DECLARATION OF JUDGE CHARLESWORTH

1. I have voted for the three provisional measures indicated by the Court, which supplement the measures contained in the Order of 26 January 2024. I regret, however, that subparagraph (2) *(b)* of the operative paragraph is drafted in such opaque terms that it fails to provide clear guidance to the Parties.

2. The case before the Court is brought in the context of an ongoing conflict that is causing enormous loss of life and human suffering. In January, the Court described the immediate background to this conflict in these terms:

> "On 7 October 2023, Hamas and other armed groups present in the Gaza Strip carried out an attack in Israel, killing more than 1,200 persons, injuring thousands and abducting some 240 people, many of whom continue to be held hostage. Following this attack, Israel launched a large-scale military operation in Gaza, by land, air and sea, which is causing massive civilian casualties, extensive destruction of civilian infrastructure and the displacement of the overwhelming majority of the population in Gaza"[1].

3. The Court found that the Palestinians in the Gaza Strip have a plausible right to be protected from acts of genocide and related prohibited acts, that the Applicant had a plausible right to seek compliance by the Respondent with its obligations under the Genocide Convention, and that these plausible rights were at risk of irreparable prejudice[2]. To address that urgent need for protection, the Court indicated a series of provisional measures.

4. As the Court observes today, the catastrophic humanitarian situation is unremitting and in fact rapidly deteriorating (Order, paras. 18-21). Given that the Palestinian population in the Gaza Strip is now on the brink of famine, South Africa has requested the Court to indicate further provisional measures and/or to modify the measures indicated on 26 January 2024. Starvation, and the resulting loss of life in overwhelming numbers, clearly poses a threat to the right of existence of the Palestinians as a group, a right protected by the Genocide Convention[3].

5. Against this background, the Court's task is to determine whether the existing measures indicated in its Order of 26 January 2024 are sufficient to preserve the rights forming the object of the proceedings on the merits. In its reasoning, the Court draws on a number of United Nations documents to satisfy the requirement of Article 76, paragraph 1, of the Rules of Court that there has been a change in the situation justifying modification. These documents illustrate how the provision of humanitarian aid in the Gaza Strip is undermined by the military campaign. The documents make clear that the only way to prevent further destruction of the Palestinian population in the Gaza Strip is to bring military operations to an end. They all call for ceasefires, whether temporary or permanent.

6. In the dispute brought by South Africa, the Court's mandate is confined to protecting the right of the Palestinian group to be protected from acts of genocide and other prohibited acts under

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[1] *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*, para. 13.

[2] *Ibid.*, paras. 59 and 74.

[3] *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

the Genocide Convention only if, and in so far as, that right is prejudiced by Israel's acts. And the Court cannot order a ceasefire as the conflicting parties are not all before it. However, while the Court cannot remove the risk to the Palestinian group completely, it can at least mitigate it by indicating measures directed at the Parties that are before it: Israel and South Africa.

7. In this light, the measures indicated by the Court today only partly respond to the situation that the Court describes and to the continuing threat to the right of the Palestinian group to exist. While the measure in subparagraph (2) *(a)* identifies appropriate actions for Israel to take, the measure in subparagraph (2) *(b)* is elliptical. Instead of employing the convoluted terms of operative subparagraph (2) *(b)*, in my view the Court should have made it explicit that Israel is required to suspend its military operations in the Gaza Strip, precisely because this is the only way to ensure that basic services and humanitarian assistance reach the Palestinian population.

8. Of course, the suspension of Israel's military operations too only partly addresses the risk of destruction of the Palestinians in Gaza. The Court may not have the power to indicate measures directed at entities not bound by its Statute, but it has the power to indicate measures directed at the parties to the dispute before it. While it is Israel's conduct that is in issue before the Court, it does not follow that South Africa has no role to play in preserving the rights in dispute. After all, invocation of responsibility for the breach of *erga omnes* obligations carries duties with it. In my view it is open to the Court to order both Israel and South Africa to take all reasonable measures within their power to achieve an immediate and sustained humanitarian ceasefire, which would serve to preserve the rights in dispute between them.

(Signed) Hilary CHARLESWORTH.