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One Hundred Eighteenth Congress  
U.S. House of Representatives  
Committee on Foreign Affairs  
2170 Rayburn House Office Building  
Washington, DC 20515

March 5, 2024

President Joseph R. Biden  
The White House  
1600 Pennsylvania Avenue N.W.  
Washington, D.C. 20500

Secretary Antony Blinken  
U.S. Department of State  
Harry S. Truman Building  
2201 C Street N.W.  
Washington, D.C. 20520

Dear President Biden and Secretary Blinken,

On December 29, 2023, the Republic of South Africa submitted an Application to the International Court of Justice (“ICJ” or “Court”) alleging that Israel has violated its obligations under the Genocide Convention.<sup>1</sup> South Africa has requested the Court to declare that Israel’s actions following Hamas’ October 7, 2023 assault on Israel “breach[ed] its obligations under the Genocide Convention, in particular the obligations provided under Article I,”<sup>2</sup> as Israel purportedly has “engaged in and failed to prevent or to punish acts and measures which are genocidal.”<sup>3</sup>

As your administration has observed, South Africa’s claims are “*meritless, counterproductive, and completely without any basis in fact whatsoever.*”<sup>4</sup> Moreover, that Hamas’ assault itself “was carried out by a genocidal organization and comprised nothing less than the full range of atrocity crimes under international law,”<sup>5</sup> as I have noted, underscores that South Africa’s claims

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<sup>1</sup> *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 and request for the indication of provisional measures dated 29 Dec. 2023 (“*South Africa v. Israel*, Application”).

<sup>2</sup> *South Africa v. Israel*, Application, para. 111.

<sup>3</sup> *South Africa v. Israel*, Application, para. 114.

<sup>4</sup> The White House, Press Briefing by Press Secretary Karine Jean-Pierre and NSC Coordinator for Strategic Communications John Kirby dated 3 Jan. 2024 (emphasis added); see also AP, *Secretary of State Blinken dismisses Israel genocide allegation as “meritless”* dated 10 Jan. 2024.

<sup>5</sup> Letter from Chairman McCaul to Secretary Blinken and Ambassador Van Schaack dated 19 Oct. 2023, at 1; see also *id.* at 4 (“I call upon the Department of State to join me in issuing a clear and unambiguous declaration that

are absurd. These claims are a baseless abuse of international legal process and threaten to undermine the Genocide Convention.

In January, I joined 210 members of Congress in a bipartisan letter urging the administration to “offer Israel all appropriate support in opposing the South African application to the ICJ.”<sup>6</sup> Yet – over a month later – requisite support has not been provided, and the case nevertheless is proceeding rapidly. Indeed, the Court has since indicated provisional measures against Israel,<sup>7</sup> South Africa has requested *further* provisional measures,<sup>8</sup> Israel has made observations on this additional request,<sup>9</sup> the Court has ruled on this additional request,<sup>10</sup> and Israel has filed a report with the Court detailing its compliance with the provisional measures.<sup>11</sup> In addition, Nicaragua has filed an application for permission to intervene in the proceedings, in which it refers to Hamas as a “paramilitary” organization and asserts that “the actions of Israel have crossed the threshold of . . . permissible measures of self-defense.”<sup>12</sup>

As a party to the Genocide Convention; an ally of Israel; and a leader in preventing, responding to, and ensuring accountability for mass atrocities; the United States must not remain idle in these proceedings, which implicate core national interests. I thus specifically urge that the administration intervene in the case without delay, as is its right under the ICJ Statute.

In this regard, upon signing the Genocide Convention Implementation Act, Ronald Reagan observed that “[d]uring the Second World War, mankind witnessed the most heinous of crimes: the Holocaust. And after the war, the nations of the world came together and drafted the genocide convention as a howl of anguish and an effort to prevent and punish future acts of genocide. . . . I’m delighted to fulfill the promise made [ ] to all the peoples of the world, and especially the Jewish people.”<sup>13</sup> Decades on, this promise includes – as it must – a solemn duty for the United States to protect the Convention from South Africa’s efforts to debase its significance, render hollow the meaning of genocide, and permit its use as a political tool by malign actors.

Pursuant to Article 63 of the ICJ Statute, Member States have “the right to intervene in [ ] proceedings [before the Court]” “[w]henver the construction of a convention to which [those]

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Hamas has committed acts of genocide, crimes against humanity, and war crimes against the Jewish people and the State of Israel. Indeed, all parties to conflict must act in accordance with international law.”).

<sup>6</sup> Letter from Representative Smith, Representative Manning *et al.* to Secretary Blinken dated 23 Jan. 2024, at 1.

<sup>7</sup> *South Africa v. Israel*, Order of 26 Jan. 2024, para 86.

<sup>8</sup> *South Africa v. Israel*, Request for additional measures under Article 75(1) of the Rules of Court dated 12 Feb. 2024, para 10.

<sup>9</sup> *South Africa v. Israel*, Observations of the State of Israel on the request for additional measures under Article 75 (1) of the Rules of Court dated 15 Feb. 2024

<sup>10</sup> *South Africa v. Israel*, Decision of the Court on South Africa’s request for additional provisional measures dated 16 Feb. 2024

<sup>11</sup> Reuters, *Israel files report with World Court on Gaza measures* dated 26 Feb. 2024.

<sup>12</sup> *South Africa v. Israel*, Application for permission to intervene submitted by Nicaragua dated 23 Jan. 2024, para 3-4.

<sup>13</sup> President Ronald Reagan, *Remarks on Signing the Genocide Convention Implementation Act of 1987* dated 4 Nov. 1988.

states [ ] are parties is in question.”<sup>14</sup> A declaration to this effect must be filed “as soon as possible.”<sup>15</sup> In 2022, the United States filed a Declaration of Intervention in *Ukraine v. Russian Federation* (another case brought before the ICJ under the Genocide Convention), in which the United States set forth observations regarding its interpretation of the Convention.<sup>16</sup> These observations concerned key elements of the crime of genocide, including “the scope of the subject matter the Genocide Convention is intended to address,”<sup>17</sup> and sought to protect the United States’ rights and interests in the proceedings.

The United States must similarly intervene in South Africa’s case against Israel. In particular, the United States should demonstrate clearly and with precision – before the Court and, in consequence, the international community – that Israel’s actions in defending itself against Hamas plainly are not genocide. In this regard, South Africa’s submission fails to provide any substantive evidence to support its claims and rather presents a “deliberately curated, decontextualized and manipulative description of the reality of current hostilities.”<sup>18</sup> This includes relying repeatedly in its pleading on statements by the United Nations Relief and Works Agency (UNRWA),<sup>19</sup> whose employees are known to have participated in the October 7, 2023 assault on Israel, as the House Foreign Affairs Committee recently has examined.<sup>20</sup>

That Israel follows extensive procedures to prevent harm to civilians, continues to facilitate humanitarian assistance into Gaza, and remains committed to upholding international humanitarian law is beyond reproach. And the suggestion that Israel has carried out genocidal acts is an affront to international justice, undermines the promise of the Convention itself, and cannot go unaddressed by the United States before the Court.

The United States must actively engage in issues before the ICJ which implicate its national interests. Accordingly, I am deeply concerned that South Africa’s case against Israel remains pending without a Declaration of Intervention by the United States. I urge the administration to promptly file such a Declaration.

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<sup>14</sup> ICJ Statute, art. 63 (“Whenever 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. [ ] Every state so notified has the right to intervene in the proceedings . . . .”); ICJ Rules, art. 82 (“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 . . . . Such a declaration shall be filed as soon as possible . . . .”); *see also* ICJ Statute, Art. 62 (“Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.”); ICJ Rules, Art. 81 (“An application for permission to intervene under the terms of Article 62 of the Statute . . . shall be filed as soon as possible . . . .”).

<sup>15</sup> *See* ICJ Rules, art. 82.

<sup>16</sup> *Allegations of Genocide under The Convention on The Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Declaration of intervention of the United States of America dated 7 Sept. 2022.

<sup>17</sup> *Id.* para. 25.

<sup>18</sup> *South Africa v. Israel*, Verbatim record 2024/2, para 8.

<sup>19</sup> *South Africa v. Israel*, Application instituting proceedings and request for the indication of provisional measures dated 29 Dec. 2023.

<sup>20</sup> House Foreign Affairs Joint Subcommittee Hearing, Subcommittee on Global Health, Global Human Rights and International Organizations, Subcommittee on Oversight & Accountability, *UNRWA Exposed: Examining the Agency’s Mission and Failures* dated 30 Jan. 2024; *see also* UN Watch, *UNRWA’s Terrorgram: How a Telegram Group of 3,000 UNRWA Teachers in Gaza Celebrated the October 7<sup>th</sup> Hamas Massacre* dated 29 Jan. 2024.

Sincerely,

A handwritten signature in blue ink that reads "Michael T. McCaul". The signature is written in a cursive, flowing style.

Michael T. McCaul  
Chairman  
House Foreign Affairs Committee