

INTERNATIONAL COURT OF JUSTICE

**DECLARATION OF INTERVENTION
PURSUANT TO ARTICLE 63 OF THE STATUTE OF THE COURT
BY THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS**

**FILED IN THE REGISTRY OF THE COURT
IN THE CASE OF**

**APPLICATION OF THE CONVENTION ON THE PREVENTION AND
PUNISHMENT OF THE CRIME OF GENOCIDE IN THE GAZA STRIP
(SOUTH AFRICA *v.* ISRAEL)**

11 MARCH 2026

**DECLARATION OF INTERVENTION OF
THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS
Pursuant to Article 63 of the Statute of the International Court of Justice**

In the case of

**APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF
THE CRIME OF GENOCIDE IN THE GAZA STRIP
(SOUTH AFRICA v. ISRAEL)**

To the Registrar of the International Court of Justice (the “Court”), the undersigned being duly authorized by the Kingdom of the Netherlands:

1. On behalf of the Kingdom of the Netherlands (the “Netherlands”), I have the honour to submit to the Court a Declaration of Intervention pursuant to the right to intervene set out in Article 63(2) of the Statute of the International Court of Justice (the “Statute”), 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(5) of the Rules of Court (the “Rules”) provides that a declaration of a State’s desire to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall specify the case and the convention to which it relates and shall contain:
 - (a) particulars of the basis on which the declarant State considers itself a party to the convention;
 - (b) identification of the particular provisions of the convention the construction of which it considers to be in question;
 - (c) a statement of the construction of those provisions for which it contends;
 - (d) a list of documents in support, which documents shall be attached.
3. Those matters are addressed in sequence below, following some preliminary observations.

I. Preliminary observations

4. On 29 December 2023, the Republic of South Africa (“South Africa”) instituted proceedings against the State of Israel (“Israel”) in relation to a dispute concerning the latter’s violation of the *Convention on the Prevention and Punishment of the Crime of Genocide*¹ (the “Genocide Convention” or the “Convention”).²
5. According to its Application instituting proceedings, South Africa considers that the conduct of Israel is “in violation of its obligations under the Genocide Convention, including Articles I, III, IV, V and VI, read in conjunction with Article II.”³

¹ Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations Treaty Series, Vol. 78, p. 277 (entered into force 12 January 1951).

² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Application instituting proceedings, filed in the Registry of the Court on 29 December 2023.

³ *Id.*, para. 110.

6. On 6 February 2024, pursuant to Article 63(1) of the Statute, the Registrar notified the Netherlands, as a State Party to the Genocide Convention, that “the 1948 Convention on the Prevention and Punishment of the Crime of Genocide [...] is invoked both as a basis of the Court's jurisdiction and as a substantive basis of [South Africa's] claims on the merits. In particular, [South Africa] 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.”⁴

7. By this Declaration, the Netherlands avails itself of the right to intervene in the dispute between South Africa and Israel under Article 63(2) of the Statute, as a State Party to the Genocide Convention.

8. The Court has recognized that Article 63 confers a right of intervention,⁵ which is “limited to the construction of the convention concerned.”⁶ A State seeking to intervene must confine its intervention to “the point of interpretation which is in issue in the proceedings, and does not extend to general intervention in the case.”⁷ The Court also held that, “in accordance with the terms of Article 63 of the Statute, the limited object of the intervention is to allow a third State not party to the proceedings, but party to a convention whose construction is in question in those proceedings, to present to the Court its observations on the construction of that convention.”⁸

9. The Court has further clarified that the Rules of Court “do not require States seeking to intervene to show in addition that they address interpretive points that are in dispute in the proceedings between the parties.”⁹ The Rules of Court also do “not contain the requirement that a proposition for a construction of the convention in question must meet a particular standard of specificity.”¹⁰ Furthermore, the Court has held that it “does not consider that intervention under Article 63 is only permitted in relation to points of interpretation that are in dispute between the parties.”¹¹ The Court also considered that “the question of a State's motivation when filing a declaration of intervention is not relevant for the purposes of the admissibility of that declaration.”¹²

10. Furthermore, bearing in mind the *jus cogens* character of the prohibition of genocide,¹³ and the *erga omnes partes* nature of the obligations under the Genocide Convention, all States Parties have a

⁴ Letter of 6 February 2024 from the Registrar of the Court to the Minister of Foreign Affairs of the Kingdom of the Netherlands.

⁵ *Haya de la Torre (Colombia v. Peru)*, Judgment, 13 June 1951, *I.C.J. Reports* 1951, p. 71, p. 76; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Application by Malta for Permission to Intervene, Judgment, 14 April 1981, *I.C.J. Reports* 1981, p. 3, para. 21; *Whaling in the Antarctic (Australia v. Japan)*, Declaration of Intervention by New Zealand, Order, 6 February 2013, *I.C.J. Reports* 2013, p. 3, para. 7; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Admissibility of the Declarations of Intervention, Order, 3 July 2024, *I.C.J. Reports* 2024, p. 729, para. 35; *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, 5 June 2023, *I.C.J. Reports* 2023, p. 354, para. 26.

⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Admissibility of the Declarations of Intervention, Order, 3 July 2024, *I.C.J. Reports* 2024, p. 729, para. 21; see also *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, 5 June 2023, *I.C.J. Reports* 2023, p. 354, para. 27.

⁷ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Application by Malta for Permission to Intervene, Judgment, 14 April 1981, *I.C.J. Reports* 1981, p. 3, para. 26.

⁸ *Whaling in the Antarctic (Australia v. Japan)*, Declaration of Intervention by New Zealand, Order, 6 February 2013, *I.C.J. Reports* 2013, p. 3, para. 7.

⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Admissibility of the Declarations of Intervention, Order, 3 July 2024, *I.C.J. Reports* 2024, p. 729, para. 35.

¹⁰ *Ibid.*

¹¹ *Id.*, para. 44.

¹² *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, 5 June 2023, *I.C.J. Reports* 2023, p. 354, para. 44.

¹³ *Armed activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction of the Court and admissibility of the application, Judgment, 3 February 2006, *I.C.J. Reports* 2006, p. 6, para. 64.

common interest in the accomplishment of the high purposes of the Genocide Convention. In its first order on provisional measures in the present case, the Court made the following statement relative to the interests of all States Parties to the Genocide Convention:

[The Court] recalls in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* [...], it observed that all the States parties to the Convention have a common interest to ensure the prevention, suppression and punishment of genocide, by committing themselves to fulfilling the obligations contained in the Convention. Such a common interest implies that the obligations in question are owed by any State party to all the other States parties to the relevant convention; they are obligations *erga omnes partes*, in the sense that each State party has an interest in compliance with them in any given case.¹⁴

11. It is in this context, as State Party to the Genocide Convention, that the Netherlands submits its Declaration of Intervention. Given its interest in the accomplishment of the high purposes of the Convention, as well as its consequent interest in its construction, the Netherlands wishes to avail itself of the right of intervention in this case with the limited objective of placing before the Court its interpretation of the relevant provisions of the Convention.

12. The present Declaration of Intervention presents a statement of the construction of the Genocide Convention for which the Netherlands contends in accordance with Article 82(5)(c) of the Rules of Court, indicating the relevant provisions of the Genocide Convention and the direction of the construction considered by the Netherlands. If deemed admissible by the Court, the Netherlands will provide an elaboration of this construction in its subsequent Written Observations.

13. The Netherlands hereby confirms that its Declaration of Intervention and, if deemed admissible, its subsequent Written Observations, will be limited to the construction of provisions of the Genocide Convention and will not address other matters.

14. This Declaration has been filed in accordance with Article 82(1) of the Rules of Court.

II. The Case and Convention to which this Declaration Relates

15. This Declaration of Intervention relates to the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip*, instituted by South Africa on 29 December 2023 against Israel. That case concerns the interpretation, application, and fulfilment of the Genocide Convention.

16. As a State Party to this Convention, the Netherlands has an interest in the construction of this Convention resulting from the case brought by South Africa. The Netherlands accordingly exercises its right to intervene in these proceedings pursuant to Article 63(2) of the Statute. The Declaration is directed at questions of the construction of the Genocide Convention arising in this case.

¹⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the indication of provisional measures, Order, 26 January 2024, *I.C.J. Reports* 2024, p. 3, para. 33.

III. Basis on which the Kingdom of the Netherlands is a State Party to the Genocide Convention

17. In accordance with Article XI of the Genocide Convention, the Kingdom of Netherlands deposited its instrument of accession to the Genocide Convention with the Secretary-General of the United Nations on 20 June 1966.

18. The Genocide Convention entered into force for the Netherlands on the ninetieth day following the deposit of their respective instruments of ratification and accession. Accordingly, the Netherlands is a State Party to this Convention. It has not filed a reservation to the Convention.

IV. The Provisions of the Genocide Convention in Question in the Present Case

19. In its Application, South Africa alleges violations of the Genocide Convention through “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.”¹⁵ Specifically, South Africa argues that:

The acts and omissions by Israel complained of by South Africa are genocidal in character because they are intended to bring about the destruction of a substantial part of the Palestinian national, racial and ethnical group, that being the part of the Palestinian group in the Gaza Strip (“Palestinians in Gaza”). The acts in question include killing Palestinians in Gaza, causing them serious bodily and mental harm, and inflicting on them conditions of life calculated to bring about their physical destruction. The acts are all attributable to Israel, which has failed to prevent genocide and is committing genocide in manifest violation of the Genocide Convention.¹⁶

20. South Africa specified that Israel “is in violation of its obligations under the Genocide Convention, including Articles I, III, IV, V and VI, read in conjunction with Article II.”¹⁷ It furthermore stated that it “is also acutely aware of its own obligation — as a State party to the Genocide Convention — to prevent genocide” and that the “Application by South Africa [...] fall[s] to be considered in that context.”¹⁸

21. In light of the above, the proper construction of Articles I, read in conjunction with Article VIII, and II of the Genocide Convention is in question in the case and is directly relevant to the resolution of the dispute placed before the Court by South Africa’s Application.

22. These Articles provide:

Article I

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.

¹⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Application instituting proceedings, filed in the Registry of the Court on 29 December 2023, para. 110.

¹⁶ *Id.*, para. 1.

¹⁷ *Id.*, para. 110.

¹⁸ *Id.*, para. 3.

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, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article VIII

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

V. The Construction of the Provisions for which the Kingdom of the Netherlands contends

23. The Netherlands will base its construction of provisions of the Genocide Convention on the general rules of interpretation of treaties, as reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (“VCLT”).¹⁹ Pursuant to Article 31(3)(b) of the VCLT, such interpretation must take account of the subsequent practice of the parties to the treaty to the extent that this establishes the agreement of the parties regarding the treaty’s interpretation, as well as any relevant rules of international law applicable in the relations between the parties. Pursuant to Article 32 of the VCLT, in certain circumstances, recourse may also be had to supplementary means of interpretation, including the preparatory work of the treaty.

24. In this context, the Court noted that references to other rules and principles of international law outside the Genocide Convention presented by States intervening in a case concerning the Genocide Convention may be considered by the Court “in so far as they concern the construction of the Convention’s provisions, in accordance with the customary rule of interpretation reflected in Article 31(3)(c), of the Vienna Convention on the Law of Treaties.”²⁰

25. Pursuant to Article 31(3)(c) of the VCLT, the Netherlands will support its interpretation with other relevant rules of international law applicable between the parties to the dispute, including conventional and customary international law. The Netherlands will also refer to the decisions of international courts and tribunals as subsidiary means in the interpretation of the Genocide Convention, pursuant to Article 38(1)(d) of the Statute.

A. Construction of Articles I, II and VIII of the Genocide Convention

26. The following section presents the issues the Netherlands considers relevant for the construction of the Convention, in particular with respect to the definition of underlying acts of genocide, and the role such acts can play in the determination of genocidal intent. Consistent with and

¹⁹ Vienna Convention on the Law of Treaties, 23 May 1969, United Nations Treaty Series, Vol. 1155, p. 331 (entered into force 27 January 1980).

²⁰ *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, 5 June 2023, *I.C.J. Reports* 2023, p. 354, para. 84.

based upon the Declaration of Intervention of 15 November 2023 and subsequent Written Observations of 3 March 2025 submitted by the Netherlands, together with Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, and the United Kingdom of Great Britain and Northern Ireland, in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, the Netherlands will present its view on the construction of the Convention in relation to the requirement of specific intent. This will include its view on 1) the significance of circumstantial evidence; 2) the importance of a balanced approach recognizing the exceptional gravity of the crime of genocide, as direct evidence is usually rare in cases concerning genocide; and 3) the importance of a comprehensive and holistic approach to the available evidence. This will be followed by a section on forced displacement, on children, and one on starvation and the deliberate withholding of humanitarian aid. In addition, the Netherlands will present its view on the obligation of third states to prevent genocide.

i) Forced displacement can, depending on the facts, amount to or lead to an underlying act of genocide and forced displacement can play an important role in determining specific intent

27. Under this heading, the Netherlands will make submissions on the construction of the Convention in relation to forced displacement. These submissions will be consistent with and based upon the Declaration of Intervention and subsequent Written Observations submitted by the Netherlands, together with Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, and the United Kingdom of Great Britain and Northern Ireland in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*.

28. The Netherlands will present the view that, although forced displacement of persons does not, as such, constitute an enumerated underlying act of genocide, on a proper construction of the Genocide Convention, forced displacement may, depending on the facts, lead or amount to one of the enumerated underlying acts of genocide set out in Article II(b) and Article II(c) of the Genocide Convention and may also constitute evidence of specific intent. In this regard, the Netherlands will argue that 1) forced displacement may lead to or inflict serious mental or bodily harm as prohibited by Article II(b) of the Genocide Convention; 2) forced displacement may lead or amount to the infliction on the group of conditions of life calculated to bring about its physical destruction in whole or in part in the sense of Article II(c) of the Genocide Convention, which covers methods of physical destruction other than killing; and 3) in addition to leading or amounting to the underlying acts of genocide, forced displacement may also constitute evidence of specific intent.

ii) The underlying acts of genocide need to be assessed differently when the acts are committed against children and acts committed against children can play an important role in determining specific intent

29. In the exercise of its right to intervene, the Netherlands will make submissions as to the construction of the Convention in relation to acts committed against children. These submissions will be consistent with and based upon the Declaration of Intervention and subsequent Written Observations submitted by the Netherlands, together with Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, and the United Kingdom of Great Britain and Northern Ireland in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*. In the view of the Netherlands, in assessing whether a specific act constitutes an

underlying act of genocide, the particular impact on children must be taken into account and acts committed against and/or the targeting of children is relevant for the determination of specific intent.

30. This will include the Netherlands' view on 1) the application of the term "serious bodily or mental harm" in light of the distinctive needs and vulnerabilities of children, and, accordingly, the appropriate, lower, threshold for "serious bodily or mental harm" under Article II(b) of the Genocide Convention when the victim is a child; 2) the consideration of the conditions of life calculated to bring about the physical destruction of members of a group as prohibited under Article II(c) of the Genocide Convention, which must be applied in light of the distinctive needs and vulnerabilities of children; and 3) the effects of forced displacement in light of the specific needs of children which can, under specific circumstances, amount to an act of genocide.

31. This will also include the Netherlands' view on the determination of specific intent. In the exercise of its right to intervene, the Netherlands will submit that, in construing the specific intent requirements in Article II of the Genocide Convention, there are several ways in which the Court should take account of the targeting of children, including by killing, for the purpose of establishing specific intent. This is because the targeting of children as such may present evidence of genocidal intent and is, accordingly, relevant to the determination of the specific intent of genocide and to a proper construction of what it means to intend to destroy a group in whole or in part.

iii) The underlying acts of genocide may take the form of starvation and the deliberate withholding of humanitarian aid, which can also play an important role in determining specific intent

32. Under this heading, the Netherlands will make submissions as to the construction of the Convention in relation to starvation and the deliberate withholding of humanitarian aid. The Netherlands will present the view that while these acts do not as such constitute enumerated underlying acts of genocide under Article II of the Convention, they may amount to the genocidal acts listed in Article II, in particular Article II(a), II(b), and II(c).

33. In this regard, the Netherlands will argue that 1) starvation or the deliberate withholding of humanitarian aid may result in the death of members of the group and may amount to the prohibited act of killing under Article II(a) of the Genocide Convention; 2) starvation or the deliberate withholding of humanitarian aid may lead to or inflict serious mental or bodily harm as prohibited by Article II(b) of the Genocide Convention, and 3) such acts may amount to the deliberate infliction on the group of conditions of life calculated to bring about its physical destruction in whole or in part in the sense of Article II(c) of the Genocide Convention.

34. In particular, with regard to acts that may amount to the deliberate infliction on the group of conditions of life calculated to bring about its physical destruction in whole or in part under Article II(c) of the Genocide Convention, the Netherlands will argue that such acts are not limited to methods of destruction that would immediately cause the death of members of the group, but rather that such acts must be calculated to bring about their eventual physical destruction. This does not require the actual physical destruction to have occurred, but rather that the conditions were 'calculated' to bring about such destruction.

35. The Netherlands will also argue that, in construing the specific intent requirement in Article II of the Genocide Convention, the Court should take account of starvation or the deliberate withholding

of humanitarian aid for the purpose of establishing specific intent, in particular when this occurs on the basis of a concerted plan of a consistent pattern of conduct.

iv) The legal nature and substance of the obligation of third states to prevent genocide

36. Under this heading, the Netherlands will make submissions as to the construction of the Convention in relation to the legal nature and substance of the obligation of third States to prevent genocide. This relates to Articles I and VIII of the Genocide Convention.

37. South-Africa notes in its application that “[t]here [is] plainly a dispute between Israel and South Africa relating to the interpretation and application of the Genocide Convention, going [...] to South Africa’s compliance with its own obligation to prevent genocide.”²¹ Therefore, the obligation of third states to prevent genocide will be in question in the case.

38. The intervention by the Netherlands will address 1) the scope of the obligation of third States to prevent genocide, including the circumstances that trigger the applicability of the obligation to prevent as applicable to third States; 2) the nature of this obligation; and 3) the scope of the obligation “to employ all means reasonably available them, so as to prevent genocide so far as possible.”²² The Netherlands will further present the view that the obligation to prevent genocide is a due diligence obligation and, hence, an obligation of conduct. What is required for the implementation of an obligation of conduct will depend on the circumstances of a given situation, including the extent to which a third State is able to exert influence on that situation. As the Court noted, “[d]ue diligence is a standard of conduct whose content in a specific situation derives from various elements, including the circumstances of the State concerned, and which may evolve over time.”²³

VI. Documents in Support of the Declaration

39. The following is a list of the documents in support of this Declaration, which documents are attached hereto:

- (a) Letter of 6 February 2024 from the Registrar of the International Court of Justice to the Ministry of Foreign Affairs of the Netherlands;
- (b) Instrument of accession by the Kingdom of the Netherlands to the Genocide Convention;

VII. Conclusion

40. Based on the information set out above, the Netherlands avails itself of the right conferred upon it by Article 63(2) of the Statute to intervene as non-party in the proceedings brought by South Africa against Israel in this case. The Netherlands reserves its right to supplement or amend this Declaration, and any associated Written Observations submitted with respect to it, as it considers necessary in response to any developments in the proceedings.

²¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Application instituting proceedings, filed in the Registry of the Court on 29 December 2023, para. 16.

²² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 26 February 2007, *I.C.J. Reports* 2007, p. 43, para. 430.

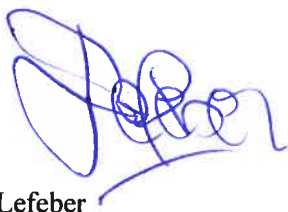
²³ *Obligations of States in Respect of Climate Change*, Advisory Opinion, 23 July 2025, paras. 280-300.

41. The Government of the Netherlands has appointed the undersigned, Prof. Dr. René Lefeber, as Agent for the Kingdom of the Netherlands, and Dr. Annemarieke Künzli as co-agent, for the purposes of the present Declaration.

42. It is requested that all communications in this case be sent to the following address:

Kingdom of the Netherlands
Ministry of Foreign Affairs of the Netherlands
International Law Division
Rijnstraat 8
2515XP Den Haag
Kingdom of the Netherlands
djz-ir-procedures@minbuza.nl

Respectfully,



Prof. dr René Lefeber
Agent of the Kingdom of the Netherlands