

STATEMENT OF THE STATE OF ISRAEL PURSUANT TO THE COURT’S ORDER OF 23 DECEMBER 2024 RELATING TO THE ADVISORY PROCEEDINGS INITIATED BY GENERAL ASSEMBLY RESOLUTION 79/232

I. Introduction

1. The present written statement is submitted pursuant to the Court’s Order of 23 December 2024, which fixed 28 February 2025 as the time-limit within which written statements on the question submitted to the Court for an advisory opinion may be presented to the Court.
2. That another case concerning Israel has been brought before the Court when the ink has barely dried on the *Israeli practices* advisory opinion, and at a time when Israel is the respondent in a contentious case outrageously brought against it for seeking lawfully to repel heinous attacks against its citizens and territory, is not a testament to the strength of the international legal system. Rather, it is part of an abusive and systematic campaign that regrettably weaponizes international law, and international legal institutions, with the aim of depriving Israel of fundamental rights accorded to all sovereign States, including the right to defend itself.
3. Indeed, the present proceedings seek again to turn international law on its head by inviting the Court, in a partisan and prejudicial manner, to consider that Israel has only obligations and no rights; and, moreover, that those obligations are absolute and unqualified. Such a finding would not only be wrong in law: it would risk systemic damage to the international legal order and approximate the Court to the political—and often politicized—organs of the United Nations, thus compromising its judicial integrity.
4. The question put to the Court by resolution 79/232 is patently biased and one-sided. It is based on false assumptions and inquires only into the obligations of Israel, without referring in any way to Israel’s rights and powers, nor indeed to its legitimate security concerns, which are the indispensable and immediate context to the matters raised in the question. Also hidden deliberately from view is the conduct of the United Nations (“UN”) and, in particular, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (“UNRWA”), despite that conduct being inextricably linked to the present

proceedings. As the UN has itself confirmed, UNRWA employees participated actively in the heinous attack of 7 October 2023 on Israeli territory. They murdered and kidnapped Israeli citizens, abducted bodies, and looted property. UNRWA facilities have been used as Hamas military command-and-control centres, hideouts, and weapon storage facilities; they have also served Hamas's extensive underground terror tunnel system. Israel has warned of the symbiotic relationship between UNRWA and Hamas for over two decades, also drawing attention to the virulent incitement to violence, jihad, and martyrdom prevalent in teaching materials used in UNRWA schools. It has also sought constructively to engage with UNRWA and with the UN to root out Hamas and other terrorist organizations from within. These efforts, however, have been met with resistance, and with evasive and woefully deficient responses, which in turn have led to devastating consequences. UNRWA's failure to abide by its mandate and to uphold the fundamental principles of neutrality, impartiality, and independence, which the UN has long acknowledged are essential to the provision of humanitarian assistance, is as indisputable as it is egregious.

5. Israel's obligations are, indeed, neither absolute nor unqualified. They cannot be. By careful and deliberate design, the rules of international law are intended to safeguard the sovereignty and security of States and certainly not to undermine them. No State is expected to accept or to facilitate grave risk to its citizens and territory. On the contrary, international law prescribes the right and obligation of a State in acting to defend its existence, its territory, and its people. Israel is fully committed to complying with international law; but that law is not a suicide pact.
6. The remainder of this statement is structured as follows. **Section II** sets out the pertinent context to the request made to the Court, which is inextricably linked to the question asked of the Court. **Section III** explains that there are compelling reasons for the Court to exercise its discretion and decline to give the advisory opinion requested of it. Without prejudice to this firm position, **Section IV** discusses the obligations of Members of the UN to which attention may be drawn in the present case, and **Section V** similarly considers the obligations of an Occupying Power vis-à-vis third parties notwithstanding Israel's principled view as to its status in the territories in question.

II. The indispensable background to the request made to the Court

7. Israel considers it important that the Court be aware of some of the key circumstances leading up to the adoption of resolution 79/232, specifically as regards allegations that were made in connection with legislation adopted by Israel in October 2024 in relation to UNRWA. The details as to how UNRWA became irreparably compromised through its infiltration by terrorist organizations, systemic violations of the principle of neutrality, and persistent refusal to remedy this intolerable situation, constitute critical context that must not be ignored.
8. As the following factual chronology will make plain, Israel invited UNRWA to carry out its humanitarian activities, and committed to facilitating these activities, on the natural and express understanding that its security must not be undermined; yet over the years UNRWA repeatedly breached its obligations of neutrality, impartiality, and independence, including by keeping members of terrorist organizations on its payroll and premises **(A)**. The shocking extent of UNRWA's infiltration and partisan approach became undeniable during the horrifying attack on Israel on 7 October 2023 and in the subsequent military hostilities **(B)**. Despite this, and in astonishing disregard of Israel's pleas, the UN and UNRWA have refused to rectify this matter effectively **(C)**. Israel was thus left with no choice but to determine that UNRWA could no longer be trusted or dealt with, a decision that is consistent with international law, to which Israel remains fully committed **(D)**.

A. UNRWA's persistent breaches of its obligation of neutrality

9. UNRWA was established by General Assembly resolution 302 (IV) of 8 December 1949, with a mandate to provide, in collaboration with local governments, direct relief and works programmes. This humanitarian agency was set up as a temporary organization whose mandate had therefore to be renewed periodically. Its current mandate extends to 2026.
10. On 14 June 1967, Israel and UNRWA concluded an agreement (the “**Comay-Michelmores Agreement**”) by which Israel accepted that, “at the request of the Israel Government, UNRWA would continue its assistance to the Palestine refugees, with the full co-operation

of the Israel authorities, in the West Bank and Gaza Strip areas”.¹ The Agreement further specified, in clear and unequivocal terms, that it was “a provisional agreement which will remain in force until replaced or cancelled”. Through the Agreement Israel took it upon itself to facilitate UNRWA’s task “to the best of its ability, subject only to regulations or arrangements which may be necessitated by considerations of military security”.

11. Thus the Comay-Micheltore Agreement was from the outset a provisional agreement that either party could abrogate at will. The Agreement recorded that UNRWA’s assistance would continue to be provided in the relevant territory at the request of Israel, and that Israel would facilitate that assistance subject to its security considerations. It was on the basis of this common understanding that UNRWA’s presence and relief activities were enabled and validated.
12. It is indisputable that UNRWA, as a subsidiary organ of the General Assembly with a mandate established by that body, must at all times abide by the guiding principles of international civil service as incorporated in numerous UN directives. In keeping with the purposes of the UN as laid down in its Charter, these notably include the principles of neutrality, impartiality, and independence. As the General Assembly accepted in resolution 46/182 concerning “Strengthening of the coordination of humanitarian emergency assistance of the United Nations”, “[h]umanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality”.² The General Assembly has moreover “[r]ecogniz[ed] that independence, meaning the autonomy of humanitarian objectives from the political, economic, military or other objectives that any actor may hold with regard to areas where humanitarian action is being implemented, is also an important guiding principle for the provision of humanitarian assistance”.³
13. Israel has cooperated with UNRWA for decades, expressing by word and deed its commitment to facilitating the Agency’s humanitarian activities. At the same time, Israel was repeatedly compelled to call upon UNRWA to operate within the terms of its mandate

¹ *Exchanges of Notes Between Israel and UNRWA Constituting an Agreement Concerning the Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 14 June 1967*, 688 U.N.T.S. 3. (**Annex 1**).

² A/RES/46/182, 19 December 1991, para. 2 (**Annex 2**).

³ A/RES/58/114, 17 December 2003, Preamble (**Annex 3**); the resolution also “[r]eaffirm[ed] the principles of neutrality, humanity and impartiality for the provision of humanitarian assistance”.

and with due regard to the security situation on the ground. This was increasingly the case in relation to the infiltration by members of Hamas and Palestinian Islamic Jihad into UNRWA's ranks and the misuse of UNRWA's installations, including UNRWA schools, where incitement to violence against Israel and its citizens was rampant.

14. By way of example, in a letter addressed to the UN Secretary-General by Israel's Permanent representative to the UN as early as 6 November 2003, Israel cautioned that "as has been the case in previous years ... little has changed in the Agency's [UNRWA's] lack of appreciation for the overall situation in the area and, specifically, for security constraints facing Israel".⁴ While noting that "Israel appreciates and reaffirms its support for the humanitarian work being carried out by UNRWA, other international organizations and many non governmental organizations", the letter complained of conduct that was "inconsistent with the principle of neutrality", including "a disturbing trend of the publication of politically oriented articles in the international press by the Commissioner-General of UNRWA". The letter further explained that "[t]errorist organizations use and exploit UNRWA installations as hideouts and places of refuge" and that "[w]hile Israel recognize[d] that UNRWA is not responsible for security in refugee camps, it does expect the organization to draw greater attention to the violent actions taking place there. ... Some local members of Agency staff have assisted or closed their eyes to terrorists seeking refuge at these sites and, in doing so, endanger those depending upon genuine UNRWA services and assistance, while abusing their positions to the detriment of the needy population." In closing, the letter recorded that "Israel remains hopeful that UNRWA will seek ways to operate within the terms of its mandate so as to continue its humanitarian mission, with due regard and sensitivity to the difficult security situation on the ground."

15. In a letter dated 7 November 2005 from the Permanent Representative of Israel to the UN to the Chairman of the General Assembly's Fourth Committee, Israel again "appreciate[d] and reaffirm[ed] its support for the humanitarian work being carried out by UNRWA, other international organizations and many non governmental organizations", but noted that "there is little understanding expressed [by UNRWA] as to the genuine and legitimate security needs of Israel faced with ongoing Palestinian terror".⁵ The letter drew attention

⁴ A/58/557, 6 November 2003, para. 1 (**Annex 4**).

⁵ A/C.4/60/6, 7 November 2005 (**Annex 5**).

to the launching of a rocket-propelled grenade from within an UNRWA School in Gaza, adding that Israel “regrets the abuse of UNRWA installations by Palestinian terrorist groups and expects that UNRWA will take all possible steps to ensure such abuse is not repeated”.

16. The years that followed saw continuous engagement by Israel to facilitate UNRWA’s various humanitarian projects and activities, including with reference to specific employees and beneficiaries, and by upholding UNRWA’s immunities under international law before domestic authorities. Indeed, UNRWA’s large-scale operations could not have been carried out without Israel’s continued facilitation, which UNRWA itself has repeatedly acknowledged over the years. Yet UNRWA personnel continued to breach the fundamental principles of neutrality and impartiality. For instance, in a letter dated 2 February 2010 in which Israel protested inflammatory and biased televised remarks made by UNRWA’s spokesperson, Israel underlined that these contradicted the UN regulations pertaining to the conduct of its staff; it also cautioned that “[t]he systematic and enduring politization of UNRWA, which the State of Israel has repeatedly protested, undermines the Agency’s humanitarian role”.⁶ Other States, for their part, saw it necessary to remind UNRWA that it must “take all possible measures to assure that no part of [contributions made to UNRWA] shall be used to furnish assistance to any refugee who is receiving military training as a member of the so-called Palestine Liberation Army or any other guerrilla type organization or who has engaged in any act of terrorism”.⁷

17. By 2017, Israel cautioned at the UN that “[i]nstead of focusing on relief and humanitarian assistance, UNRWA chooses to promote a controversial political agenda”, and that it was “unacceptable for a United Nations agency to actively promote the agenda of one side of the conflict”.⁸ It also demonstrated that “UNRWA personnel have even been found within the ranks of the internationally designated terrorist organization, Hamas” and that UNRWA had failed to address such incidents appropriately.⁹

⁶ Letter from the Ministry of Foreign Affairs of Israel to the Commissioner-General of UNRWA, 2 February 2010 (**Annex 6**); *See, in similar terms*, Letter from the Ministry of Foreign Affairs of Israel, to the Commissioner-General of UNRWA, 28 March 2012 (**Annex 7**).

⁷ *See, for example, Framework for Cooperation Between UNRWA and the Government of the United States of America for 2011*, 30 November 2010 (**Annex 24**).

⁸ A/72/334, 14 August 2017 (**Annex 8**).

⁹ *Ibid.*

18. Identical letters sent by Israel's UN Permanent Representative to the UN Security Council and to the UN Secretary-General dated 9 June 2017, following the confirmation by UNRWA of the existence of a Hamas tunnel built beneath two adjacent UNRWA elementary schools in Gaza, explained that this was "not an isolated incident" and called once more upon the UN to act.¹⁰ Israel warned that this was "the latest of deeply concerning attempts by Hamas terrorists to systematically exploit the organs of the United Nations" and that "[s]uch activities not only place the people of Israel and Gaza at risk, but are severely damaging to humanitarian efforts in Gaza".¹¹ The Permanent Representative of Israel emphasised that "[t]ime and again, I have warned of Hamas'[s] intentions to continue using civilian infrastructure in future conflict ... Despite the repeated efforts of my delegation, our reports of Hamas'[s] military build-up and use of children in military campaigns have fallen on deaf ears. This time, the international community must not turn a blind eye towards such cynical exploitation."
19. Just ten days later, on 19 June 2017, the Permanent Representative of Israel to the UN wrote again to the UN Secretary-General and the President of the Security Council, calling their attention to "the ongoing misconduct" of UNRWA.¹² The letter explained that Israel "remain[ed] concerned regarding the Agency's persistent use of humanitarian funding for the purpose of perpetuating a one-sided narrative about the conflict in our region", revealing that UNRWA misleadingly used in its fundraising campaign an image of a young girl allegedly standing among the rubble in Gaza, when in fact the picture was of a Syrian girl who fell victim to the Syrian civil war. Israel added that "[t]his incident is just the latest symptom of the Agency's negligence and inability to remain neutral, which is consistently plaguing its conduct. The Agency has become notorious for its employees' often egregious acts, including bias and incitement against Israel in UNRWA classrooms and calls for violence on social media". After listing additional examples of misconduct, the letter recalled that "UNRWA is an organization with the power, not to mention the responsibility, to speak out against terror and educate the next generation of Palestinians towards peace and reconciliation. ... It is high time that UNRWA stopped promoting a particular narrative

¹⁰ S/2017/493, 9 June 2017 (**Annex 9**).

¹¹ *Ibid*: "[t]his latest finding verifies once again that Hamas' cruelty knows no limits, including endangering centres of learning and education, and using children as human shields. This latest abuse is not only a flagrant misuse of United Nations premises and civilian infrastructure, but more importantly, is a direct threat to the safety and security of children."

¹² S/2017/517, 19 June 2017 (**Annex 10**).

and assumed responsibility for any misconduct by its staff and affiliates. It must fulfil its duty to provide a neutral and honest account that represents the real situation on the ground, rather than presenting facts in manners that serve the promotion of a subjective political narrative.”

20. In 2018, Israel again expressed its view at the UN that it was “unacceptable for a United Nations agency to actively support a biased narrative about the conflict in the region” and that “UNRWA should stick to its original humanitarian mandate while refraining from one-sided politicized advocacy”.¹³ It also reported that two further tunnels had been exposed under UNRWA’s schools in Gaza, and that nevertheless “UNRWA deliberately chooses to omit any direct mention of Hamas’[s] responsibility and of its common practice to misuse United Nations and civilian infrastructure”. Israel referred to the various ways in which UNRWA policies were in fact serving Hamas and reiterated that “[i]t is of utmost importance to ensure that all United Nations-affiliated agencies, and especially UNRWA, remain neutral and safeguarded from abuse by terrorist organizations”.¹⁴

21. Significantly, for years UNRWA apparently considered that there was no conflict or issue arising from the fact that hundreds, if not thousands, of its local employees were members of Hamas or other designated terrorist organizations. As a former UNRWA Commissioner-General stated in an interview broadcast in 2004: “Oh, I am sure that there are Hamas members on the UNRWA payroll and I don’t see that as a crime. Hamas as a political organization does not mean that every member is a militant, and we do not do political vetting and exclude people from one persuasion as against another”.¹⁵ UNRWA’s current Commissioner-General, rather than expressing determination to root out Hamas from UNRWA’s ranks, maintained the unacceptable position that “[o]ur employees are part of the social fabric of Gaza and its ecosystem. And as part of the social fabric in Gaza, you have also Hamas”.¹⁶ A former UNRWA General Counsel has recently stated in reference to UNRWA that “[t]he U.N. has been unable and or unwilling to eliminate Hamas militants

¹³ A/73/323, 14 August 2018, p. 3 (**Annex 11**).

¹⁴ *Ibid*, p. 4.

¹⁵ ‘Canada looking at UN agency over Palestinian connection’, *CBC news* (3 October 2004) (**Annex 12**).

¹⁶ P. Kingsley and R. Bergman, ‘U.N. Agency in Gaza Fought Hamas Infiltration; Not Hard Enough, Israel Says’, *The New York Times* (10 February 2024) (**Annex 13**). UNRWA’s Commissioner-General further conceded that UNRWA employees are not required to declare that they are not members of an armed group but only that they would refrain from “political activities”: see Karl Vick, ‘UNWRA Chief Philippe Lazzarini on the U.N. Agency’s Future in Gaza’, *Time* (22 November 2024) (**Annex 44**).

and their supporters, as well as those from other terrorist groups, from their ranks”.¹⁷ He accepted that “the numbers the Israelis are talking about are probably pretty close to the truth”.¹⁸ UNRWA personnel, including at the highest levels, equally had no qualms about meeting with Hamas officials, including those of Hamas’s military wing.¹⁹

22. UNRWA’s infiltration is not by only a few “rotten apples”, as UNRWA officials and others have implied.²⁰ A comparison of lists of Hamas members obtained by Israel in the course of the current hostilities in Gaza with the list of 12,521 UNRWA employees in Gaza during the years 2023-2024 (provided to Israel by UNRWA in accordance with procedures established under the General Convention of 1946) revealed that at least 1,462 of UNRWA employees (nearly 12%) are members of Hamas, its military wing, the Palestinian Islamic Jihad organization, or other terrorist factions.²¹ Of these persons, 79% are employed as “educators” and 5 percent as “medical service providers”. Others include “social workers”, “construction or engineering specialists”, and “administrative” staff. Notably, as many as 80 school principals and deputy-principals out of a total of 546 (that is, nearly 15%), employed in 60 different UNRWA schools, have been confirmed as members of Hamas, its military wing, the Palestinian Islamic Jihad organization, or other military factions. A senior member of Hamas, Suhail al-Hindi, served as Chair of UNRWA’s teachers’ sector and later (2006-2017) as the Chair of UNRWA’s Staff Union.²² Further examples include:²³

- a. Mohammed Mohd Shuwaideh, Deputy Squad Leader of Hamas’s Al-Qassam Third Battalion in the Gaza District, a registered UNRWA employee since 2001 who was the Principal of UNRWA’s Zaitun Prep A Boys School (under which an operational

¹⁷ J. Becker and A. Rasgon, ‘Records Seized by Israel Show Hamas Presence in U.N. Schools’, *The New York Times* (8 December 2024) (**Annex 14**).

¹⁸ *Ibid.*

¹⁹ For instance, in 2021 UNRWA’s Deputy Commissioner-General Leni Stenseth met with Yahya Sinwar in his office: see ‘UNRWA Official Expresses Understanding to Sinwar’, *Al Mayadeen* (3 June 2021) (**Annex 15**).

²⁰ See, for example, Mr. Martin Griffiths, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordination, told the Security Council on 31 January 2024: “UNRWA’s lifesaving services to over three-quarters of Gaza’s residents should not be jeopardized by the alleged actions of a few individuals”. (**Annex 63**).

²¹ This list, it may be added, was only provided by UNRWA in user-friendly, digital format containing ID numbers after pressure by UNRWA donors, which made this a condition for the continuation of its financial support of UNRWA. Prior to March 2024, UNRWA never agreed to share with Israel a list of its employees in such a way: lists of employees were provided annually by UNRWA in hard copy, containing only the names of employees, without their ID numbers, and always after the employment had already commenced.

²² UNRWA suspended Al-Hindi in 2011 after he appeared in an event with Hamas leader Ismail Hania, but reinstated him in his position just three months later. Another noteworthy example is that of Fateh Sherif, an UNRWA “school principal” and head of the UNRWA Teachers Association of Lebanon, who was Head of Hamas’s Lebanon branch.

²³ Information Concerning the Infiltration of Terrorist Organizations into UNRWA (**Annex 68**).

Hamas tunnel was discovered in 2023, despite its location being made known to UNRWA previously and UNRWA claiming it was subsequently sealed);

- b. Adeeb Juma Raei, Deputy Company Commander in Al-Qassam Infantry Battalion, a registered UNRWA employee since 2006 who was the Deputy School Principal of UNRWA's Rimal Prep A Boys School;
- c. Ahmad Ali Abu Zayda, a Squad Leader in Al-Qassam Military Intelligence Department, a registered UNRWA employee since 2016 who was an UNRWA "maths and computer teacher";
- d. Bilal Imad El Swairki, a Squad Leader of Al-Qassam Combat Engineering Battalion, a registered UNRWA employee since 2017 who was an UNRWA "psychosocial counsellor" at the Shijaiya Prep A Boys School;
- e. Mohammad Said Musallam, a Deputy Squad Leader of Al-Qassam Combat Support Battalion in the Gaza District, a registered UNRWA employee since 2021 who was an UNRWA "practical nurse" at the Gaza Town Health Centre;
- f. Khaled Said Mustafa El Masri, another member of Hamas, a registered UNRWA employee since 1987 who was the Principal of the Maghazi Prep B Boys School, another UNRWA school under which a Hamas tunnel was constructed;
- g. Shadi Mohammad Jamal Razak Darabiah, an Al-Qassam Squadron Commander in the East Jabaliya Battalion, a registered UNRWA employee since 2005 who was an UNRWA "school attendant";
- h. Ali Isa Hamuda Matar, another Al-Qassam militant, a registered UNRWA employee since 2000 who was an UNRWA "Arabic teacher";
- i. Baker Mahmoud Abdallah Darwish, an Al-Qassam Platoon Commander, a registered UNRWA employee since 2005 who was an UNRWA "school counsellor" at the Nuseirat Prep E Boys School; and
- j. Alaa Jameel Abu Anza, Deputy Head of the Al-Qassam's Internal Security Apparatus and Conter-Intelligence in Khan Younis, a registered UNRWA employee since 2015 who was an UNRWA "Arabic teacher" at the Absan Prep Boys School.

23. Israel has repeatedly notified UNRWA of the involvement of specific UNRWA employees in the military activities of Hamas and Palestinian Islamic Jihad, but UNRWA has failed to address this in any appropriate manner. To give a particularly disturbing example, Israel notified UNRWA's Commissioner-General in writing in December 2011 of several UNRWA employees, identified by name, who held positions in the military arms of Hamas

and Palestinian Islamic Jihad; it added that “this is a very serious issue and that a situation where UN funds and donor funds are used to finance personnel engaged in terrorist activity, cannot be tolerated”.²⁴ One of the UNRWA employees identified in that letter, Naji Abedallah Salem Abu Aziz, was by October 2024 an UNRWA “school principal”; three anti-tank positions and a Hamas tunnel shaft were found inside his school, and he himself was heading a Hamas weapons manufacturing unit.²⁵ Another UNRWA employee, Hani Ibrahim Ismail Kaskin, was identified in the letter as a Palestinian Islamic Jihad operative but to this day is employed as an UNRWA teacher.

24. The fact that Hamas members are senior UNRWA employees has allowed them to exercise significant influence from within UNRWA and appropriate its installations as military assets, in keeping with Hamas’s declared strategy of abusing civilian infrastructure for military gain.²⁶ Intelligence revealed that at a Hamas council (da’wah) meeting in 2022, it was stated that “the movement is making efforts to take control of these [UNRWA’s] offices to exploit them for the benefit of the movement, in addition to utilising locations under UNRWA offices as security warehouses for the storage of rockets, and for the tunnels”. UN Secretary-General Ban Ki-Moon stated in 2015 that he was “dismayed that Palestinian militant groups would put United Nations schools at risk by using them to hide their arms”, and that such conduct was “unacceptable”.²⁷ UNRWA’s own report from 2022 stated that in its installation inspections during that year, “[t]he most common issues identified were the absence of an adequate ‘no weapons’ sign and UN signage”.²⁸ And yet no adequate steps have been taken by the UN to call UNRWA to account.

25. UNRWA’s schools, in particular, have been appropriated by Hamas as military assets, forming an integral part of that organization’s military deployment plans in Gaza. As already noted, as many as 80 school principals and deputy-principals, employed in 60

²⁴ Letter from the Ministry of Foreign Affairs of Israel to the Commissioner-General of UNRWA (21 December 2011) (**Annex 62**).

²⁵ See Information Concerning the Infiltration of Terrorist Organizations into UNRWA (**Annex 68**); see also J. Becker and A. Rasgon, ‘Records Seized by Israel Show Hamas Presence in U.N. Schools’, *The New York Times* (8 December 2024) (**Annex 14**).

²⁶ Hamas, ‘Manual on Foundations of Military Engineering, Phase III’, encourages Hamas militants to abuse civilian infrastructure such as “houses, schools, universities, hospitals, bridges, electricity companies, the legislative councils, mosques [and] markets” for being “considered as the best obstacles to defend”, in Information Concerning the Infiltration of Terrorist Organizations into UNRWA (**Annex 68**).

²⁷ S/2015/286 (27 April 2015) p. 3. (**Annex 16**)

²⁸ UNRWA, ‘Annual Operational Report 2022’ (27 July 2023) p.63 (**Annex 61**).

different UNRWA schools, have been confirmed as members of Hamas, its military wing, the Palestinian Islamic Jihad organization, or other military factions. A copy of the “Deployment Plan” of the Al-Qassam Brigades Third Battalion, for instance, revealed that armed Hamas fighters were present in two military posts located within the Arlis and Al-Zahra schools, and the “Defence Plan” of the Al-Fatah and Al-Daraj battalions revealed that military posts were located in the Assad Al-Saftawi and Fahmi Al-Jarjawi schools. UNRWA and the UN have largely turned a blind eye to this flagrant breach of neutrality.²⁹

26. Nor did UNRWA see it necessary to address in any effective manner the concerns, raised repeatedly by Israel and other international actors, that its educational activities had the perverse effect of radicalizing generations of Palestinians by glorifying violence and terrorism, encouraging jihad, promoting antisemitism, and denying Israel’s right to exist. In 2021, the European Parliament expressed its concern “about the hate speech and violence taught in Palestinian school textbooks and used in schools by UNRWA”;³⁰ and in 2022 “[d]eplore[d] that problematic and hateful material in Palestinian school textbooks has still not been removed”.³¹ In 2024, the European Parliament again condemned the “problematic and hateful contents encouraging violence, spreading antisemitism and inciting hatred in Palestinian school textbooks drafted by Union-funded civil servants as well as in supplementary educational materials developed by UNRWA staff and taught in its schools”.³² The UN’s own assessment that same year found in relation to hateful educational content that “[e]ven if marginal, these issues constitute a grave violation of neutrality”.³³

²⁹ Information Concerning the Infiltration of Terrorist Organizations into UNRWA (**Annex 68**).

³⁰ 2020/2140(DEC), 29 April 2021, Resolution, para. 444 (**Annex 19**). That same year, United States Secretary of State Anthony Blinken said that “[w]e’re also determined that UNRWA pursue very necessary reforms in terms of some of the abuses of the system that have taken place in the past, particularly the challenge that we’ve seen in disseminating in its educational products antisemitic or anti-Israel information.”: H. Cohen, ‘US to aid UNRWA on condition of new curriculum’, *The Jerusalem Post* (11 June 2021) (**Annex 20**). Other UNRWA donor countries, including Australia, Canada, and the United Kingdom, expressed similar concerns.

³¹ 2021/2106(DEC), 4 May 2022, para. 175 (**Annex 21**).

³² 2023/2129(DEC), 11 April 2024, para. 199 (**Annex 22**).

³³ Independent Review Group on UNRWA, ‘Final Report for the United Nations Secretary-General, Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality’ (20 April 2024), p. 30 (**Annex 23**); Tellingly, the Report moreover found it necessary to recommend, inter alia, that UNRWA “[r]eview the content of all textbooks and supplements with host countries, Israel and the Palestinian Authority”, and “[b]an any hate speech, incitation to violence and/or antisemitic references from host-country textbooks and locally produced supplements in UNRWA schools” (*ibid.*).

B. The horrifying extent of UNRWA's infiltration by terrorist organizations and its dire consequences

27. The shocking extent of UNRWA's infiltration by Hamas and other terrorist organizations, of which Israel has been warning the UN repeatedly for over two decades, became undeniable during the horrifying attack on Israel of 7 October 2023 and the subsequent military hostilities.
28. As the UN Office of International Oversight Service has confirmed,³⁴ UNRWA employees took an active part in carrying out the heinous attack of 7 October 2023 on Israeli territory, committing, *inter alia*, murder, kidnapping, and looting. To mention several horrific examples that Israel has drawn attention to based on intelligence material:³⁵
- a. Mohammad Marwan Abu Itiwi, a militant of the Al-Qassam Brigades who was a registered UNRWA "driver", was captured on film murdering and kidnapping Israeli civilians in the Reim area in Israel on 7 October 2023.³⁶
 - b. Faisal Ali Mussalem Al-Naami, an operative of the Al-Qassam Brigades serving in the communications and combat support branch of the Nuseirat Battalion who was a registered UNRWA "social worker", was captured on video abducting the body of a murdered 21-year-old Israeli citizen and driving off with it (back into Gaza).
 - c. Rami Mohammad Ramadan Sabbah, a Hamas military operative in the Deir el Balah Battalion and a registered UNRWA "maths teacher", appeared on social media images that recorded the kidnapping of an elderly Israeli woman.
 - d. Ibrahim Atiya Mohammad Abu Ghafra, an operative of Al-Qassam Brigades special forces unit (Nukhba) in the Second Company of the Nuseirat Battalion, a registered UNRWA "school teacher", murdered Israeli citizens in the Israeli Kibbutz Reim.
 - e. Yusuf Zedan El Hawajri, an operative of Al-Qassam Brigades in the Deir el Balah Battalion, a registered UNRWA "Arabic teacher", was associated with the kidnapping of young Israeli girls and looted Israeli property.

³⁴ See below, paras. 39-42.

³⁵ Information Concerning the Infiltration of Terrorist Organizations into UNRWA (**Annex 68**).

³⁶ This is a man whom the UN Secretary-General mourned the death of as "another one of our UNRWA colleagues": see António Guterres, @antoniguterres, X (former Twitter) (24 October 2024) (**Annex 18**).

- f. Mamdouh Husain Ahmad Al Qaq, an operative in the Rafah Brigade of the Palestinian Islamic Jihad and another registered UNRWA “teacher”, also infiltrated Israeli territory and took part in the 7 October attack.
 - g. Hafez Mousa Mohammed Mousa, an operative of Al-Qassam Brigades in the East Jabaliya Battalion, a registered UNRWA “school principal”, directed other Hamas operatives to infiltrate Israel with cars and weapons through the Erez crossing.
29. UNRWA’s references to its employees killed or injured during the current conflict in Gaza have unashamedly included terrorists of this kind. Moreover, while UNRWA has shared with Israel the names of only about one third (37%) of its ground staff which it claims were killed, no less than 24% of those names have been identified by Israel as those of members of Hamas or Palestinian Islamic Jihad.
30. UNRWA employees have also been said to have taken part in the holding of Israeli hostages in Gaza. One rescued hostage stated that she was held in captivity by an UNRWA “teacher”; another released hostage, Emily Damari, was reportedly held in an UNRWA facility.³⁷
31. Hamas’s widespread and systemic misuse of UNRWA’s assets and facilities continued unchecked during the armed hostilities following the 7 October attack, exposing the deeply embedded connection between the two organizations. Hamas command-and-control centres, hideouts, and weapon storage facilities were found within or in the immediate surrounding of at least 32 UNRWA facilities, including schools, warehouses, compounds, and apartments. Most notably, a central server farm lying 18 meters underground and serving the intelligence command centre of Hamas was uncovered under UNRWA’s Headquarters in Gaza, and was connected directly to UNRWA’s electricity supply.³⁸ Hamas and Palestinian Islamic Jihad terrorists and infrastructure were found inside the UNRWA headquarters in Gaza City.³⁹ Multiple attacks against Israeli forces were conducted from within UNRWA premises.

³⁷ See ‘Freed Gaza Hostage Told Starmer that Hamas Held Her in UNRWA Premises, Her Mother Says’, *The Guardian* (31 January 2025). (**Annex 25**); The “use of UNRWA offices as a prison for Israeli hostages” was condemned by Italy: see Remarks by Italian Foreign Minister Antonio Tajani, *see* ‘Italian Foreign Minister Antonio Tajani: ‘We don’t want to work with UNRWA and we condemn the use of UNRWA offices as a prison for Israeli hostages’, *European Jewish Congress* (7 February 2025) (who added that “We are working only with World Food Programme. We don’t want to work with UNRWA.”) (**Annex 72**).

³⁸ IDF Spokesperson Website (10 February 2024) (**Annex 52**).

³⁹ IDF Spokesperson Website (12 July 2024) (**Annex 56**).

32. Hamas militants operated from within UNRWA schools, as a matter of course. To give just some examples, Hamas launched an anti-tank missile from within an UNRWA school in Rafah;⁴⁰ it used the Abu-Ariban school and another school in Nusseirat as hideouts for its militants;⁴¹ utilized a school in Nusseirat, for a long period of time, as a military operations room;⁴² and made use of the Al-Qahirah, Mousa, and Al-Jaouni schools as command centres from where attacks on Israeli forces were directed.⁴³
33. Tunnel shafts leading to Hamas's extensive underground tunnel system – the sole purpose of which is to serve Hamas's terrorist campaign against Israel – were found inside a number of UNRWA schools as well. Indeed, UNRWA acknowledged over the years that Hamas tunnels were built underneath its schools but did nothing to remedy this grave matter. For example, tunnels that had been exposed under the Maghazi Prep B Boys School in 2017 and under the Zeitoun Prep A Boys School in 2021, which UNRWA had claimed were covered and deactivated, were found to be operational in the course of the current hostilities.
34. It is also of note that, unlike other humanitarian organizations operating in Gaza, UNRWA did not inform Israel even once throughout the hostilities about an instance where Hamas had infiltrated or used its infrastructure, thus breaching its duty to give notice that its facilities have been compromised. A single public announcement was made by UNRWA on social media that Hamas had stolen fuel from it, but it was soon deleted.
35. Against this background, it is clear that Israel's concerns as regards UNRWA's infiltration by Hamas and other terrorist organizations, which were voiced time and again in countless exchanges with UNRWA and the UN, fell on deaf ears; and that the UN's and UNRWA's failure to address these egregious breaches of the fundamental principles of neutrality, impartiality, and independence have had devastating consequences, causing unprecedented suffering and exacerbating the already elevated security risks.

⁴⁰ IDF Spokesperson Website (30 May 2024) (**Annex 38**).

⁴¹ IDF Spokesperson Website (14 July 2024) (**Annex 57**).

⁴² IDF Spokesperson Website (14 May 2024) (**Annex 51**).

⁴³ IDF Spokesperson Website (4 July 2024) (**Annex 69**); IDF Spokesperson Website (6 July 2024) (**Annex 70**).

C. The refusal by the UN and UNRWA to take appropriate accountability measures

36. The action that has been taken by the UN was woefully insufficient to address the fundamental reality that UNRWA has acted and continues to act in breach of the principles of neutrality, impartiality and independence. On 5 February 2024, the UN Secretary-General, in consultation with UNRWA, appointed an Independent Review Group headed by Ms Catherine Colonna to assess “whether the Agency is doing everything within its power to ensure neutrality and to respond to allegations of serious breaches when they are made, taking into account the Agency’s mandate, its capacities and resources and the unique and frequently difficult operational, political and security context in which it has to work, particularly in Gaza”.⁴⁴ However, the Terms of Reference of the Independent Review Group prohibited it from investigating allegations that the principle of neutrality was breached or making any findings of fact in respect of them.⁴⁵ These significant limitations on the mandate of the Independent Review Group prevented it from effectively addressing the very concerning situation on the ground, and from making any significant progress to address it.

37. Despite the circumscribed mandate of the Independent Review Group, its Report of 20 April 2024 (the “**Colonna Report**”) confirms what Israel has been asserting for decades: UNRWA has been systemically and scandalously breaching its duty of neutrality. These breaches were found to be so extensive that the Independent Review Group issued no less than fifty recommendations addressing “eight critical areas requiring immediate improvement”.⁴⁶ These “critical areas” encompass the full scope of UNRWA’s operations, including governance, management and international oversight structures, staff, installations, education services, staff unions, and engagement with donors.⁴⁷ The Colonna

⁴⁴ Independent Review Group on UNRWA, ‘Final Report for the United Nations Secretary-General, Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality’ (20 April 2024), Annex A, p. 47, para. 3 (**Annex 23**).

⁴⁵ *Ibid*, p. 49, para. 7.

⁴⁶ *Ibid*, p. 5.

⁴⁷ *Ibid*, at p. 5. As has been observed, “[t]hat such recommendations needed to be made at all reflects UNRWA’s failure to utilize basic principles of competent management. More important, the report identifies two longstanding moral failures: UNRWA’s resistance to—and obstruction of—vetting staff for terrorist connections and its refusal to remove from its educational materials content contrary to UN principles, primarily antisemitic, anti-Israel, or pro-violence content. All told, the report’s identification of those moral failures along with the many basic management failures amount to a damning indictment of the agency’s current and past leadership. ... the obvious nature of many of the fifty recommendations points to scandalous mismanagement at UNRWA over many decades. Moreover, the longtime insistence on not properly vetting staff members to avoid employing terrorists

Report further determined that UNRWA's breaches of neutrality "include instances of staff publicly expressing political views, host-country textbooks with problematic content being used in some UNRWA schools, and politicized staff unions making threats against UNRWA management and causing operational disruptions".⁴⁸ Significantly, the Report accepted unequivocally that "[a]ny involvement in a militarized group that promotes discrimination or violence, such as Hamas or Islamic Jihad, violates the principle of neutrality".⁴⁹

38. The UN Secretary-General activated a separate investigation by the UN's Office of Internal Oversight Services ("**OIOS**") in relation to 19 UNRWA staff members who were alleged to have participated in the attacks of 7 October 2023. This investigation, too, was limited, not only in terms of the number of UNRWA personnel scrutinized, but also because the OIOS mandate did not enable it to inquire into previous conduct of the listed employees, including their membership of Hamas, UNRWA's own conduct in this regard, and any consequences thereof. As a result, its work was obviously circumscribed in a way which meant it would not take cognizance of the full and proper context.
39. As has been acknowledged by OIOS personnel, the Israeli authorities cooperated fully with their investigation, including by sharing sensitive intelligence information. Nevertheless, Israel's requests to the OIOS and later to the UN Secretary-General that the full report be shared with Israel (after it was viewed by several other Member States),⁵⁰ was rejected. Israel obtained only a redacted version in which the conclusions of the reports were omitted in their entirety, and Israel was therefore unable to assess, challenge, or indeed endorse, the OIOS report.
40. It follows that the intolerable reality of the widespread infiltration of UNRWA's ranks by Hamas and other terrorist organizations, and of UNRWA's own blatant disregard for its obligations and mandate, has not been adequately addressed or at all investigated. The severe findings of the Colonna Report and OIOS investigation endorse the concerns

or terrorist supporters, and on not removing educational materials containing content contrary to UN principles, reflects not just a management failure but a moral failure": J. Lindsay, 'Evaluating UNRWA after the Colonna Report', *The Washington Institute for Near East Policy* (27 June 2024), p.7 (**Annex 26**).

⁴⁸ Independent Review Group on UNRWA, 'Final Report for the United Nations Secretary-General, Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality' (20 April 2024), p. 5 (**Annex 23**).

⁴⁹ *Ibid*, at p. 20.

⁵⁰ See Letter from the Permanent Representative of Israel to the UN Secretary-General, 5 August 2024 (**Annex 27**).

repeatedly expressed by Israel about the grave security risks arising from UNRWA's staffing, procedures, and operations, but leave the core problem of UNRWA's wholesale infiltration unaddressed. The so-called 'Action Plan' adopted by UNRWA following the Colonna Report, which fails to make any mention of Hamas or terror infiltration risks more broadly, likewise holds very little promise of meaningful change. Yet the UN has refused to do more. Israel's pleas that the well-supported allegations of widespread violations by UNRWA be transparently dealt with were ignored.

41. Indeed, UNRWA's reading of the Colonna Report, as conveyed to Israel in a letter dated 8 May 2024, was that "[i]n essence, the Report recommends that the Agency and Israel cooperate closely on neutrality issues"⁵¹. It has thus been made clear that UNRWA is determined only to act on a case-by-case basis, and on account of information gathered by Israel, and that it has no intention to address head-on the systemic problem of its extensive infiltration by Hamas. What is more, while UNRWA finally updated its staff rules in May 2024 so as to prohibit for the first time "membership in an armed group", this prohibition is deliberately narrower than the language of the Colonna Report, which as noted above made clear that "[a]ny involvement in a militarized group that promotes discrimination or violence, such as Hamas or Islamic Jihad, violates the principle of neutrality".

42. In a letter dated 13 May 2024 from Israel's Ministry of Foreign Affairs to the Executive Office of the UN Secretary-General, Israel drew attention to this systemic problem and again called upon the UN to act.⁵² It warned that "[s]ince neither OIOS nor the Independent Review Group led by Ms. Colonna were officially mandated to investigate this issue, the practical ramification is grave: no UN agency is investigating the most extensive infiltration ever of a UN body by a terrorist organization". Israel further made clear that "[t]his is a very disturbing and worrying development, especially in view of the severity of the accusations and the implications for the security of Israel." It added that "currently there is a gap between the policy of UNRWA, which employs hundreds of Hamas and PIJ [Palestinian Islamic Jihad] members, and that of many donor countries, who have already designated both as terrorist organizations." The letter ended with the statement that "Israel

⁵¹ Letter from the Acting Director of UNRWA's Department of Legal Affairs to the Director of Department for UN Political Affairs Ministry of Foreign Affairs of Israel, 8 May 2024 (**Annex 28**).

⁵² Letter from the Ambassador Deputy Director General for the UN and International Organizations Division Ministry of Foreign Affairs of Israel to the Chef de Cabinet Executive Office of the UN Secretary-General, 13 May 2024 (**Annex 29**).

expects that the result of this vetting process would be the UN taking concrete steps in order to immediately terminate the employment of these terrorists. The attempt to ignore the Israeli vetting and to belittle the situation is unacceptable.”

43. Later that same month, a letter from the Israeli Ministry for Foreign Affairs to the UN Secretary-General’s Special Assistant for Safety and Security highlighted Israel’s repeated requests that UNRWA address the fact that armed militants have been identified in an UNRWA compound in the presence of individuals wearing blue UN vests who were using vehicles marked as UN vehicles.⁵³ This, the letter explained, “is just one example of the problematic nature of the relations between UNRWA and Hamas, which creates security risks that cannot be ignored”. The letter asked UNRWA “not to abandon UN vehicles, and if UN vehicles are being left unattended or UN premises are evacuated, ... to update the IDF immediately”. It moreover emphasised that “the systemic infiltration of Hamas into the ranks of UNRWA-Gaza, including by the employment of hundreds of terrorist operatives, the presence of armed men in UNRWA premises and the terrorist infrastructure which was established in UNRWA facilities, pose various security risks and therefore the office of UNDSS [United Nations Department for Safety and Security] should interfere and make sure that the situation within UNRWA is rectified.”

44. On 4 July 2024 Israel wrote to UNRWA’s Commissioner-General, recalling that “Hamas’[s] infiltration into the ranks of UNRWA has been a recurring concern, which was brought to your attention as well as to [that of] your predecessors and other senior UN officials by Israel in past years.”⁵⁴ Israel explained that UNRWA employees and facilities were directly involved in attacks against Israel on and following 7 October 2023, and that “[t]he longstanding problem of incitement for hatred, Jihad and glorification of terrorism in UNRWA’s educational system has a direct connection to the issue of employment of Hamas members, as many of these terrorist operatives hold positions of authority within UNRWA, such as school principals and deputy school principals.” Israel attached a list of some 100 additional names of UNRWA employees that were identified as Hamas operatives, with their military identification numbers, and asked the Commissioner-General that the

⁵³ Letter from the Director of Department for the UN Political Affairs Ministry of Foreign Affairs of Israel to the Special Assistant to the UN Under-Secretary-General for Safety and Security, 30 May 2024 (**Annex 30**).

⁵⁴ Letter from the Deputy Director General for the UN and International Organizations Division Ministry of Foreign Affairs of Israel to the Commissioner-General of UNRWA, 4 July 2024 (**Annex 31**).

employment of these persons and any member of Hamas or Palestinian Islamic Jihad be terminated immediately. The letter added that “[t]his is a test case for the UN and UNRWA regarding the respect for the principle of neutrality and [for] the implementation of Ms. Colonna’s report.”

45. In his reply of 8 July 2024, UNRWA’s Commissioner-General made it clear that UNRWA did not intend to undertake any large-scale vetting process of its employees, and moreover said that “UNRWA does not have the resources or authorities of a State” and therefore has difficulties in obtaining supporting evidence. Concerns would only be investigated if Israel raised them in relation to specific individuals, and Israel would need to supply the evidence itself with respect to each individual case.⁵⁵
46. When the Executive Office of the UN Secretary-General responded on the following day (9 July 2024) to Israel’s letter sent two months earlier, it sought to cast the Colonna Report’s findings as regards UNRWA and UNRWA’s reaction to those findings in a very positive light.⁵⁶ It also stated again that the onus was on Israel to evidence any suspicion of misconduct by individual UNRWA employees, and suggested that the new steps adopted by UNRWA should suffice to ensure its neutrality.
47. On 15 October 2024, Israel addressed a letter to the Executive Office of the UN Secretary-General, noting the “UN’s evasive response” to the grave revelations concerning UNRWA’s systemic infiltration by Hamas and Palestinian Islamic Jihad, and highlighting UNRWA’s multifaceted breach of neutrality in respect of its installations in Gaza.⁵⁷ The letter referred at some length to Hamas tunnels discovered under UNRWA schools in which Hamas operatives served as principals; to the Hamas server farm discovered underneath UNRWA’s Headquarters in Gaza; to a Hamas military site discovered under an UNRWA girls school in Gaza; to Hamas operatives holding key positions in UNRWA despite Israel’s warnings to UNRWA about them; and to the presence of militants inside UNRWA’s premises. It then

⁵⁵ Letter from the Commissioner-General of UNRWA to the Ambassador Deputy Director General for the UN and International Organizations Division Ministry of Foreign Affairs of Israel, 8 July 2024 (**Annex 32**).

⁵⁶ Letter from the Chef de Cabinet Executive Office of the UN Secretary-General to the Ambassador Deputy Director General for the UN and International Organizations Division Ministry of Foreign Affairs of Israel, 9 July 2024 (**Annex 33**).

⁵⁷ Letter from the Deputy Director General Head of the Division for the UN and International Organizations Ministry of Foreign Affairs of Israel to the Chef de Cabinet Executive Office of the UN Secretary-General, 15 October 2024 (**Annex 34**).

stated that “[d]espite the clear position of Colonna’s report, which stated that employment by UNRWA of Hamas or Islamic Jihad members would be a violation of the principle of neutrality, UNRWA time and [again] utterly fails in implementing it and continues to ignore the most crucial issue – how to tackle the on-going problem of massive employment of terrorist operatives by UNRWA”. The letter urged the UN once again “to take all necessary measures to ensure that UNRWA adheres to the principle of neutrality”, noting that “[u]p until now, the UN has failed to do so”.

48. Another letter, sent to the Executive Office of the UN Secretary-General by Israel’s Ministry of Foreign Affairs on 28 October 2024, protested the Secretary-General’s announcement mourning the death of an “UNRWA colleague” whom Israel had earlier identified before the UN as a Hamas operative who was one of the perpetrators of the 7 October 2023 attack. The letter “strongly urge[d] [the UN] once again to take all necessary actions to ensure that UNRWA upholds the principle of neutrality, as the UN has not done so to date”⁵⁸.

D. Israel’s legitimate decision that UNRWA could no longer be trusted and its lawful response

49. It is against the background of these extraordinary circumstances of UNRWA’s widespread infiltration by terrorist organizations and longstanding breaches of neutrality, coupled with the lack of any prospect of these serious matters being adequately addressed by the UN notwithstanding multiple requests, warnings, and opportunities, that Israel ultimately reached the conclusion that UNRWA could no longer be trusted to fulfil its humanitarian objectives, and to act in accordance with the principles of neutrality, impartiality, and independence.
50. Israel therefore exercised its right to abrogate the Comay-Micheltmore Agreement and decided to end its official engagement with UNRWA. It also prohibited the operation of UNRWA within the territory of Israel. UNRWA is, of course, expected to respect the laws

⁵⁸ Letter from the Deputy Director General Head of the Division for the UN and International Organizations Ministry of Foreign Affairs of Israel to the Chef de Cabinet Executive Office of the UN Secretary-General, 28 October 2024 (**Annex 35**).

and regulations of a host country, and was afforded ample time to make necessary arrangements in this regard.⁵⁹

51. Significantly, Israel made it clear that the legislation adopted in this connection would not in any way undermine Israel's commitment to its international legal obligations. As was confirmed in letters sent by Israel to the UN on 18 December 2024, "Israel is committed to observing all the international legal obligations that are incumbent upon it, including those prescribed by the law of armed conflict and those reflected in the provisional measures indicated by the International Court of Justice. It regularly assesses its actions in the light of the applicable international law, including as part of the legal proceedings now pending before Israel's High Court of Justice in relation to the provision of humanitarian aid to Gaza. As before, Israel goes to great lengths to continue to allow and facilitate the provision of necessary humanitarian assistance and services in Gaza under very challenging circumstances."⁶⁰

52. Indeed, the Chairperson of the Knesset's Foreign Affairs and Defense Committee, who introduced the legislation in question to the Knesset, stated that the abrogation of the Comay-Micheltore Agreement is not intended to hinder any of Israel's international legal obligations. As he put it, "[t]he legislator does not intend through this bill any change as regards the provision of humanitarian aid or any other assistance needed by the civilian population. ... on the contrary, genuine organizations operating in this field, as opposed to those infiltrated by terrorist groups, could assist the population far more effectively than UNRWA has done until now".⁶¹

53. Israel's legislation is moreover consistent with the obligations of every State, as recognized by the Security Council, to refrain from providing any form of support, active or passive, to entities involved in terrorist acts, and to take the necessary steps to prevent the commission of terrorist acts.⁶²

⁵⁹ See also letter from the Permanent Representative of Israel to the United Nations to the UN Secretary-General, 30 January 2025 (**Annex 36**).

⁶⁰ See Identical Letter from the Permanent Representative of Israel to the United Nations to the President of the Security Council and President of the General Assembly, 18 December 2024 (**Annex 37**).

⁶¹ Remarks by Member of Knesset Mr Yuli Edelstein during the Second and Third Reading of the *Law to cease UNRWA operations*, 28 October 2024 (**Annex 67**).

⁶² See below para.58.

54. Israel has been working tirelessly with international partners other than UNRWA, including within the UN system, so as to allow and facilitate the continued passage of humanitarian aid to civilians in Gaza, and to ensure the unhindered provision these of necessary basic services, in a way that does not undermine Israel's security. These large-scale efforts include consistent high-level diplomatic engagement, provision of on-the-ground logistical solutions, and real-time coordination mechanisms involving numerous third States, key UN agencies (including the UN Senior Humanitarian and Reconstruction Coordinator for Gaza),⁶³ as well as a wide variety of non-governmental organizations.⁶⁴ For such purposes Israel has been constantly facilitating the smooth passage of international aid workers, as well as humanitarian and logistical supplies, to and from Gaza through Israeli territory. The reality on the ground has proven that claims that UNRWA is irreplaceable are simply untrue.
55. As regards Judea and Samaria, Israel has emphasized that the Palestinian Authority's roles and responsibilities over civilian affairs (as agreed under the Oslo Accords) must not be overlooked.⁶⁵ Israel continues to cooperate and coordinate, through designated liaisons, with a host of UN agencies, non-governmental organizations, and third States that operate in the area. This includes the ongoing issuance of work permits for international employees and continuous facilitation of aid projects. In keeping with the Oslo Accords, which regulate the hosting of representative offices of foreign States in territories under the administration of the Palestinian Authority for certain defined purposes (and as such do not

⁶³ See also Identical Letter from the Permanent Representative of Israel to the United Nations to the President of the Security Council and President of the General Assembly, 18 December 2024 (**Annex 37**): "UN agencies such as the World Food Programme, UNICEF, and the United Nations Development Programme (UNDP), along with the World Health Organization, have significantly expanded their operations in Gaza, including through the UN Mechanism for accelerating the provision of humanitarian relief consignments to Gaza, and have proven their capacity to deliver aid effectively, on a very large scale, and without corrosive ties to terrorist entities. These humanitarian organizations are equipped to provide the necessary humanitarian response in Gaza, as they do elsewhere in the world. Most of the humanitarian aid entering the territory is already coordinated by actors other than UNRWA; the Water, Sanitation and Hygiene (WASH) response in Gaza is likewise being implemented primarily by UNICEF and UNDP, with very minimal involvement by UNRWA. The only barrier to expanding humanitarian operations by agencies other than UNRWA has been political." Cooperation is also undertaken with the United Nations Department of Safety and Security (UNDSS), the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), the United Nations Population Fund (UNFPA), the United Nations Office for Project Services (UNOPS), the Food and Agriculture Organization (FAO), and the UN Access Services Unit (ASU).

⁶⁴ These non-governmental organizations include the International Rescue Committee (IRC), Global Empowerment Mission (GEM), Save The Children, Project Hope, American Near East Refugee Aid (ANERA), International Medical Corps (IMC), UK Emergency Medical Team (UK-MED), Médecins Sans Frontières (MSF), World Central Kitchen (WCK), Water Mission, Relief and Humanitarian Aid Mission for All (RAHMA), MedGlobal, Catholic Relief Services (CRS), the International Committee of the Red Cross (ICRC), Mercy Corps, The Samaritan's Purse, and the Multifaith Alliance.

⁶⁵ Identical Letter from the Permanent Representative of Israel to the United Nations to the President of the Security Council and President of the General Assembly, 18 December 2024 (**Annex 37**).

impose on Israel any obligation towards third States),⁶⁶ Israel facilitates such representation. These representative offices, it may be added, are not diplomatic or consular missions and they and their staff do not enjoy any diplomatic or consular privileges or immunities as such.

56. Israel has further made it clear that all residents of Jerusalem are entitled to government and municipal services under Israeli law. The Government of Israel has already adopted a series of decisions, including most recently on 5 June 2024, to promote the provision of those services that were hitherto provided by UNRWA, including in the fields of health and education.

57. Israel's consistent position, as also explained to the UN, has been and remains that "international law does not require any State to assist and cooperate with an entity that jeopardizes and impairs its national security, not least an entity that has proven itself to be anything but neutral and impartial. UNRWA has not only failed to abide by its duties and uproot Hamas but it has moreover repeatedly prioritized political agendas over efficient aid delivery and has often hindered broader humanitarian efforts by insisting on a monopoly of services."⁶⁷

58. Regrettably, these rights and entitlements of Israel are obscured from the view of the Court in resolution 79/232, by which the present advisory proceedings were initiated. So is the fact that it is not Israel but terrorism that, as the Security Council has put it, "continues to pose a serious threat to international peace and security, the enjoyment of human rights, the social and economic development of all Member States, and undermines global stability and prosperity".⁶⁸

III. The Court should decline to give the requested advisory opinion

⁶⁶ See Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995, Article IX(5) (**Annex 64**). The Oslo Accords do not in any way impose on Israel any obligation towards third States.

⁶⁷ Identical Letter from the Permanent Representative of Israel to the United Nations to the President of the Security Council and President of the General Assembly, 18 December 2024 (**Annex 37**).

⁶⁸ S/RES/2129 (2013), 17 December 2013, preamble (**Annex 39**).

59. The Court has consistently affirmed that it has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met.⁶⁹ The present case presents not one but several compelling reasons for the Court to do so.

60. First, the Request and question put to the Court touch upon claims and allegations which are *sub judice* in a contentious proceeding currently pending before the Court, namely, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*. This fact serves not only to highlight the abusive nature of the present Request (on which more is said below) but suggests that giving the advisory opinion might essentially pre-judge elements relevant to the case brought against Israel by South Africa, thus gravely undermining the integrity of the Court's judicial function.

61. Remarkably, South Africa has co-sponsored the Request, no doubt seeking to gain from any statement the Court might make in the present case for purposes of assisting positions already taken, or to be taken, by it in the pending contentious proceeding. What is more, so far eight of the other co-sponsors of the Request (Belize, Bolivia, Chile, Colombia, Ireland, Libya, Spain, and the Palestinians) have sought to intervene in the *South Africa v. Israel* proceeding, a number of them making improper assertions relating to legal matters that are also raised by the Request.

62. As the Court has recalled, the Permanent Court of International Justice (PCIJ) previously declined to exercise its jurisdiction to render an advisory opinion in the *Status of Eastern Carelia* proceedings, in which “the question put to [the PCIJ] was directly related to the main point of the dispute actually pending between two States, so that answering the question would be substantially equivalent to deciding the dispute between the parties”.⁷⁰ In the advisory proceedings on *Interpretation of Peace Treaties*, the Court distinguished the PCIJ's *Eastern Carelia* precedent because the request for an advisory opinion “in no way touche[d] the merits” of the pending dispute.⁷¹ The position could hardly be more different

⁶⁹ Including most recently in the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024* (“Israeli Practices Advisory Opinion”), paras. 30-31.

⁷⁰ *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, Advisory Opinion, I.C.J. Reports 1950*, p. 65, at p. 72, citing the *Status of Eastern Carelia, Advisory Opinion, 1923 PCIJ, Series B, No. 5*.

⁷¹ *Ibid.*

in the present case, as any advisory opinion rendered will unquestionably influence (and thus might potentially pre-judge) determinations to be made in the parallel contentious proceeding. Indeed, various alleged facts and other false assertions which are strenuously denied by Israel, and are *sub judice* in the pending *South Africa v. Israel* case, form the very premise for the Request. The close connection between the Request, as formulated, and the pending contentious proceeding in *South Africa v. Israel* is highlighted yet further by the fact that its very text echoes the provisional measure prescribed at paragraph 51(2)(b) of the Court's Order of 28 March 2024 in the contentious case.

63. Taking due account of the logic of the overall system contemplated in the Charter, it should moreover be unassailable that the General Assembly ought not to be perceived as involving itself in claims and allegations raised in contentious cases that are pending before the Court. Nor should it be allowed by the Court to do so. There are clear difficulties in accepting as legitimate a situation where such political pressure is put upon the Court with regard to matters under consideration in a contentious case between UN Member States. Such a situation would also be contrary to basic tenets of procedural fairness, equality of arms, and natural justice in the resolution of international disputes.
64. Thus, even though the question put to the Court inquires only as to what the obligations of Israel are, and not whether or not Israel has abided by these obligations, the multiple and inextricable links between that question and the matters raised in the pending contentious proceeding between South Africa and Israel warrant an exercise by the Court of its discretion not to render the requested advisory opinion. It is, indeed, difficult to think of a situation in which the rendering of an opinion by the Court would more clearly undermine the integrity of its judicial function in relation to its contentious jurisdiction.
65. Second, the Request and question put to the Court have been formulated in a blatantly prejudicial, one-sided, and even contradictory manner. For instance, resolution 79/332 sees no difficulty in “[d]emand[ing] that Israel comply without delay with all of its legal obligations” while at the same time requesting that the Court provide its opinion on “what are the obligations of Israel”. The question posed by the Request is indeed so targeted at Israel that it proceeds on the assumption that Israel has failed to meet its obligations under international law, without any regard to Israel's legitimate security interests and concerns, or to the obligations of the UN and other third parties in relation to the very subject-matter

of the question. For the Court to give its opinion in response to a such a question would be incompatible with its judicial character.

66. Third, the omnibus question put to the Court is one which the Court has to a large extent already been called to address in earlier Advisory Opinions relating specifically to Israel. In those proceedings the Court considered what it viewed as the applicable rules and principles of international law, and expanded on its understanding of Israel's specific obligations. These obligations evidently form a core aspect of the question submitted in the recent Request.

67. Fourth, the question put to the Court concerns obligations that can only be defined in relation to a fact-specific analysis for which advisory proceedings are inherently ill-suited. The significance of facts is demonstrated by Section II above, and is likewise undeniable in relation to an assessment of the situation on the ground during ongoing hostilities. Thus the Request would require the Court either to undertake significant factual investigations and make factual findings on disputed and dynamic matters, which cannot properly be pursued in the framework of advisory proceedings, or to assume the veracity of disputed allegations, which would be incompatible with the Court's judicial function.

68. Taken together, all these reasons both illustrate and point to yet another compelling reason for which the Court should in the present case draw a line and decline to give the requested opinion: the weaponization and abuse of the international judicial process.

69. The Court is no doubt aware of the complex and evolving situation in the Middle East, and for Israel in particular. Contrary to the Court's call for their unconditional and immediate release and in brazen violation of international law, dozens of Israeli and other nationals are still being held in brutal captivity at the hands of Hamas and other terrorist organizations in Gaza, now for almost seventeen excruciating months. These organizations and others continue to declare openly their determination to resume their attacks on Israel. Tens of thousands of Israelis are still internally displaced as a result of the devastation caused by a conflict that Israel did not start and did not want. Yet the circumstances in which the present Request has been brought to the Court, and the express terms in which the question is asked of the Court, encourage the Court to pay no regard to this relevant context. The Court's

advisory jurisdiction is employed as another means to single Israel out in an attempt to deny its right to lawfully defend itself.

70. The Court should not allow its judicial process to be used in this partisan and prejudicial way. It should recognize that this Request crosses a line in attempting to weaponize and politicize further its advisory procedure, in a way which compromises the Court's judicial integrity and makes the law indistinguishable from politics. The glaring abuse demonstrated by the present Request must not be condoned.

IV. Obligations of a Member of the United Nations

71. Without prejudice to Israel's firm position that the Court should in the circumstances decline to give the advisory opinion requested of it, several observations are offered below as regards the obligations incumbent upon Members of the UN to which attention may be drawn in the present case. These obligations, which the Members of the Organization have assumed voluntarily, all reflect the intention of Members to enable the UN to realize the common peaceful purposes they have defined for it, while at the same time to safeguard and indeed promote their own sovereign rights within this collective system. These obligations are, as such, neither absolute nor unqualified.
72. The obligations that Members of the UN have taken upon themselves in the Charter are thus intrinsically linked to the purposes enumerated in Article 1 of the Charter. This is made clear by the introductory sentence of Article 2 of the Charter, which, it seems necessary to recall, prescribes that the UN too, and not only its Members, must act in fulfilment of the Purposes listed in Article 1 and the Principles listed in Article 2. When an agency subordinate to the General Assembly betrays the fundamental principles upon which the UN was established but is not brought to account, this is an affront not only to justice but also to the Charter itself.
73. It follows that the UN itself, as an organization, must at all times act in fulfilment of the stated Purposes as set out in the Charter. Even if there is a presumption that the Organization acts *intra vires* when asserting that it is acting in fulfilment of one of the purposes stated in

Article 1 of the Charter,⁷² this is only a presumption. As is clear from Section II above, any such presumption is displaced in the present circumstances as regards UNRWA.

74. Article 2, paragraph 5, of the Charter provides that “[a]ll Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter ...”. This obligation is not unlimited or unqualified. First, by its own terms, assistance to the UN is required in relation to action that is undertaken in accordance with the Charter. Thus, where UN action is manifestly contrary to the Charter and to the basic principles of the international civil service therein contained, to the detriment of a Member’s vital interests, the Member in question cannot be expected to assist the UN in perpetuating such conduct. It would be difficult to conceive that any State taking upon itself the obligations laid down in the Charter has ever considered, let alone agreed, otherwise.

75. Second, and in any event, the obligation of assistance laid down in Article 2, paragraph 5 does not encompass all action undertaken by each and every organ or agency of the UN, but is limited to enforcement action taken by the UN Security Council under Chapter VII of the Charter. This interpretation is consistent with the general structure of the Charter and the respective functions assigned by it to the organs of the Organization, and is supported by the drafting history of the provision.⁷³

76. Article 56 of the UN Charter, according to which Members “pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55 [concerning the promotion of solutions for economic, social, cultural, or humanitarian matters, and of respect for human rights and for fundamental freedoms for all]” is likewise not unqualified. In whatever way the terms “pledge”, “action”, and “in co-operation” may be interpreted (which is far from straightforward), they concern the achievement of a common end in pursuit of the Organization’s peaceful purposes. Article 56 does not require a Member State to cooperate with the Organization

⁷² See *Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion of 20 July 1962: *I.C.J. Reports 1962*, p. 168.

⁷³ See H. Aust, ‘Article 2(5)’, in *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY* (B. Simma et al. eds., 4th ed., Oxford University Press, 2024) p. 367 at pp. 369-371 (**Annex 40**); see also H. Kelsen, *THE LAW OF THE UNITED NATIONS: A CRITICAL ANALYSIS OF ITS FUNDAMENTAL PROBLEMS* (Stevens, 1950, reprinted by The Lawbook Exchange 2000) pp. 91-92, 97 (**Annex 41**).

or indeed with other States in extraordinary circumstances of the kind set out in Section II above.

77. Article 105 of the Charter provides in pertinent part that the UN “shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes”; and that “... officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization”. This provision does not confer upon the UN or its officials a right of unfettered access to or through a Member’s territory or any right to operate therein without that Member’s consent. Nor does it derogate from the obligation of the UN and its staff to observe fully the local laws and regulations of the Member concerned.
78. Pursuant to Article 105, paragraph 3, the Members of the UN have concluded the Convention on Privileges and Immunities of the United Nations, which was adopted by the General Assembly of the United Nations on 13 February 1946 and is to similar effect. By this instrument the States Parties have accorded certain privileges and immunities to the UN, its property and assets, and its officials, as well as to experts on missions for the UN, but only “as [these] are necessary for the fulfilment of [the UN’s] purposes”.⁷⁴
79. A decision by a Member State to refuse, or to withdraw its consent for, cooperation with a UN agency or the operation of that UN agency on that State’s territory, does not constitute a breach of that agency’s immunity. Nor do the UN’s privileges and immunities impose an obligation on a Member State to provide such consent. This is certainly the case in extraordinary circumstances where the legitimate security concerns of a Member State are severely undermined by the agency in question, whose conduct manifestly contravenes the fundamental principles of neutrality, impartiality, and independence.

⁷⁴ See Article 105 of *Charter of the United Nations*, 26 June 1945, 1 U.N.T.S. 16 (**Annex 42**), as well as the Preamble to *Convention on the Privileges and Immunities of the United Nations* (“Immunity Convention”), 13 February 1946, 1 U.N.T.S. 15 (**Annex 43**). The 1946 Convention prescribes in this vein that the UN Secretary-General shall have “the right *and the duty* to waive the immunity of any official” where that immunity would impede the course of justice, and that “[t]he United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities [of its officials]”: see Sections 20, 21 of the Immunity Convention (emphasis added).

80. Where the agency and the UN have failed to rectify such actions and omissions despite innumerable and repeated requests that they do so, and where the agency has been given ample time to make the necessary arrangements, refusal by the agency to respect the withdrawal of previously-given consent by a Member State to cooperate with that agency constitutes an abuse of the privileges and immunities accorded to the UN by the Member States.
81. All the abovementioned obligations assumed by Members in accordance with the Charter must, of course, be carried out in good faith; Article 2, paragraph 2, makes that express.⁷⁵ This general obligation in no way suggests that no regard may be had of exceptional circumstances in which the legitimate security concerns of a Member are severely undermined by an agency whose conduct manifestly contravenes the principles of neutrality, impartiality, and independence. To the contrary, this is all the more so when a Member State is defending itself against repeated attacks by murderous terrorist organizations. Moreover, as the Court has had occasion to observe, “[s]ave as they have entrusted the Organization with the attainment of these common ends, the Member States retain their freedom of action”.⁷⁶
82. It follows that membership of the UN does not of itself entail obligations on a Member in respect of the UN, other international organizations, or third States seeking to engage in activities within the territory in question.
83. Mention must also be made of the obligations of Members, as stipulated in Security Council resolution 1373 which was adopted under Chapter VII of the Charter, to “[r]efrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts”; to “[t]ake the necessary steps to prevent the commission of terrorist acts”; to “[d]eny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens”; and to “[e]nsure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to

⁷⁵ The provision, it may be added, records that the obligation to fulfill in good faith the obligations assumed by Members in accordance with the Charter is intended “to ensure to all of them the rights and benefits resulting from membership”. Singling out a Member, abusing automatic majorities in plenary meetings, and seeking constantly to deny that Member the rights and benefits resulting from membership, would be in violation of this undertaking.

⁷⁶ *Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion of 20 July 1962, I.C.J. Reports 1962, p. 168.

justice”.⁷⁷ Significantly, that Security Council resolution further declared “that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations”.⁷⁸

V. Obligations of an Occupying Power

84. Contrary to the terms employed in the question put to the Court, Israel’s status, powers and responsibilities in relation to the so-called “Occupied Palestinian Territory” vary significantly. In the Gaza Strip, Israel has not exercised effective control since it withdrew from the territory in 2005: it is Hamas, which violently seized power there in 2007, that has been governing the territory, including by way of control over the local economy, policing and internal security, welfare services, tax collection, education, and the media. The lack of Israeli effective control over Gaza is made evident by the repeated large-scale coordinated attacks against Israel emanating from that territory over the years, not least on 7 October 2023 and the subsequent hostilities; Hamas continues to exercise governmental capabilities, which it has put on ugly display during the present ceasefire. In these circumstances, it is the law of armed conflict, and in particular the law on conduct of hostilities, which applies. In Judea and Samaria, sovereignty over which is in abeyance, Israel applies, as a matter of policy, the Hague Regulations of 1907 and the humanitarian provisions of the Fourth Geneva Convention, having also delegated certain powers and responsibilities to the Palestinian Authority under the Oslo Accords. Jerusalem is subject to Israeli law.

85. Without prejudice to this position and to Israel’s claims with regard to the territories in question, and notwithstanding Israel’s contention that the Court should decline to give the requested advisory opinion, several observations are provided below in relation to the law of occupation.

⁷⁷ S/RES/1373 (2001), 28 September 2001, para. 2 (**Annex 71**); *see also* S/RES/2129 (2013), 17 December 2013, para. 13 (**Annex 39**).

⁷⁸ S/RES/1373 (2001), 28 September 2001, para. 5 (**Annex 71**); *see also* S/RES/1624 (2005), 14 September 2005, preamble (**Annex 45**).

86. Two preliminary remarks are in order. A first and fundamental point is that the responsibility of an Occupying Power is coupled with authority.⁷⁹ Thus, in keeping with the Occupying Power's obligations, including to ensure, as far as possible, public order and safety in the occupied territory, the operation of third parties in that territory (be they third States or international organisations) is subject to the consent and authority of the Occupying Power. Where third parties operating in the territory with the consent of the Occupying Power undermine that authority and public order and safety, it is the Occupying Power's prerogative—and indeed its duty—to cease such conduct.
87. A second and related preliminary point is that although the question put to the Court does not reference the rights and powers of an Occupying Power, these must of course be considered in determining the existence and scope of any obligations thereof. The rights and powers accorded under the law of occupation are, indeed, crucial to the Occupying Power's ability to fulfil its obligations, which, in turn, are by design neither absolute nor unqualified.
88. The general legal framework governing situations of occupation is laid down by Article 43 of the Hague Regulations, which becomes applicable once an occupation is established as a matter of fact.⁸⁰ This Article provides that “[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his powers to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country”.⁸¹
89. This rule is complemented by Article 64 of the Fourth Geneva Convention, which is to similar effect: “... The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property

⁷⁹ Y. Dinstein, *INTERNATIONAL LAW OF BELLIGERENT* (2nd ed, Cambridge University Press, 2019), §285 (**Annex 50**).

⁸⁰ Article 43 of Hague Regulations Respecting the Laws and Customs of War on Land, Annexed to Hague Convention (IV), 18 October 1907 (**Annex 46**).

⁸¹ *Ibid.*

of the occupying forces or administration, and likewise of the establishments and lines of communication used by them”.⁸²

90. Neither of these provisions impose any duties on the Occupying Power vis-à-vis third parties, nor do they create any rights for them, as they are not the focus of the law of occupation. Further, as is clear from the terms “as far as possible”, “unless absolutely prevented”, and “however”, the duties imposed upon, and the powers vested in, an Occupying Power are not absolute. The law of occupation inherently requires a balancing of interests, in particular the security of the Occupying Power and the needs of the local population.

91. An Occupying Power has broad discretion generally as to how to administer the occupied territory, bearing in mind that it has the right to protect its security and military needs as well as the obligation to maintain public order and civil life for the benefit of the local population, as far as possible. Some of these obligations entail cooperation with local authorities, and the modalities for satisfying them may change from one instance to another, taking into account the particular circumstances of the moment.⁸³

92. This discretion of the Occupying Power encompasses, *inter alia*, the authority and power to determine whether, when, and to what extent third parties may be present and operate in the occupied territory. Specific provisions dealing with this matter may be found in the Fourth Geneva Convention and in customary international law. These provisions concern obligations vis-à-vis a “Protecting Power”, where one has been established, in relation to the protection of victims of the conflict;⁸⁴ obligations owed in the context of relief schemes (discussed further below); and obligations vis-à-vis national societies.⁸⁵ They are, however,

⁸² *Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War* (“Fourth Geneva Convention”), 12 August 1949, 75 U.N.T.S. 287 (A), expressly states (in Article 154) that it is “supplementary” to the Hague Regulations, and therefore its provisions do not supersede or override the rules established by the Regulations, and fall to be interpreted in light of the principles enshrined in those Regulations.

⁸³ See, e.g., Articles 50 and 56 of the Fourth Geneva Convention (Annex 48).

⁸⁴ “Protecting Power” means a neutral or other State not a Party to the conflict which has been designated by a Party to the conflict and accepted by the adverse Party and has agreed to carry out the functions assigned to a Protecting Power under the Geneva Conventions and Article 2(c) of *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 U.N.T.S. 3 (Annex 65). In practice, the ICRC may act as a substitute to the protecting power: see Article 11 of the Fourth Geneva Convention.

⁸⁵ Under article 63 of the Fourth Geneva Convention, National Society activities are protected in the event of occupation. This protection applies strictly to National Societies or to other humanitarian organizations capable

focused on the local civilian population as their beneficiary. Significantly, they place the third parties concerned under an obligation of their own to observe strict neutrality, and do not displace the legitimate security interests of the Occupying Power.

93. Article 59 of the Fourth Geneva Convention provides that the Occupying Power shall agree to relief schemes destined for the civilian population, if that population is inadequately supplied. Upon such agreement, Article 59 also requires the Occupying Power to facilitate such schemes by all the means at its disposal. This provision employs language similar to Article 55 of the Convention and encompasses exclusively those supplies covered by Article 55, that is, those urgently needed for the survival of the civilian population. It follows that the obligation to agree to relief schemes is not unlimited: it applies only where the civilian population is inadequately supplied and only extends to supplies within the meaning of Article 55.⁸⁶

94. Furthermore, schemes falling within the scope of Article 59 of the Fourth Geneva Convention must be undertaken by impartial humanitarian organizations or neutral and impartial third States.⁸⁷ The Occupying Power has no obligation to consent to, or facilitate, relief schemes conducted by organizations which are not impartial or whose objectives are not exclusively humanitarian.⁸⁸ This is clear not only from the language of Article 59, but also from the Occupying Power's responsibility, and indeed its duty, to maintain public

of meeting the high standards of neutrality and impartiality; failing this, the Occupying Power may suspend the activity even of a national society. *See also* THE GENEVA CONVENTIONS OF 12 AUGUST 1949 COMMENTARY: IV GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR (1958) (J. Pictet, ed.), p. 331 (**Annex 49**).

⁸⁶ *See, e.g.*, Danish Ministry of Defence, 'Military Manual on International Law Relevant to Danish Armed Forces in International Operations' (2016), p. 440-441: "The occupying power is responsible for ensuring that the civilian population does not starve or lack other basic needs. In addition to food and drinks, these include medical supplies, clothing, shelter, bedding, and other supplies essential to the survival of the civilian population and objects necessary for religious worship" (**Annex 53**).

⁸⁷ Indeed, while formal neutrality vis-à-vis the parties to the conflict is not expressly mentioned in Article 59, it is generally accepted to form part of its conditions. It has been expressly relied upon by the International Committee of the Red Cross (ICRC) in its operations and also by the UN General Assembly and the Security Council. The importance and relevance of neutrality is also confirmed by the reference in the Geneva Conventions to the neutrality of Protecting Powers, substituted when necessary by the ICRC. *See*: Article 4 of *Statutes of the International Committee of the Red Cross*, 1986 (amended in 1998 and 2017) (**Annex 58**); S/RES/1296 (2000), 19 April 2000 (**Annex 59**); S/RES/1674 (2006), 18 April 2006 (**Annex 60**); Article 61 of the Fourth Geneva Convention (**Annex 48**).

⁸⁸ Article 59 of the Fourth Geneva Convention (**Annex 48**); THE GENEVA CONVENTIONS OF 12 AUGUST 1949 COMMENTARY: IV GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR (1958) (J. Pictet, ed.), pp. 320-321 (**Annex 49**); M. Sassoli, *INTERNATIONAL HUMANITARIAN LAW: RULES, CONTROVERSIES, AND SOLUTIONS TO PROBLEMS ARISING IN WARFARE* (1st ed., 2019), p.579 (**Annex 54**); United States of America, Department of Defense, 'Law of War Manual' (July 2023), p. 178-179 (**Annex 55**).

order and safety in the occupied territory. While the Occupying Power's prerogative not to agree to relief schemes may not be exercised arbitrarily, Article 59 cannot be read in a manner that contradicts this basic framework for the administration of an occupied territory.

95. Neutrality and impartiality require that the relevant actor (whether a humanitarian organization or a State) be both capable of acting effectively and be worthy of trust.⁸⁹ Any humanitarian assistance sought to be provided under Article 59 of the Fourth Geneva Convention must comply therefore with the Red Cross and Red Crescent principles of humanity and impartiality.⁹⁰ It is indeed critical that the Occupying Power agreeing to a relief scheme perceives the organisation or State in question to be both impartial and humanitarian, and trusts that they will conduct their operations accordingly.⁹¹ Article 69 of the First Additional Protocol to the Geneva Conventions reinforces these requirements.⁹²
96. Moreover, even if the third party enjoys in the territory in question a certain status under the local law and by virtue of any agreement entered into by the local population, the Occupying Power may override these, if necessary, in accordance with Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention.
97. As for the term "relief" in Article 59, reference is made to foodstuffs, medical supplies, clothing, bedding, means of shelter, and other supplies essential for the survival of the civilian population.⁹³ While other supplies might also fall within the scope of relief consignments, the Occupying Power may refuse to agree to the provision of any consignment that is not urgently needed or to facilitate it.⁹⁴

⁸⁹ THE GENEVA CONVENTIONS OF 12 AUGUST 1949 COMMENTARY: IV GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR (1958) (J. Pictet, ed.), p. 321 (**Annex 49**).

⁹⁰ As to the term humanitarian and impartial organization – one should also refer to Article 10 of the Fourth Geneva Convention.

⁹¹ See for example: United States of America, Department of Defense, 'Law of War Manual' (July 2023), p. 219-221 (**Annex 55**).

⁹² Israel is not a party to the Protocol but accepts that certain provisions or elements therein reflect customary international law.

⁹³ Article 59 of the Fourth Geneva Convention (**Annex 48**); see also Article 69 of *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 U.N.T.S. 3 (**Annex 65**).

⁹⁴ THE GENEVA CONVENTIONS OF 12 AUGUST 1949 COMMENTARY: IV GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR (1958) (J. Pictet, ed.), p. 321 (**Annex 49**).

98. When the conditions set by Article 59 are met, the Occupying Power must agree to a relief scheme, but the technicalities of the particular scheme are to be negotiated. Once they are agreed upon, the Occupying Power is in a position to satisfy its obligation to facilitate the relief scheme. Although the text of Article 59 does not expressly confer upon the Occupying Power the power to regulate, inspect, and verify consignments, such power can be assumed from the terms of that provision, and in any case is inherent in the Occupying Power's broader authority, emanating from its duty to balance the core interests earlier identified.⁹⁵

99. In short, the carefully defined rules constituting the law of occupation are concerned with the duties and powers of an Occupying Power in relation to the local population. These duties and powers are not unqualified. Third parties may, subject to the consent of the Occupying Power and its security considerations, offer their services, *inter alia* in relation to relief schemes. However, this does not entail any direct obligations towards third parties or any rights thereof.

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⁹⁵ See in this respect Article 43 of *Hague Regulations Respecting the Laws and Customs of War on Land*, Annexed to *Hague Convention (IV)*, 18 October 1907 (**Annex 46**).

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February 28, 2025