations and construct reports on factual and legal military situations in forms such as After-Action Reviews (AARs). This military practice is virtually universal. It is designed to ensure transparency and accountability, to provide reviews for lessons to be learned and to create accurate historical records. National military situation reports become irrelevant in the judicial processes of the International Court of Justice if reports by United Nations bodies are automatically (as argued in the Myanmar case by the The Gambia) favoured over them. This is undesirable for at least four reasons: First, if disregarded they become devalued and may be considered not to be worthwhile, which might trigger a disincentive on part of the States to dedicate resources to the generation of this highly valuable reporting system any longer. Second, as noted below, UN reports utilise secondary evidence and are unreliable. Third, military reports are often of high quality and cannot generally be treated as if they have lesser evidentiary weight or are all the same. Fourth, within national military establishments, every country has its own military legal system. Assessment of *actus reus* and *mens rea* factors by the Court need to weigh military reports individually, carefully and heavily when assessing the facts and legality of military actions. Such assessment should not be based on a general assumption that military reports are, in themselves, to be considered not to be independent.

34. In the *The Gambia v Myanmar* case, UN Fact Finding Mission reports filed under the auspices of the UN Office of the High Commissioner for Human Rights (OHCHR) were brought for consideration by the Court. These differ from most UN reports in their factual depth, but not in their methodology, which is similarly lacking in robust verification and transparent sourcing. For

example, the Rohingya victim interviews in the Myanmar Fact Finding Mission reports are poorly documented and virtually non-verifiable.

35. Thus, there should be differentiations made when adjudicating the quality and reliability of factual information available in individual military reports that are put to the Court depending on their origins, sources and positions within or outside military command structures. This could imply that military reports in the *The Gambia v Myanmar* case might have a different evidentiary weight, as compared to Israeli reports to be provided to the Court in the *South Africa v Israel* case, or compared to other reports that will arise in cases in future.

IV.C.4. Reliance upon UN Reports

36. The use or application of a so-called holistic approach relies heavily upon inclusion and consideration of a vaguely wide range of contextual "facts and circumstances". It is noteworthy that interventions urging use of the holistic approach have relied upon numerous reports and statements by several United Nations agencies and officials for these contextual "facts and circumstances". The UN Reports include those of Special Rapporteurs, Independent Experts and members of Working Groups. Many of these reports and statements are unreliable, politicised, and have been proved factually incorrect.

37. As observed by Herzberg in the *International Criminal Law Review*,[14] Bassiouni was one of the first scholars to take a close examination of the methodologies and practices of UN fact-finding missions.[15] "...Bassiouni noted the inherently political character of the UN and that its human rights frameworks function systemically as a 'political process'".[16] ... He also observed that "Frequently, many mission reports are 'designed to please influential Geneva-based'[17] NGOs and governments" and that "[t]his reality,

[14] Anne Herzberg 'The Role of UN Documentation in Shaping Narratives at the International Criminal Court and the Implications for the Rights of the Accused' *International Criminal Law Review* vol 22, 1117-1143 (2022).
[15] M.C. Bassiouni, 'Appraising UN Justice-Related Fact-Finding Missions', 5 *Washington University Journal of Law and Policy* (2001) 35–49.; in Herzberg 1139. *See also* B.G. Ramcharan (ed.), 'Introduction to the Original Edition)' in *International Law and Fact-Finding in the Field of Human Rights* (Brill, Leiden, 2014), p. xix.
[16] Bassiouni, *supra* note 19, p. 38; in Herzberg *supra* note 18, 1139.
[17] *Ibid.*, p. 40.; in Herzberg, *supra* note 18, 1139.

more than anything else, impacts upon the effectiveness and impartiality of fact-finding missions'."[18] With regards to methodology, in 2001 Bassiouni observed that 'after fifty years, there is no standard operating procedure for fact-finding missions'."[19]

38. Herzberg then went on to note that "In 2015, the OHCHR issued [a set of guidelines] '*Commissions of Inquiry and Fact-finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice*'[[20]] ... It is unknown, however, if these guidelines are required to be followed by UNHCR-appointed fact-finding missions and if they are implemented in practice. It is also unknown to what standards, if any, missions falling under the auspices of the Secretary General or other UN agencies are required to adhere.".[21]

39. University of Leiden Professor Dov Jacobs has also noted that UN OHCHR fact-finding reports utilised by the ICC to open an investigation in the Myanmar/Bangladesh case posed problematic methodological issues concerning doubts as to 'how the reliability and credibility of such reports were assessed'.[22] He observed that methodological concerns impacted the quality of these reports: insufficient time, lack of access to relevant information, risk of bias, and inability to assess and verify sources.[23] He considered that these led to the 'wholesale adoption of a one-sided narrative about the complex events that took place in Myanmar'.[24]

40. Other problems with UN fact-finding missions relate to a lack of experience and expertise, including in relation to the technical and complex application of international humanitarian law to military targeting practice in urban warfare. Furthermore, "[a]s noted by Professor William Schabas, these reports are political, to 'sound the alarm and alert public opinion at a political

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[18] *Ibid*; in Herzberg.
[19] *Ibid*; in Herzberg.
[20] OHCR, *Commissions of Inquiry and Fact-finding Missions on International Human Rights and Humanitarian Law* (2015), www.ohchr.org/Documents/Publications/CoI_Guidance_and_Practice.pdf.
[21] Herzberg, *supra* note 18, 1140.
[22] D. Jacobs, 'Limitations of Using Fact-Finding Reports in Criminal Proceedings: The Case of Myanmar', *Torkel Opsahl Academic EPublisher Policy Brief Series No. 118* (2020), p. 1; https://www.toaep.org/pbs-pdf/118-jacobs/ .
[23] *Ibid.*, Sections 4–4.3.
[24] *Ibid.*

level'."[25] Herzberg notes that, because "these missions apply a different standard of evidence than criminal courts and rely extensively on hearsay, viewing these bodies as collectors of evidence shifts matters to 'dangerous ground'."[26]

41. As noted, most UN reports rely predominantly upon secondary sources. It is not possible for the judges of this Court to check thousands of footnotes in UN reports, such as is required to verify them. For example, the 'Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide' conducted by the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel,[27] relies extensively upon other UN reports that cross-refer for their sources to documents produced by NGOs that are of dubious accuracy.

42. Other examples of unreliable derivative data include reports provided by the UN Relief and Works Agency for Palestinians in the Near East ("UNRWA") and by the UN Office for Coordination of Humanitarian Affairs (OCHA), and by the Human Rights Council Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967. This matter can be further elaborated upon if Fiji is given the opportunity.

43. Fiji cautions that these types of reports are not produced by a "disinterested witness," namely "one who is not a party to the proceedings and stands to gain or lose nothing from its outcome."[70] Their provenance is neither objective, nor informed by facts. Fiji therefore urges that reports and statements by United Nations agencies and officials be individually carefully and critically evaluated in order to be weighed as evidence. The Court should not automatically give special probative status to these reports simply on the basis that they have been produced by an organ of the United Nations. It is our contention that much of this purported evidence should be disregarded by the Court to mitigate *structural due process risks in the Court's fact-finding*

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[25] 'The Influence of the Narrative in International Criminal Trials,' 9 *Bedford Row International Criminal Law Webinar Series* (1 February 2021), www.youtube.com/watch?v=APHfqv4Sz_0 .
[26] *Ibid*; in Herzberg, *supra* note 18, 1140.
[27] Commission of Inquiry: Israeli authorities and Israeli security forces have committed and are continuing to commit genocide against the Palestinians in the Gaza Strip – Conference room paper (A/HRC/60/CRP.3); https://www.un.org/unispal/document/commission-of-inquiry-report-genocide-in-gaza-a-hrc-60-crp-3/ .

approach. There can be no rational doubt that military reports such as AARs produced outside of the chain of command by liberal democratic states are more reliable concerning military operational planning, international humanitarian law compliance considerations and facts on the ground than are most, if not all, UN reports. The Court should bear in mind that UN agencies established for humanitarian purposes are generally not mandated or equipped to assess military operations conducted in the context of armed conflict.

IV.C.5. What Weight to be given to NGO Reports?

44. In the 2026 hearing of the dispute between The Gambia and Myanmar concerning interpretation and application of the Genocide Convention, Judge Cleveland introduced an important question to the parties concerning the validity of and weight to be given to NGO reports tendered as evidence before the ICJ. In the view of Fiji, it must, first, be observed that not all NGO reports are equal. NGOs vary greatly in their missions, staffing, resources, partiality, political engagements, relationships with interlocutors, institutional integrity and familiarity with international law as it applies to use of military force by States. Second, it must be observed that, in general, if impartial and reliable evidence is sought by the Court, then the substance of NGO reports must be treated with great caution rather than accepted as "conclusive" evidence.

45. Most NGOs have limited access to governmental information, lack rigorous verification processes and suffer from dubious methodological robustness. These factors typically mean that their reports require verification and are not automatically suitable as evidence. For example, scientific, academic, advocacy, humanitarian, international, grassroots, justice, revolutionary or religious NGOs have different mission orientations and political partialities, and their respective reports are each coloured variously by their mission narrative and circumstances. Even in international criminal tribunals, NGOs usually advocate for alleged victims and against governmental authorities (of whatever kind).

46. Amnesty International has been influential in promoting the "holistic approach" to inferred genocidal intent and its approach is adopted in

interventions made to the Court in this case. However, the Court should be aware that such reports can be based on a cherry-picked selection of statements made by a small number of public figures such as politicians without providing reliable contextual information whether they had command, control or influence over the missions and conduct of the military forces. The making of unauthorised and *ad hoc* public comments by individual politicians is not uncommon in liberal democracies which uphold the freedom of political expression.

47. The Court should be cautious in determining the weight to be given to NGO reports, particularly when they are integrated into a 'holistic' approach that would function to reinterpret the meaning of genocidal intent under the Genocide Convention.

48. It would be remiss if the Court were to take into favourable account some NGO reports while disregarding others, but without transparent, rational and systematic justification for its selection. Certainly, criteria based upon quality and reliability of reports are necessary for selection of them. Reports by academic experts and by think tanks might be considered to have a different evidentiary weight to advocacy NGOs. The Court could, when assessing the value of NGO reports to determine the validity of a genocide charge, take into account the way the particular NGO is funded as well as the way it has performed in the past within the political arena of a certain conflict. In other words, an important factor in this evaluation could be whether a specific NGO might have engaged in political advocacy against the accused state. However, the Court would face major challenges in formulating a transparent, rational and systematic protocol for identifying, evaluating and selecting NGO reports considered to be mostly reliable. The International Court of Justice is not yet equipped with operational protocols, resources and expertise for the painstaking research necessary to determine the veracity of individual NGO reports, whether based on assessments of their institutional reliability, or on evaluations of differentials of quality between individual NGO reports based upon their respective methodologies and care in execution.

IV.C.6. What Weight to be given to Inferences from not giving International Access?

49. In the Court's January 2026 hearing of the dispute in *The Gambia v Myanmar*, concerning interpretation and application of the Genocide Convention, Judge Gomes Robledo formulated another vital question affecting the use of implied evidence under the Genocide Convention. This concerned the implied reasons for Myanmar's refusal to grant access to international bodies that could investigate the allegations against Myanmar and, potentially, corroborate Myanmar's assertion of facts to be argued in its defence. He noted the importance of international cooperation in the prevention and suppression of genocide, quoting, for example, from the Preamble to the Genocide Convention. Subsequently, Judge Gomes Robledo queried whether inferences could be implied by the Court against Myanmar for its refusal of access, causing the Court to infer that it could accord little weight to factual evidence tendered by Myanmar.

50. Fiji observes that, in relation to information collection and fact finding by international bodies for the purpose of application of the Genocide Convention, only limited - if any - evidentiary implication can be drawn from an accused State's refusal to grant national access to such international bodies. There are many possible and sound reasons for a State's reluctance to grant access to international bodies. These include a well-founded apprehension of: inherent prejudice, dubious investigative methodology, lack of consistently verified expert qualifications within the investigative body, lack of individual accountability within the investigative body, international procedural politicization, and predetermined outcomes.

51. Even where international bodies are mandated by the United Nations to investigate a national situation, it cannot be denied that such mandates are results of international political decision-making processes and that their decision-makers' national geopolitical interest are imprinted upon them. Especially in an international criminal case in which a criminal intent is to be inferred from circumstances and must be the sole reasonable inference available to be drawn (as discussed below concerning *mens rea*), evidence based upon inferred implications drawn from a State's reluctance to grant access

to international bodies, for which there are many possible reasons, cannot be a legitimate factor in the Court's weighing of evidence. The same reasoning applies to establishment of State Responsibility for genocide charges. Accordingly, it is the opinion of Fiji that it would be an error of law to accord any evidentiary weight to a political decision by a State not to grant access to international investigative bodies.

IV.D. Article I – General Obligations

52. The Genocide Convention creates a range of State obligations relating to the prevention and punishment of the crime of genocide. It covers obligations of result, obligations of conduct and inchoate breaches of obligations. Fiji notes that some breaches of the Genocide Convention must be connected to a result of actual genocide. For example, breach of the duty to punish genocide and complicity in genocide cannot stand alone in the absence of a finding on the evidence of culpability of an actual genocide, as discussed below.

III.D.1. Armed conflict and Humanitarian Law

53. Article I of the Convention seeks to prevent and punish genocide as a crime under international law "whether committed in time of peace or in time of war". It is clear that the Genocide Convention is applicable in times of war, as this Court itself has observed.[28]

54. The Court has jurisdiction under the Genocide Convention to rule only on violations of the Genocide Convention itself, and not on alleged breaches of international humanitarian law treaties and custom. A determination whether the principles of international humanitarian law are respected falls outside the scope of the question whether the Genocide Convention is violated. The rules of international humanitarian law bear direct relevance to the commission of war crimes. The latter are not directly applicable to the interpretation of whether acts of war constitute genocide under the Genocide

[28] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia), Judgment, I.C.J. Reports 2015*, p. 68, para. 153.

Convention.

55. Moreover, violations of international humanitarian law cannot themselves prove beyond a reasonable doubt the presence of a genocidal intention of an accused. Even extensive breaches of international humanitarian law do not of themselves prove genocidal intent. Logically, however, the converse is true: evidence of military conduct that complies with international humanitarian law would indicate that the same conduct could not constitute the crime of genocide. The reasoning is simply that honoring the rules of warfare renders logically and functionally impossible the existence of genocidal *dolus specialis*.

56. Fiji agrees that: "..., if claims of genocide were to become the common currency of armed conflict, whenever and wherever that occurred, the essence of this crime would be diluted and lost."[29] This position was articulated by Judge Barak in his dissenting opinion before this Court regarding its decision on Provisional Measures in January 2024.[30] As he noted 'The drafters of the Genocide Convention clarified in their discussions that -

> "[t]he infliction of losses, even heavy losses, on the civilian population in the course of operations of war, does not as a rule constitute genocide. In modern war belligerents normally destroy factories, means of communication, public buildings, etc. and the civilian population inevitably suffers more or less severe losses. It would of course be desirable to limit such losses. Various measures might be taken to achieve this end, but this question belongs to the field of the regulation of the conditions of war and not to that of genocide.[11]"[31]

Violations of international humanitarian law occurring in the context of the armed conflict, must be investigated and prosecuted by the competent Israeli authorities.'[32] This is also the legal interpretation supported by Fiji.

57. Moreover, in the event the Court were to take into account in a

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[29] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Public sitting 12 January 2024, CR 2024/2*, p. 24, para. 9.
[30] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024*, Judge Barak judgment, para. 26.
[31] UN Economic and Social Council, Draft Convention on the Crime of Genocide, Section II: Comments Article by Article, UN doc. E/447, 26 June 1947, reproduced in H. Abtahi and P. Webb, The Genocide Convention: The Travaux Préparatoires, Martinus Nijhoff, 2008, p. 231, cited ibid.
[32] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024*, Judge Barak judgment, para. 27-8.

genocide case the observance of international humanitarian law, accusations regarding erroneous or even alleged deliberate, reckless or negligent targeting of civilians must be proved by the applicant. This is necessary because reframing instances of alleged improper targeting under a so-called holistic approach as constituting proof of genocide would result in a *de facto* reversal of the burden of proof as well as a lowering of the standard of proof of culpability for genocide. As a consequence, the respondent would be put in a position where it is required to prove innocence of genocide, constituting an unjust reversal of the burden of proof and a lower burden of proof than under international criminal law. Rather, to prove a genocide allegation, the applicant must prove beyond a reasonable doubt to the Court that attacks on armed groups were undertaken other than by reason of their individual membership in armed groups.

IV.D.2. Protected Groups

58. Fiji also observes that armed forces, combatants and terrorists are not to be considered as protected groups under the Genocide Convention. Thus, elements of the Gazan population comprising such armed groups as Hamas, Palestinian Islamic Jihad, Izz al Din al Kassam brigades, and al Quds brigades are not protected. Nor are their weapons dumps and other war materiel, command and intelligence operations, data centers, propaganda and psychological operations, storage infrastructure and support personnel, whether official or volunteer, irrespective of the size of such armed groups. Even where they number in the tens of thousands, numbers that are comparable to armed forces of many States, these personnel cannot be qualified as merely civilians. Nor are they generalizable as a national, ethnical, racial or religious group within the meaning of a protected group under the Genocide Convention.

59. Alleged genocide needs to be directed against a substantial part of the protected group, impacting its overall survival in order to be captured under Article I of the Genocide Convention. As noted by the International Criminal Tribunal for Rwanda (ICTR) in the *Akayesu* judgment

> "In concrete terms, for any of the acts charged under Article 2 (2) of the Statute to be a constitutive element of genocide, the act must

> have been committed against one or several individuals, because such individual or individuals were members of a specific group, and specifically because they belonged to this group. Thus, the victim is chosen not because of his individual identity, but rather on account of his membership of a national, ethnical, racial or religious group. The victim of the act is therefore a member of a group, chosen as such, which, hence, means that the victim of the crime of genocide is the group itself and not only the individual."[33]

The same was affirmed by the ICTY Appeals Chamber in *Krstic*.[34] In the *Genocide Convention (Croatia)* case, this Court explained that:

> "Since it is the group, in whole or in part, which is the object of the genocidal intent, the Court is of the view that it is difficult to establish such intent on the basis of isolated acts. It considers that, in the absence of direct proof, there must be evidence of acts on a scale that establishes an intent not only to target certain individuals because of their membership to a particular group, but also to destroy the group itself in whole or in part."[35]

60. Fiji considers that armed forces, combatants and terrorists engaged in armed conflict cannot qualify as protected groups under the Genocide Convention.

IV.E. Article II – Acts of Genocide

IV.E.1. Mens Rea of Acts of Genocide

61. The essence of the Genocide Convention is set out in Article II. "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…".

62. Fiji submits that Article II sets out a special intent, *dolus specialis*, that rises above general intent, *mens rea*. This distinction is between the general intent to commit an act of violence, the *actus reus*, and the additional specific intent to commit that act to destroy in whole or in part a national

[33] *Prosecutor v. Akayesu, (ICTR Case No. ICTR-96-4-T), Judgment, 2 September 1998,* para. 521.
[34] *International Criminal Tribunal for Yugoslavia v Radislav Krstic(ICTY* IT-98-33), Appellate Chamber, para 8-12.
[35] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p. 64, para. 138.

ethnical or religious group, i.e. *dolus specialis*. This *dolus specialis* is the essential characteristic of genocide, which distinguishes it from other serious crimes under international law.[36]

63. The Court has clarified that a genocidal *dolus specialis* must be present, in addition to the intent required for each of the individual acts involved.[37] In the *Bosnian Genocide* case, the Court considered three arguments made by Bosnia for finding Serbia Montenegro responsible. These were: (1) attribution to the State of the intentions and actions of perpetrators; (2) the existence of a State plan formulated by Serbia Montenegro evidencing explicit intent; and (3) inference of intent from contextual circumstances.[38]

64. While the Genocide Convention is silent as to the manner in which genocide is to be proved, in *Croatia v. Serbia*, the parties agreed that the *dolus specialis* was to be sought, first, in the State's policy, while at the same time accepting that such intent will seldom be expressly stated. In the current case before the Court, there is little argument being made on the basis of attribution or a State plan. In the instance of a State plan, it is necessary that that there be an explicit policy of genocide,[39] wherein the goal of the genocidaires is to produce group destruction[40] as disclosed by explicit statements by responsible leaders, documents such as adopted plans or policies. However, this is not at all evident in the case before the Court[41] and is not alleged.

65. The Court accepted the alternative possibility of inferring *dolus specialis* from a pattern of conduct in *Bosnia-Herzegovina v Serbia Montenegro* 2007. However, "for a pattern of conduct to be accepted as evidence of [genocidal *dolus specialis*]..., it would have to be such that it could only point to the existence of such intent".[42] Eight years later, in *Croatia v Serbia Montenegro* 2015, the ICJ stressed the same point: it should be the only

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[36] *Prosecutor v. Akayesu, (Case No. ICTR-96-4-T), Judgment, 2 September 1998,* para. 122.
[37] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p. 62, para. 132.
[38] Blake van Santen 'Searching for a Plan: Demonstrating Genocidal Intent before the ICJ' *International Law and Politics* vol 57 p.155.
[39] *International Criminal Tribunal for Yugoslavia v Radislav Krstic(ICTY* IT-98-33), Appellate Chamber, para 685.
[40] *Akayesu* ICTR para 498
[41] Blake van Santen 'Searching for a Plan: Demonstrating Genocidal Intent before the ICJ' *International Law and Politics* vol 57 p.155.
[42] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007,* pp. 109-110, para. 373.

inference that could reasonably drawn from the act in question to infer the existence of *dolus specialis* from a pattern of conduct.[43]

66. Yet various other equally reasonable explanations for the Gazan death toll might include: tactical and strategic reasons for military conduct other than intent to destroy the Gazan people, including actions in self-defence, which is recognized as an inherent sovereign right by Article 51 of the UN Charter, and other actions in pursuit of necessary concrete and direct military advantages. In determining the presence of these other reasonable explanations, the Court should take into account the question whether the responding State has has taken the extensive precautions required under international humanitarian law to mitigate civilian casualties. Even in the current South Africa case, Judge Nolte noted in his declaration in the first provisional measures decision that South Africa had not sufficiently engaged with the implications of those precautionary measures which fundamentally negate the existence of any genocidal intent.[44]

67. It is Fiji's position that the existence of precautionary measures to protect civilians and civilian objects could undermine an assumption of genocidal intent.

68. In response to an applicant's argument asserting a genocidal *dolus specialis*, if a respondent can provide *prima facie* evidence countering culpability, then the burden of proof returns to the applicant to prove culpability beyond a reasonable doubt.

69. Fiji prays that the Court will exercise extreme caution and extraordinary circumspection in its methodology for assessing evidence alleged to be probative – by any standard – of the presence genocidal *dolus specialis* in this case. Fiji considers that inference of genocidal *dolus specialis* would need to be proved beyond a reasonable doubt as the only possible inference. In drawing such an inference, it would be necessary to weigh heavily evidence of the accused's compliance with international humanitarian law and it would be remiss to give any weight to unreliable data produced as part of disinformation

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[43] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p. 47, para.

[44] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024*, Judge Nolte judgment, Para's 13-14.

operations by a party to an armed conflict or by an applicant in its support.

IV.E.2. Actus Reus of Genocide

70. Article II of the Genocide Convention contains an exhaustive list of acts constituting the crime of genocide. The acts listed in Article II of the Convention constitute the *actus reus* of genocide:

> (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."

71. Under Article II(c), 'deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part' has been seized upon by South Africa and some intervenors for its potential to deliver a broad and open-ended interpretation that would extend the definition of genocide. The Court has been assailed with allegations of widespread and systematic acts by Israel imposing on Gazans conditions of life which have been designed to bring about their physical destruction, *inter alia*, siege, starvation, widespread destruction of civilian and medical infrastructure, deprivation of food and medical supplies and treatment, and forcible displacement by means of systematic and widespread deportation.

72. However, the concept of circumstances leading to a slow death, as framed by the ICTY in the *Brdanin* case, meaning that conditions of life are inflicted to physically exterminate part of the group,[45] is inapplicable. There is an additional requirement under Article II(c) that conditions of life calculated to bring about a group's physical destruction be imposed 'deliberately' and be 'calculated'. This *dolus specialis* requirement makes it clear that it must be established by South Africa that the alleged conduct was calculated as a deliberate means to physically exterminate the group. This returns us to the lack of evidence of *dolus specialis*, discussed above.

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[45] *Prosecutor v. Brdanin (ICTY Case No. IT-99-36-T), Judgment, 1 September 2004*, para. 691.

73. Some interventions before the Court have given importance to the displacement of portions of the Gazan population, particularly from the northern Gaza Strip, to a humanitarian safe zone in the south, as conditions of life calculated to bring about physical destruction. However, in Fiji's view, such acts must be assessed in the context of precautions to protect the civilian population during a time of war. The ICTY indicated that "forcible transfer does not constitute in and of itself a genocidal act" and that "the mere dissolution [of a group] does not suffice".[46] Furthermore, in its February 2007 judgment in the *Genocide Convention (Bosnia)* case, the Court clarified that:

> "...deportation or displacement of the members of a group, even if effected by force, is not necessarily equivalent to destruction of that group, nor is such destruction an automatic consequence of the displacement. This is not to say that acts described as 'ethnic cleansing' may never constitute genocide, if they are such as to be characterized as, for example, 'deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part', contrary to Article II, paragraph (c), of the Convention, provided such action is carried out with the necessary specific intent (*dolus specialis*), that is to say with a view to the destruction of the group, as distinct from its removal from the region."[47]

74. Accordingly, Fiji considers that, in its interpretation and application of Article II of the Genocide Convention, the Court should critically evaluate allegations of genocidal acts. This requires critical forensic examination of United Nations and activist reports and then recourse to information sources beyond them, to consider independently produced expert reports. Thus, it is the view of Fiji that Article II(c) is to be applied by forensic consideration of multiple sources of information sufficiently reliable to form a basis for judicial decision-making.

75. Fiji considers that the interpretation and application of Articles I and II affect the entirety of the Genocide Convention. Therefore, the foregoing views are relevant for the Court throughout its consideration of this case.

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[46] *Prosecutor v. Stakić, (ICTY Case No. IT-97-24-T), Judgment, 31 July 2003,* para. 519.

[47] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*, p. 123, para. 190.

V. DOCUMENTS IN SUPPORT OF THE DECLARATION OF INTERVENTION

76. The following documents are appended hereto in support of this Declaration of Intervention:

Annex 1: Letter Number 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.

Annex 2: United Nations Depository Notification Confirming Fiji's accession to the Genocide Convention, dated 9 November 1959.

Signed:

H.E. LAITIA TAMATA
PERMANENT REPRESENTATIVE OF FIJI TO THE UNITED NATIONS SYSTEMS IN GENEVA AND EUROPE

LIST OF ANNEXES

Annex 1 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 – English version.

Annex 2 United Nations Treaty Series record confirming Fiji's Ratification of the Genocide Convention, dated 30 January 1970 – English version.

ANNEX 1 – Registrar's Notification

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

INTERNATIONAL COURT OF JUSTICE

FEBRUARY 6, 2024

English version

Annex 1

COUR INTERNATIONALE DE JUSTICE — INTERNATIONAL COURT OF JUSTICE

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 (

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

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

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

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

On the instructions of the Court, given in accordance with the said provision of the Rules of

Court, I have the honour to notify your Government of the following.

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

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

Your country is included in the list of parties to the Genocide Convention. The present Jetter should accordingly be regarded as the notification contemplated by Article 63, paragraph I, of the Statute. I would add that this notification in no way prejudges 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.

Philippe Gautier
Registrar

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ANNEX 2 – Accession of Fiji

ANNEX A

No. 1021. CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE. ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 9 DECEMBER 1948 [1]

ACCESSION

Instrument deposited on:

30 January 1970

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

(With effect from 30 April 1970. With a notification extending the application of the Convention to the following territories for whose international relations the United Kingdom is responsible: Channel Islands, Isle of Man, Dominica, Grenada, St. Lucia, St. Vincent, Bahamas, Bermuda, British Virgin Islands, Falkland Islands and Dependencies, Fiji, Gibraltar, Hong Kong, Pitcairn, St. Helena and Dependencies, Seychelles, Turks and Caicos Islands. Also with a declaration that the Government of the United Kingdom do not accept the reservations to articles IV, VII, VIII, IX or XII of the Convention made by Albania, Algeria, Argentina, Bulgaria, Burma, the Byelorussian Soviet Socialist Republic, Czechoslovakia, Hungary, India, Mongolia, Morocco, the Philippines, Poland, Romania, Spain, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics and Venezuela.)

[1] United Nations, *Treaty Series*, vol. 78, p. 277; for subsequent actions, see references in Cumulative Indexes Nos. 1 to 8, as well as annex A in volumes 645, 646 and 656.

END