SPEECH OF HE MR NAWAF SALAM, PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE, AT THE SEVENTY-FIFTH SESSION OF THE INTERNATIONAL LAW COMMISSION

17 July 2024

Mr Chair,
Ladies and gentlemen,
Colleagues and friends,

It is a distinct honour for me to address the International Law Commission today, and to do so for the first time in my capacity as President of the International Court of Justice. Out the outset, may I take this opportunity to congratulate Mr Marcelo Vázquez-Bermúdez on his election as Chair of the Commission for its illustrious seventy-fifth session and to congratulate all the newly elected Officers as well.

I would also like to apologize for the many postponements of this meeting with you, due to the Court's particularly busy schedule over the last few months.

In my speech to you this morning, in keeping with custom, I will focus on providing an update on the cases submitted to the Court over the last year and the decisions it has rendered since President Donoghue's address to you in July 2023. I know I speak on behalf of all of my fellow Members of the Court when I say that we place great value on this annual exchange of views between our two institutions. As an aside, I also note that we currently have six esteemed colleagues on the Bench who are former members of the International Law Commission.[1]

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There are at present 24 cases on the Court's docket, 21 of which are contentious and 3 are advisory proceedings. The inter-State disputes cover diverse and wide-ranging legal issues, such as land and maritime delimitation, the scope of jurisdictional and State immunities and alleged breaches of obligations under an array of bilateral and international conventions. Two of the questions submitted for an advisory opinion were submitted by the General Assembly and relate to the situation

[1] Judges Tomka, Xue, Nolte, Gómez Robledo, Aurescu and Tladi.

in the Occupied Palestinian Territory and to Climate Change; the third question was submitted by the International Labour Organization and relates to the Right to Strike under ILO Convention No. 87.

Since July 2023, five new contentious cases have been added to the Court's docket involving States from Latin America, Asia, Africa and Europe[2], as well as the aforementioned request for an advisory opinion from the ILO[3]. The most recent contentious case was instituted by Ecuador against Mexico on 29 April 2024 regarding the alleged misuse of the premises of a diplomatic mission. The Court has held hearings dealing with requests for the indication of provisional measures and preliminary objections to jurisdiction in seven contentious proceedings, as well as holding hearings on one of the two questions submitted by the General Assembly for an advisory opinion by the Court.[4] Following these hearings, the Court has already rendered its decision in five of the eight cases[5], details of which I shall shortly set out, and the other three cases are currently under deliberation. In particular, the Court is deliberating, in the context of its advisory function, on the question of the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* and, in the context of its contentious procedure, on preliminary objections to jurisdiction in two separate sets of proceedings between Armenia and Azerbaijan concerning *Alleged Violations of the International Convention on the Elimination of All Forms of Racial Discrimination*.

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[2] July 2023: *AVIA* {briefly mentioned by President Donoghue}; December 2023: *SAI*; March 2024: *NG*; April 2024: *ME* and *EM*

[3] November 2023: *ILO*

[4] September 2023: *URB (preliminary objections)*; October 2023: *CNLS (provisional measures)*; January and May 2024: *SAI (provisional measures)*; February 2024: *OPT (advisory proceedings)*; April 2024: *NG (provisional measures)*, *ARAZ and AZAR (preliminary objections)*; April and May 2024: *ME (provisional measures)*

[5] SAI Order of 26 January 2024 on request for provisional measures of 29 December 2023; *URB* Judgment on preliminary objections of 2 February 2024; *CNLS* Order on request for provisional measures of 16 November 2023; *NG* Order 30 April 2024 on the Request for the indication of provisional measures; ME Order of 23 May 2024 on request for the indication of provisional measures; SAI Order of 24 May 2024 on request for the indication and modification of provisional measures of 10 May 2024.

In reviewing the decisions rendered by the Court, I shall begin with the Judgments delivered[6], before turning to the numerous substantive Orders issued in the course of the reporting period.

On 13 July 2023, the Court issued its Judgment on the merits in the case concerning the *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua* v. *Colombia)*. In an earlier case between these two States, the Court had rendered a Judgment in 2012 establishing, *inter alia*, a single maritime boundary delimiting the continental shelf and the exclusive economic zones of Nicaragua and Colombia up to the 200-nautical-mile limit from the baselines from which the territorial sea of Nicaragua is measured. On 16 September 2013, Nicaragua filed an Application instituting new proceedings.

Following the filing of the written pleadings on the merits, the case became ready for hearing. In this context, the Court decided that, in the circumstances of the case, before proceeding to any consideration of technical and scientific questions in relation to the delimitation of the continental shelf between Nicaragua and Colombia beyond 200 nautical miles from the baselines from which the breadth of the territorial sea of Nicaragua is measured, it was necessary to decide on certain questions of law, after hearing the Parties thereon. Accordingly, by its Order of 4 October 2022, the Court directed Nicaragua and Colombia to present their arguments at the oral proceedings in the case exclusively with regard to two questions of law. The first question was whether, under customary international law, a State's entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured may extend within 200 nautical miles from the baselines of another State. The second question addressed the criteria under customary international law for the determination of the limit of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured and whether paragraphs 2 to 6 of Article 76 of the United Nations Convention on the Law of the Sea reflect customary international law.

[6] *NICOLC* Judgment on the merits of 13 July 2023; *UR* Judgment on the merits of 31 January 2024; and *URB* Judgment on preliminary objections of 2 February 2024.

The Court held oral proceedings on these questions of law in December 2022 and rendered its Judgment in July 2023. In that Judgment, The Court concluded that, under customary international law, a State's entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured may not extend within 200 nautical miles from the baselines of another State. The Court went on to state that, in the absence of overlapping entitlements over the same maritime areas, it could not proceed to a maritime delimitation.

The Court further stated that, within 200 nautical miles from the baselines of Colombia's mainland coast and of Colombia's islands, there was no area of overlapping entitlement to be delimited in the case. In addition, the Court considered the question of the maritime entitlements of certain maritime features in the area.

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On 31 January 2024, the Court issued its Judgment on the merits in the case concerning *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation)*. The proceedings in this case were instituted by Ukraine following events which occurred from early 2014 in eastern Ukraine and in the Crimean peninsula. It should be noted at the outset that the Court rejected the Russian Federation's invocation of the "clean hands"-doctrine as a defence on the merits, stating that it considered that this doctrine could not be applied in an inter-State dispute where the Court's jurisdiction is established, and the application is admissible.

With regard to the claims of Ukraine under the International Convention for the Suppression of the Financing of Terrorism, to which I shall refer as the "ICSFT", the Court clarified that only monetary or financial resources provided or collected for use in carrying out acts of terrorism may provide the basis for the offence of terrorism financing. As for the alleged non-compliance by the Russian Federation with its obligations under specific Articles of the ICSFT to freeze certain funds, to prosecute or extradite alleged offenders of terrorism financing offences, to assist other States parties in their investigations into terrorism financing and to take practicable measures to prevent the movement of "funds" into Ukraine for purposes of terrorism financing, the Court considered that it had not been established by the Applicant that the Russian Federation had violated its obligations

under the Convention. However, the Court did find that the Russian Federation had violated its obligations to investigate allegations of the commission of terrorism financing offences by alleged offenders present in its territory.

With regard to the claims of Ukraine under the International Convention on the Elimination of All Forms of Racial Discrimination, to which I shall refer as "CERD", the Court indicated that it was not called upon to determine whether violations of obligations under CERD had occurred in individual instances but, rather, whether a "pattern of conduct" could be established.

The Court examined in detail the alleged violations by the Russian Federation of various provisions of CERD with regard to disappearances, murder, abductions and torture, law enforcement measures, including measures taken against the Mejlis, the body representing the Tatar community in Crimea. Further, the Court examined measures relating to citizenship, measures taken with respect to culturally significant gatherings, to media outlets and measures concerning cultural heritage and cultural institutions of Crimean Tatar and ethnic Ukrainians in Crimea. The Court found that it had not been established that the Russian Federation had violated its obligations under CERD.

Finally, the Court examined whether the conduct of the Russian Federation with regard to school education in Crimea qualified as racial discrimination under CERD. After examining the legislative and other practices of the Russian Federation regarding school education in the Ukrainian language in Crimea, the Court concluded that the Russian Federation had violated its obligations under CERD by the way in which it had implemented its educational system in Crimea after 2014 with regard to school education in the Ukrainian language. In particular, the Russian Federation had not demonstrated that it had complied with its duty to protect the rights of ethnic Ukrainians from a disparate adverse effect based on their ethnic origin by taking measures to mitigate the pressure resulting from the exceptional *[I quote]* "reorientation of the Crimean educational system towards Russia" *[end of quote]* on parents whose children had until 2014 received their school education in the Ukrainian language.

The Court then considered the submission of Ukraine that the Russian Federation had breached the Court's Order of 19 April 2017 indicating provisional measures. The Court found that, by maintaining the ban on the Mejlis, the Respondent had violated that Order, while observing that this

finding was made independently from the Court's finding on the merits that the ban on the Mejlis did not violate the Russian Federation's obligations under CERD. As to the availability of education in the Ukrainian language, the Court found that, while Ukraine had shown that a sharp decline in teaching in the Ukrainian language took place after 2014, it had not been established that the Russian Federation had acted in breach of the Order on provisional measures. In particular, the Court took note of a report by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and city of Sevastopol during the period in question which confirmed that instruction in the Ukrainian language was available after the adoption of the Order. Finally, the Court considered that the Russian Federation, by recognizing the so-called "Donetsk People's Republic" and "Luhansk People's Republic" as independent States and by launching what it called a "special military operation" against Ukraine, had severely undermined the basis for mutual trust and co-operation and thus made the dispute more difficult to resolve, in violation of the Court's Order of 19 April 2017.

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On 2 February 2024, the Court issued its Judgment on the preliminary objections raised by the Russian Federation in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation: 32 States intervening)*. You may recall that, on 26 February 2022, Ukraine filed an Application against the Russian Federation concerning a dispute under the Genocide Convention. On 3 October 2022, the Russian Federation raised preliminary objections to jurisdiction and admissibility. In its Judgment, the Court explained that the dispute between the Parties comprised two aspects. The first one concerned Ukraine's request for a declaration that no genocide attributable to it was committed in the Donbas; the second one concerned the compatibility of the actions of the Russian Federation, including use of force in and against Ukraine, with its obligations under the Genocide Convention.

The Court concluded that it had jurisdiction under the Genocide Convention to entertain the first aspect of the dispute, and that Ukraine's request for a declaration that it was not responsible for a breach of its obligations under the Genocide Convention was admissible. Of particular note in this

regard is the Court's finding that Article IX of the Genocide Convention does not preclude the possibility for a State to seek a declaration that it is not responsible for committing genocide. In assessing the admissibility of Ukraine's request in the present case, the Court took account of the fact that the request was made in the context of an armed conflict between the Parties and that the Russian Federation had taken the measures complained of by Ukraine with the stated purpose of preventing and punishing genocide allegedly committed by Ukraine in the Donbas region. In such a special context, the Court recognized the legal interest of Ukraine in obtaining a declaration that it had not breached its obligations under the Genocide Convention, and its request was found admissible.

However, the Court found that it did not have jurisdiction to decide the second aspect of the dispute between the Parties, i.e. Ukraine's claims that the Russian Federation's use of force in and against Ukraine beginning on 24 February 2022 and its recognition of the so-called "Donetsk People's Republic" and "Luhansk People's Republic" on 21 February 2022 violated Articles I and IV of the Genocide Convention. The Court found that, even if the acts of the Russian Federation complained of by Ukraine were fully established, they would not constitute a violation of obligations under the Genocide Convention, and therefore the Court could not have jurisdiction under that Convention. The Court explained that Ukraine was not claiming that the Russian Federation had refrained from taking measures to prevent or punish a genocide, and that, in these circumstances, it was difficult to see how the conduct complained of could constitute a violation of obligations to prevent genocide and punish perpetrators of genocide. The Court was also not convinced that the alleged invocation in bad faith of the Genocide Convention by the Russian Federation could constitute a violation of obligations under Articles I and IV. Nor could the alleged violation by the Russian Federation of other international rules, such as the rules on the use of force, constitute a violation of the Genocide Convention, since that Convention did not incorporate other such rules of international law.

I should add that a particularity of this case is the fact that 33 States filed Declarations of Intervention under Article 63 of the Statute. I will explain a little further on the procedure by which the Court decided on the admissibility of these Declarations. Suffice to say that in its Judgment, the

Court rejected the Russian Federation's preliminary objection to the admissibility of Ukraine's Submission based on abuse of process. By this objection, the Respondent had argued, *inter alia*, that Ukraine had sought to rally States to arrange an abusive mass intervention in the case, in an attempt to put pressure on the Court.

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I shall now move to some of the significant Orders issued by the Court[7].

In this regard, I note, as an aside, that there has been a noticeable increase in the number of incidental proceedings being submitted to the Court, in particular requests for the indication of provisional measures, which are then given priority over other cases. While the Court understands the importance and value of this expedited procedure, which aims to offer urgent interim relief to Parties when there is a risk of escalation, it also wishes to stress that it is a procedure that should not be used as a litigation tactic to advance arguments on the merits.

Turning back to the substantive Orders under review, I will start by referring back to the Declarations of Intervention during the preliminary objections phase of the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation: 32 States intervening).* By an Order rendered on 5 June 2023, the Court decided on the admissibility of these Declarations of Intervention which, I recall, were submitted under Article 63 of the Statute. This provision grants State parties to a convention a right to intervene in a case when the construction of that convention is in question. These 33 States, all parties to the Genocide Convention, sought to intervene to present observations on the construction of Article IX, which is the compromissory clause of that instrument, and of other

[7] *URB Order of 5 June 2023* on the admissibility of the Declarations of Intervention under Article 63 of the Statute; *ARAZ Order of 6 July 2023* on the Request for the modification of the Order of 22 February 2023 indicating a provisional measure; *CNLS Order of 16 November 2023* on the Request for the indication of provisional measures; *ARAZ Order of 17 November 2023* on the Request for the indication of provisional measures; *GV Order of 1 December 2023* on the Request for the indication of provisional measures; *SAI Order of 28 March 2024* on the Request for the modification of the Order of 26 January 2024 indicating provisional measures; *NG Order of 30 April 2024* on the Request for the indication of provisional measures.

provisions relevant to the jurisdiction of the Court. Some of these States also sought to present observations on provisions of the Genocide Convention relating to the merits of the case.

The Russian Federation had raised objections to the admissibility of all of the Declarations of Intervention. By its Order of 5 June 2023, the Court considered these objections and decided that the Declarations of Intervention submitted by 32 States were admissible at the preliminary objections stage of the proceedings in so far as they concerned the construction of Article IX and other provisions of the Genocide Convention relevant for the determination of the jurisdiction of the Court. In particular, the Court explained that its task in determining the admissibility of a Declaration of Intervention under Article 63 of the Statute was limited to ascertaining whether that Declaration related to the construction of provisions in question at the relevant stage of the proceedings. The Court found that, in the case at hand, the construction of Article IX and other provisions concerning the Court's jurisdiction *ratione materiae* was in question at the preliminary objections stage of the proceedings, and thus the parts of the Declarations addressing the construction of these provisions were admissible at that stage. The Court added that it would not, at the preliminary objections stage, have regard to any part of the written or oral observations of intervening States going beyond the construction of provisions in question at that stage.

In the 5 June 2023 Order, the Court also upheld an objection raised by the Russian Federation with respect to the admissibility of the Declaration of Intervention filed by the United States, on the basis that the United States had entered a reservation to Article IX of the Genocide Convention. The Court held that the United States could not intervene in relation to the construction of Article IX of the Convention while it was not bound by that provision. Nor could it intervene in relation to the construction of any other provision that could, at the preliminary objections stage, only be relevant to the jurisdiction of the Court under Article IX. Accordingly, the Declaration of Intervention of the United States was found to be inadmissible in so far as it concerns the preliminary objections stage of the proceedings.

Following the issuance of the Court's Order on 5 June 2023, most of the States whose Declarations of Intervention were found admissible at the preliminary objections stage availed

themselves of the right, pursuant to the Rules of Court, to file written observations and to present oral observations during the hearings on the preliminary objections of the Russian Federation.

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I now turn to the two Orders relating to provisional measures rendered on 6 July 2023 and 17 November 2023 in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan)*. The Applicant in this case alleges breaches of this Convention, which I will again refer to as "CERD", with regard to persons of Armenian national or ethnic origin, carried out during and after hostilities in the Nagorno-Karabakh region that erupted in autumn 2020.

The first Order relates to Armenia's request for the modification of an earlier Order dated 22 February 2023 in which the Court had ordered Azerbaijan to take all measures at its disposal to ensure unimpeded movement of persons, vehicles and cargo along the Lachin Corridor, which links Nagorno-Karabakh and Armenia. In particular, Armenia contended that this Order needed to be modified because of what it characterised as a significant new impediment to movement along the Lachin Corridor as a result of the alleged establishment of two military checkpoints by Azerbaijan. In its Order of 6 July 2023, the Court considered that, even if it could be said, in light of these developments, that there had been a change in the situation that existed when the Court issued its 22 February 2023 Order, Armenia's request still concerned allegations of disruption in movement along the Lachin Corridor. The consequences of any such disruption for persons of Armenian national or ethnic origin would be the same as those noted by the Court in its earlier Order. Therefore, the Court found that the circumstances were not such as to require the exercise of its power to modify that Order.

On 29 September 2023, Armenia submitted a new Request for the indication of provisional measures[8] in which it alleged that Azerbaijan had launched a military assault on the ethnic Armenian

[8] It is recalled that previously in this case, Armenia submitted, together with its Application, a first Request for the indication of provisional measures on 16 September 2021 (disposed of by an Order of the Court dated 7 December 2021), followed by a Request made on 16 September 2022 for the modification of the Order of 7 December 2021 indicating provisional measures (disposed of by an Order of the Court dated 12 October 2022), followed by a further Request for the indication of provisional measures on 27 December 2022 (disposed of by an Order of the Court dated 22 February 2023).

population of Nagorno-Karabakh on 19 September 2023, resulting in the forcible displacement of tens of thousands of ethnic Armenians. Armenia thus requested urgent interim measures of protection for that population. In its Order of 17 November 2023, the Court indicated three provisional measures. First, Azerbaijan was directed to ensure, in accordance with its obligations under CERD, that persons who had left Nagorno-Karabakh after 19 September 2023 and who wished to return home were able to do so in a safe, unimpeded and expeditious manner; that persons who had remained in Nagorno-Karabakh after that date and who wished to depart were able to do so in the same safe manner; and that persons wishing to stay in Nagorno-Karabakh were free from the use of force or intimidation that may cause them to flee. Secondly, Azerbaijan was directed to protect and preserve registration, identity and private property documents and records that concerned the persons affected by the events of 17 November 2023. Thirdly, Azerbaijan was instructed to submit a report to the Court on the steps taken to give effect to the provisional measures indicated.

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I now turn to the Order on provisional measures delivered by the Court on 16 November 2023 in the case concerning *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands* v. *Syrian Arab Republic)*. The joint Applicants instituted these proceedings on 8 June 2023, alleging that the Syrian Government has been responsible, at least since 2011, for systematic violations of its obligations under the Convention against Torture. The Application was accompanied by a Request for the indication of provisional measures. In particular, Canada and the Netherlands stated that urgent measures were needed in order to protect the lives and physical and mental integrity of individuals within Syria who were being subjected to torture and other cruel, inhuman or degrading treatment or punishment, or were at imminent risk of being subjected to such treatment.

In its Order of 16 November 2023, the Court ordered the Syrian Arab Republic, in accordance with its obligations under the Convention against Torture, to take all measures within its power to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment and ensure that its officials, as well as any organizations or persons which may be subject to its control, direction

or influence, did not commit any acts of torture or other acts of cruel, inhuman or degrading treatment or punishment. The Court further ordered that the Respondent take effective measures to prevent the destruction and ensure the preservation of any evidence related to allegations of acts within the scope of the Convention against Torture.

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Shortly after the delivery of this Order, on 1 December 2023, the Court issued another Order on provisional measures in the case concerning *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela)*. By way of background, let me recall that this case was instituted in 2018 and that it is currently at the merits phase, the Court having already pronounced itself on questions relating to jurisdiction and admissibility. On 30 October 2023, Guyana filed a Request for the indication of provisional measures due to its concern over the Government of Venezuela's stated intention to hold a so-called "Consultative Referendum" on 3 December 2023 regarding the purported creation, on a unilateral basis, of the State of "Guayana Esequiba" within Venezuela, comprising the territory at issue in the current proceedings.

In its Order of 1 December 2023, the Court stated that, in light of the strong tension that characterized the relations between the Parties, it considered that the conduct of Venezuela – in organizing such a referendum and the assertions made that it would take concrete action on the basis of the results of that referendum – presented a serious risk of Venezuela acquiring and exercising control and administration of the territory in dispute, which is currently administered by Guyana in its totality. The Court therefore directed Venezuela to refrain from taking any action, pending a final decision in the case, which would modify the situation that currently prevails in the territory in dispute. The Court further instructed both Parties to refrain from any action which might aggravate or extend the dispute or make it more difficult to resolve.

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I now turn to three Orders delivered by the Court 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)*.

South Africa filed this case on 29 December 2023, alleging that Israel, in conducting military operations in and against Gaza in the wake of the attack in Israel by Hamas on 7 October 2023, has breached and continues to breach its obligations under the Genocide Convention. According to South Africa, provisional measures were necessary in order to protect against further, severe and irreparable harm to the rights of the Palestinian people and to ensure Israel's compliance with its obligations under the Genocide Convention. In its Order of 26 January 2024, the Court noted with deep concern that the population in Gaza was extremely vulnerable, pointing out that the military operation conducted by Israel after 7 October 2023 had resulted, *inter alia*, in tens of thousands of deaths and injuries and the destruction of homes, schools, medical facilities and other vital infrastructure, as well as displacement on a massive scale. The Court expressed its alarm at the fact that many Palestinians in the Gaza Strip had no access to the most basic foodstuffs, potable water, electricity, essential medicines or heating.

In the operative clause of its Order, the Court directed Israel to take all measures within its power to prevent the commission of all acts within the scope of Article II of the Genocide Convention, to ensure with immediate effect that its military did not commit any acts described in the first operative paragraph; to take all measures within its power to prevent and punish the direct and public incitement to commit genocide in relation to members of the Palestinian group in the Gaza Strip; to take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip; to take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II and Article III of the Genocide Convention against members of the Palestinian group in the Gaza Strip; and to submit a report to the Court on all measures taken to give effect to this Order within one month as from the date of the Order.

By a letter dated on 12 February 2024, South Africa submitted to the Court what it referred to as an "Urgent Request for additional measures under Article 75, paragraph 1, of the Rules of Court". In particular, the Applicant argued that the developing circumstances in Rafah required the Court to exercise its power under that provision. By a letter from the Registrar dated 16 February 2024, the

Parties were informed of the Court's decision. The Court stated that the recent developments in the Gaza Strip, and in Rafah in particular, demanded immediate and effective implementation of the provisional measures indicated by the Court in its Order of 26 January 2024, which were applicable throughout the Gaza Strip, including in Rafah, and did not demand the indication of additional provisional measures. The Court also emphasized that Israel remained bound to fully comply with its obligations under the Genocide Convention and with the said Order, including by ensuring the safety and security of the Palestinians in the Gaza Strip.

On 6 March 2024, South Africa filed a further Request for the indication of additional provisional measures and/or the modification of measures previously indicated by the Court in its Order 26 January 2024, based on the alleged change in the situation in Gaza since the indication of the first set of provisional measures. In its Order of 28 March 2024, the Court found that the desperate level of food insecurity in the Gaza Strip and the fact that famine was setting in constituted a change in the situation which existed when the Court adopted its Order in January. As the provisional measures indicated therein did not fully address the consequences arising from this change in situation, their modification was thus justified. In the operative clause, the Court reaffirmed the provisional measures indicated in its Order of 26 January 2024 and indicated additional measures. In particular, it directed Israel, in conformity with its obligations under the Genocide Convention, and in view of the worsening conditions of life faced by Palestinians in Gaza, in particular the spread of famine and starvation, to take all necessary and effective measures to ensure, without delay, in full co-operation with the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance, including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians throughout Gaza, including by increasing the capacity and number of land crossing points and maintaining them open for as long as necessary. It also directed Israel to ensure with immediate effect that its military did not commit acts which constitute a violation of any of the rights of the Palestinians in Gaza, including by preventing, through any action, the delivery of urgently needed humanitarian assistance. In addition, Israel was ordered to submit a report to the Court on all measures of compliance taken, within one month as from the date of the Order.

On 10 May 2024, South Africa submitted to the Court another urgent Request for the modification and indication of provisional measures, aimed, *inter alia*, at halting Israel's military offensive in Rafah and ensuring the unimpeded access to Gaza of United Nations and other officials engaged in the provision of humanitarian aid and assistance. In its Order of 24 May 2024, the Court reaffirmed the provisional measures indicated in its Orders of 26 January 2024 and 28 March 2024, and indicated additional measures. In particular, it directed Israel, in conformity with its obligations under the Genocide Convention, and in view of the worsening conditions of life faced by civilians in the Rafah Governorate, to immediately halt its military offensive, and any other action in the Rafah Governorate, which may inflict on the Palestinian group in Gaza conditions of life that could bring about its physical destruction in whole or in part. Israel was also directed to maintain open the Rafah crossing for unhindered provision at scale of urgently needed basic services and humanitarian assistance; and to take effective measures to ensure the unimpeded access to the Gaza Strip of any commission of inquiry, fact-finding mission or other investigative body mandated by competent organs of the United Nations to investigate allegations of genocide. Finally, Israel was ordered to submit a report to the Court on all measures of compliance taken, within one month as from the date of the Order.

In all three Orders, the Court expressed its grave concern over the fate of the hostages abducted during the attack in Israel on 7 October 2023 and held since then by Hamas and other armed groups, and called for their immediate and unconditional released.

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I turn now to the Court's Order of 30 April 2024 on the Request for the indication of provisional measures submitted by Nicaragua on 1 March 2024, together with its Application instituting proceedings against Germany, in the case concerning *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory*. The Applicant in this case states that every Contracting Party to the Genocide Convention has a duty under that Convention to do everything possible to prevent the commission of genocide and alleges that Germany, by

providing political, financial and military support to Israel and by defunding the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), is facilitating the commission of genocide and has failed in its obligation to do everything possible to prevent the commission of genocide. In its Request for the indication of provisional measures, Nicaragua argued that interim measures of protection were urgently needed to ensure that Germany suspended its military assistance to Israel in so far as this aid was used or could be used to commit or to facilitate serious violations of the Genocide Convention occurring in the Gaza Strip and that it resumed its support of UNRWA, having announced its decision to suspend its financial contributions on 27 January 2024. In reaching its decision on Nicaragua's Request, the Court, in its Order, took into account a range of factors, including Germany's assertions regarding its national legal framework governing the manufacturing, marketing and export of weapons and other military equipment, as well as the apparent decrease since November 2023 in the value of material for which licences to export arms to Israel had been granted by the German Government. With regard to Germany's decision to suspend its support of UNRWA in respect of its operations in Gaza, the Court observed, first, that contributions to UNRWA were voluntary in nature. Secondly, it noted that, according to the information provided to it by Germany, no new payment was due from the latter in the weeks following the announcement of its decision. Finally, the Court noted that Germany had stated that it had supported initiatives aimed at funding the agency's work, as well as providing financial and material support to other organizations operating in the Gaza Strip.

In conclusion, based on the factual information and legal arguments presented by the Parties, the Court found that, at present, the circumstances were not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.

Before doing so, however, the Court recalled that, in its Order on provisional measures of 26 January 2024 in the *South Africa* v. *Israel* case, it noted that the military operation conducted by Israel following the attack of 7 October 2023 had resulted in *[I quote]* "a large number of deaths and injuries, as well as the massive destruction of homes, the forcible displacement of the vast majority of the population, and extensive damage to civilian infrastructure" *[end of quote]*. The Court further stated, in its Order in the *Nicaragua* v. *Germany* case, that it remained deeply concerned about the

catastrophic living conditions of the Palestinians in the Gaza Strip. It recalled that, pursuant to common Article 1 of the Geneva Conventions, all States parties were under an obligation "to respect and to ensure respect" for the Conventions "in all circumstances". It followed from that provision that every State party to these Conventions, *[I quote]* "whether or not it is a party to a specific conflict, is under an obligation to ensure that the requirements of the instruments in question are complied with" *[end of quote]*. Moreover, the Court considered it particularly important to remind all States of their international obligations relating to the transfer of arms to parties to an armed conflict, in order to avoid the risk that such arms might be used to violate the above-mentioned Conventions. All these obligations were incumbent upon Germany as a State party to the said Conventions in its supply of arms to Israel.

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Now, I come to the Court's Order of 23 May 2024 on the Request for the indication of provisional measures filed by Mexico, together with its Application of 11 April 2024, in the case concerning the *Embassy of Mexico in Quito (Mexico* v. *Ecuador)*. This case relates to events that occurred on 5 April 2024, when armed members of the Ecuadorian security forces entered the Mexican Embassy without the authorization of the Head of Mission, restrained the Deputy Chief of Mission and forcibly removed from the premises Mr Glas Espinel, former Vice-President of Ecuador, who had been granted political asylum by Mexico. In its Request, Mexico asked the Court, *inter alia*, to order Ecuador to refrain from acting against the inviolability of the premises of the Mission and the private residences of Mexico's diplomatic agents, and to take appropriate measures to protect and respect them, as well as the property and archives therein. In its examination of the Request, the Court took into account assurances provided by Ecuador to Mexico in writing and also during the hearing held on 1 May 2024 that it would, in accordance with the Vienna Convention on Diplomatic Relations and other relevant rules of international law, provide full protection and security to the premises, property and archives of the diplomatic mission of Mexico in Quito, and would allow Mexico to clear the premises of that mission and the private residences of its diplomatic agents. The

Court considered that the assurances given by Ecuador encompassed the concerns expressed by Mexico in its Request. With regard to those assurances, the Court reiterated that unilateral declarations can give rise to legal obligations, that interested States may place confidence in them, and are entitled to require that the obligation thus created be respected. The Court further reiterated that once a State has made such a commitment concerning its conduct, its good faith in complying with that commitment is to be presumed.

In light of the above, the Court considered that there was at that given time no urgency, in the sense that there was no real and imminent risk of irreparable prejudice to the rights claimed by the Applicant.

The Court observed that the conditions for the indication of provisional measures identified in its jurisprudence were cumulative. Therefore, having found that one such condition had not been met, the Court was not required to examine whether the other conditions were satisfied.

The Court concluded that the circumstances, as they presented themselves to it at that point in time, were not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.

The Court nonetheless emphasized the fundamental importance of the principles enshrined in the Vienna Convention on Diplomatic Relations. It recalled in particular that there is no more fundamental prerequisite for the conduct of relations between States than the inviolability of diplomatic envoys and embassies.

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Finally, I turn to the Court's Order of 3 July 2024 on the admissibility of the declarations of intervention filed by seven States under Article 63 of the Statute in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia* v. *Myanmar)*.

Let me recall that the case was instituted by The Gambia against Myanmar in November 2019 for alleged violations by the latter of its obligations under the Genocide Convention through acts

adopted, taken and condoned by its Government against members of the Rohingya group. The Court indicated provisional measures in 2020 and, by a Judgment of 22 July 2022, it found that it had jurisdiction on the basis of Article IX of the Genocide Convention to entertain the Application filed by The Gambia, and that the said Application was admissible.

On 15 November 2023, the Maldives filed a declaration of intervention in the case, with reference to Article 63 of the Statute of the Court. On the same date, a joint declaration of intervention was filed, pursuant to the same provision, by Canada, Denmark, France, Germany, the Netherlands and the United Kingdom. Myanmar objected to the admissibility of these declarations of intervention.

By its Order of 3 July 2024, the Court decided that the declarations of intervention under Article 63 of the Statute submitted were admissible in so far as they concerned the construction of provisions of the Genocide Convention.

The Court recalled that intervention under Article 63 of the Statute involved the exercise of a right by a State party to a convention the construction of which was in question before the Court, and that the object of such an intervention was limited to the construction of the specific convention under consideration in a given case. The Court found that the declarations of intervention submitted in *The Gambia* v. *Myanmar* case mainly concerned the construction of Articles I, II, IV, V and VI of the Genocide Convention – provisions which are in question at the current merits stage of the proceedings. The Court observed that, although these declarations in some instances addressed matters other than the construction of provisions of the Genocide Convention, such as facts and the evidentiary value of a certain category of documents, it would not consider such issues and expected the interveners to refrain from addressing them any further.

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Mr Chair, this concludes my brief account of the recent decisions of the Court during a year of intense judicial activity. It has been a privilege for me to address you today for the first time since my election as President of the Court, which happily coincides with seventy-fifth anniversary of the Commission. I now look forward to engaging in an enriching discussion with the members of the

Commission. It is my sincere belief that this yearly tradition, that allows our two institutions to share ideas in a collegial setting, is key to maintaining our close links, as we endeavour, in a complementary manner, to forward the aims of the United Nations and to promote the international rule of law.

I thank you for your kind attention.

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