

26 JANUARY 2024

O R D E R

[of the Court]

85. The Court deems it necessary to emphasize that all parties to the conflict in the Gaza Strip are bound by international humanitarian law. It is gravely concerned about the fate of the hostages abducted during the attack in Israel on 7 October 2023 and held since then by Hamas and other armed groups, and calls for their immediate and unconditional release.

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86. For these reasons,

THE COURT,

***Indicates* the following provisional measures:**

(1) By fifteen votes to two,

The State of Israel shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to Palestinians in Gaza, take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention, in particular:

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- (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; and**
- (d) imposing measures intended to prevent births within the group;**

IN FAVOUR: *President Donoghue; Vice-President Gevorgian; Judges Tomka, Abraham, Bennouna, Yusuf, Xue, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant; Judge ad hoc Moseneke;*

AGAINST: *Judge Sebutinde; Judge ad hoc Barak;*

(2) By fifteen votes to two,

The State of Israel shall ensure with immediate effect that its military does not commit any acts described in point 1 above;

IN FAVOUR: *President Donoghue; Vice-President Gevorgian; Judges Tomka, Abraham, Bennouna, Yusuf, Xue, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant; Judge ad hoc Moseneke;*

AGAINST: *Judge Sebutinde; Judge ad hoc Barak;*

(3) By sixteen votes to one,

The State of Israel shall 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;

IN FAVOUR: *President Donoghue; Vice-President Gevorgian; Judges Tomka, Abraham, Bennouna, Yusuf, Xue, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant; Judges ad hoc Barak, Moseneke;*

AGAINST: *Judge Sebutinde;*

(4) By sixteen votes to one,

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

IN FAVOUR: *President Donoghue; Vice-President Gevorgian; Judges Tomka, Abraham, Bennouna, Yusuf, Xue, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant; Judges ad hoc Barak, Moseneke;*

AGAINST: *Judge Sebutinde;*

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(5) By fifteen votes to two,

The State of Israel shall 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 Convention on the Prevention and Punishment of the Crime of Genocide against members of the Palestinian group in the Gaza Strip;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge ad hoc* Moseneke;

AGAINST: *Judge* Sebutinde; *Judge ad hoc* Barak;

(6) By fifteen votes to two,

The State of Israel shall submit a report to the Court on all measures taken to give effect to this Order within one month as from the date of this Order.

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge ad hoc* Moseneke;

AGAINST: *Judge* Sebutinde; *Judge ad hoc* Barak.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-sixth day of January, two thousand and twenty-four, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of South Africa and the Government of the State of Israel, respectively.

(Signed) Joan E. DONOGHUE,
President.

(Signed) Philippe GAUTIER,
Registrar.

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DECLARATION OF JUDGE NOLTE

1. The circumstances of this case are heartbreaking. On 7 October 2023, persons associated with Hamas attacked Israel from the Gaza Strip. They committed atrocities during which more than 1,000 Israelis were killed and over 200 were taken hostage. Rockets continue to be fired into Israel. Israel has responded with a military operation in the Gaza Strip, as a result of which thousands of Palestinian civilians have been killed and wounded, a large majority of the Palestinians living in the Gaza Strip have been displaced, and a large percentage of all buildings for a population of some 2 million people have been destroyed (see paragraph 13 of the Order)¹. This apocalyptic situation arises from a very complicated political and historical context. Many people around the world hold widely divergent views about who is responsible for the current situation, about various aspects of the larger conflict, and what needs to be done to resolve them.

[...]

DECLARATION OF JUDGE XUE

1. In the present case, I concur with my colleagues in upholding South Africa's standing, on a prima facie basis, in instituting proceedings against Israel for breach of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention"). I feel obliged to give a short explanation of my position at this stage.

[...]