

INTERNATIONAL COURT OF JUSTICE

**OBLIGATIONS OF ISRAEL IN RELATION TO THE PRESENCE
AND ACTIVITIES OF THE UNITED NATIONS, OTHER
INTERNATIONAL ORGANIZATIONS AND THIRD STATES IN AND
IN RELATION TO THE OCCUPIED PALESTINIAN TERRITORY**

WRITTEN STATEMENT

THE PEOPLE'S REPUBLIC OF CHINA

28 FEBRUARY 2025

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Introduction

1. The question of Palestine has remained unsettled for more than half a century, during which the Palestinian people have depended on humanitarian assistance as a vital lifeline. Since October 2023, the humanitarian situation in the Occupied Palestinian Territory (hereinafter the OPT) has deteriorated significantly amid escalating Palestinian-Israeli conflict. Israel has enacted restrictive legislation and other measures, most notably banning the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter the UNRWA) from operating in the region.¹ This web of restrictions systematically obstructs humanitarian assistance from reaching Palestinians, whether provided by the United Nations, international organizations, or third States, creating an invisible “wall” that severs Palestinians from essential humanitarian support and threatens their survival. The urgent removal of these barriers has become imperative, as the Palestinian people’s survival depends on the full, immediate, rapid, unimpeded, and sustained delivery of humanitarian assistance.

2. In the face of this deepening humanitarian crisis, the United Nations General Assembly adopted resolution 79/232 in which the General Assembly “[d]ecides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, on a priority basis and with the utmost urgency, to render an advisory opinion on the following question, considering the rules and principles of international law, as regards in particular the Charter of the United Nations, international humanitarian law, international human rights law, privileges and immunities applicable under international law for international organizations and States, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, the advisory opinion of

¹ See UN General Assembly Resolution 79/232 (2024), A/RES/79/232, preambular paras. 15, 20.

the Court of 9 July 2004, and the advisory opinion of the Court of 19 July 2024, in which the Court reaffirmed the duty of an occupying Power to administer occupied territory for the benefit of the local population and affirmed that Israel is not entitled to sovereignty over or to exercise sovereign powers in any part of the Occupied Palestinian Territory on account of its occupation:

What are the obligations of Israel, as an occupying Power and as a member of the United Nations, in relation to the presence and activities of the United Nations, including its agencies and bodies, other international organizations and third States, in and in relation to the Occupied Palestinian Territory, including to ensure and facilitate the unhindered provision of urgently needed supplies essential to the survival of the Palestinian civilian population as well as of basic services and humanitarian and development assistance, for the benefit of the Palestinian civilian population, and in support of the Palestinian people's right to self-determination?"

3. By an order dated 23 December 2024, the Court decided that the United Nations and its Member States, as well as the observer State of Palestine, may submit written statements to the Court. Subsequently, at the request of the League of Arab States, the Organization of Islamic Cooperation, and the African Union, the Court authorized the participation of each of these organizations in the advisory proceedings.

4. China notes the January 2025 ceasefire agreement, which facilitated the exchange of those being held and enabled humanitarian assistance convoys to reach Palestinian territory. However, the humanitarian situation remains dire, and the urgency of the question posed by the General Assembly in Resolution 79/232, therefore remains undiminished, requiring the Court's immediate attention.

5. The present request marks the third time the General Assembly has sought an advisory opinion from the Court regarding the question of

Palestine. This legal trilogy began with the advisory opinion of 9 July 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (hereinafter the *Wall* advisory opinion). In that opinion, the Court found that the construction of the wall by Israel in the OPT was contrary to international law and Israel was under an obligation to terminate its breaches of international law and to make reparation for the damage caused.² Twenty years later, in the advisory opinion of 19 July 2024 on the *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory including East Jerusalem* (hereinafter the *OPT* advisory opinion), the Court concluded that Israel's continued presence in the OPT was unlawful and Israel was under an obligation to bring to an end the occupation, cease settlement activities immediately and to make reparation for the damage caused.³

6. The present question requested by the General Assembly is premised on the Court's established finding of the illegality of Israel's prolonged occupation of the Palestinian Territory. Gravely concerned by the dire humanitarian situation in the OPT,⁴ the General Assembly has now posed a question that marks a significant departure from its previous requests. While the 2004 and 2024 advisory opinions focused on Israel's obligations toward Palestine and its people, this third question pivots to examine Israel's obligations in relation to the United Nations, other international organizations, and third States (hereinafter collectively referred to as the third Parties). The General Assembly seeks legal guidance from the Court to address pressing questions, including those on humanitarian and development assistance, to complement the Court's

² See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136 [hereinafter *Wall*], para. 163.

³ See *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory including East Jerusalem*, Advisory Opinion, International Court of Justice, 19 July 2024 [hereinafter *OPT*], para. 285.

⁴ See UN General Assembly Resolution 79/232 (2024), A/RES/79/232, para. 1.

advisory opinion of 19 July 2024.⁵

7. China actively participated in the *OPT* before the Court through a written statement of 25 July 2023 and oral submissions during the February 2024 proceedings. In these interventions, China elaborated on the illegality of Israel's policies and practices in its prolonged occupation of the Palestinian territory and called on both parties and the international community to work together toward a comprehensive, just and lasting solution of the question of Palestine.

8. China expresses profound concern over the dire humanitarian crisis unfolding in the Gaza Strip and the unprecedented challenges confronting UNRWA in its vital mission. These mounting challenges, exacerbated by human factors, threaten the Agency's ability to deliver essential humanitarian assistance. China voted in favour of the General Assembly Resolution 79/232. China now presents its legal position on the question requested by the General Assembly to aid the Court in rendering its advisory opinion.

9. The question requested by the General Assembly relates primarily to Israel's obligations under international law, as the occupying Power in the OPT and as a UN Member State regarding the ensuring and facilitation of humanitarian and development assistance by the third Parties to people in the OPT. The question also relates to relevant rights and obligations of the third Parties under international law.

10. This statement presents three key matters: the Court's advisory jurisdiction and the admissibility of the case; Israel's obligations as both occupying Power and Member State of the United Nations; and China's policies and proposals on humanitarian assistance to Palestinians and related matters.

⁵ See UN General Assembly Resolution 79/232 (2024), A/RES/79/232, preambular para. 23.

I. The Court has advisory jurisdiction over the question requested by the General Assembly, and there is no compelling reason for the Court to exercise its discretionary power to decline to give the opinion.

A. The Court has advisory jurisdiction over the present case

11. Article 96 of the Charter of the United Nations (hereinafter the Charter) provides that “[t]he General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question” and “[o]ther organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities”. According to these provisions, two conditions must be met for the Court’s advisory jurisdiction over relevant question: first, the question is posed by the UN General Assembly, Security Council or other organs having competence and acting thereunder, second, the question must be legal in nature. Both conditions are satisfied in this case. The General Assembly has posed the question. The question is directed at Israel’s obligations in relation to the third Parties under international law, including the Charter, international humanitarian law, international human rights law, the UN privileges and immunities law, thereby establishing its legal nature.

B. There is no compelling reason for the Court to exercise its discretionary power to decline to give the opinion

12. Article 65 of the Court’s Statute provides that “[t]he Court **may** give an advisory opinion on any legal question”.⁶ Therefore, once jurisdictional conditions are met, the Court has discretionary power to decide whether to provide an advisory opinion. The Court’s consistent jurisprudence is that, as the “principal judicial organ of the United

⁶ Statute of the International Court of Justice [hereinafter ICJ Statute], Article 65.

Nations”, it should in principle not decline to give an advisory opinion unless “compelling reasons” exist.⁷ The Court’s jurisprudence further indicates that among the most significant considerations is whether an advisory opinion would circumvent the principle that a State cannot be compelled to submit its disputes for judicial settlement without its consent, i.e. the principle of State consent.⁸ In its 1975 *Western Sahara* Advisory Opinion, the Court stressed that “lack of consent might constitute a ground for declining to give the opinion requested if, in the circumstances of a given case, considerations of judicial propriety should oblige the Court to refuse an advisory opinion.”⁹

13. In the present case, exercising advisory jurisdiction would not circumvent the principle of State consent. The question requested by the General Assembly concerns the question of Palestine, a matter fundamental to international peace and security, and central to the UN work since its founding. The UN has explicitly recognized this as its “permanent responsibility”.¹⁰ Moreover, the General Assembly’s request addresses Israel’s obligations in relation to the United Nations, other international organizations and third States. This scope encompasses the rights and obligations between Israel and numerous third Parties beyond Palestine, transcending any bilateral dispute between Israel and Palestine.

14. In light of the aforementioned considerations, the Court has jurisdiction to give an advisory opinion, and there is no compelling reason for the Court to decline to exercise jurisdiction. China supports the Court exercising its advisory jurisdiction in accordance with international law. China hopes the Court will address the specific legal question requested in

⁷ See *Wall*, para. 44.

⁸ See *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, para. 85.

⁹ See *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, para. 32.

¹⁰ See UN General Assembly Resolution 66/17 (2011), A/RES/66/17. See also UN General Assembly Resolution 57/107 (2002), A/RES/57/107; UN General Assembly Resolution ES-10/15 (2004), A/RES/ES-10/15.

the General Assembly resolution 79/232 and, building upon its advisory opinion of 19 July 2024, provide legal guidance to the work of General Assembly on humanitarian and development assistance to Palestine. Such guidance would serve the critical objectives of promoting lasting peace, stability and development in the Middle East, while safeguarding international peace and security, upholding the authority of international law and advancing international justice and fairness.

II. Obligations of Israel, as the occupying Power, to the third Parties

15. Israel has the status of an occupying Power. According to Article 42 of the 1907 Regulations concerning the Laws and Customs of War on Land, which is considered to reflect customary international law, “[t]erritory is considered occupied when it is actually placed under the authority of the hostile army.” The key criterion for determining whether it constitutes an occupation is whether effective control is exercised over the territory.¹¹ Despite Israel’s claim of withdrawing its physical military presence from Gaza in 2005, both legal rules and factual evidence demonstrate that Israel’s status as an occupying Power remains unchanged, with the rules of occupation continuing to apply to the Gaza Strip. The Court’s *OPT* advisory opinion confirms that Israel continues to “exercise effective control” over the Gaza Strip through key governmental functions, “including control of the land, sea and air borders, restrictions on movement of people and goods, collection of import and export taxes, and military control over the buffer zone ... [t]his is even more so since 7 October 2023”. Therefore, Israel cannot be entirely released of its obligations under the laws of occupation.¹² The continuation of Israel’s occupation of Gaza has also been repeatedly recognized in a series of

¹¹ See *OPT*, para. 90; *Wall*, paras. 78, 89; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005 [hereinafter *Armed Activities*], para. 172.

¹² See *OPT*, paras. 89-91, 93-94.

resolutions of the Security Council and General Assembly.¹³ While the January 2025 ceasefire agreement provided for the withdrawal of Israeli forces from Gaza, Israel's fundamental control over Gaza remains unchanged. Therefore, Israel's obligations under the laws of occupation persist, as the mere withdrawal of physical military presence does not terminate its status as an occupying Power. Palestinian territory of Gaza continues to be occupied territory, and Israel remains its occupying Power.

16. The Israeli occupation of the Palestinian territories constitutes an illegal occupation under international law. Regardless of the duration of the occupation, Israel, as the occupying Power, has no sovereignty over the OPT and is legally obliged to refrain from exercising any acts of sovereignty.¹⁴

17. Under international law, in situations of armed conflict, particularly occupation, the legal obligations of Israel as the occupying Power, in relation to the presence and activities of the third Parties are mainly governed by three bodies of international law, international humanitarian law, international human rights law and general international law.

A. Israel's obligations under international humanitarian law in relation to the third Parties

18. As far as applicable international humanitarian law is concerned, Israel is a State party to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (hereinafter the Fourth Geneva Convention). This Convention is

¹³ See UN Security Council Resolution 1860 (2009), S/RES/1860, preambular para. 2; UN Security Council Resolution 2720 (2023), S/RES/2720, preambular para. 4. See also UN General Assembly Resolution 64/94 (2009), A/RES/64/94, para. 10; UN General Assembly Resolution ES-10/20 (2018), A/RES/ES-10/20, preambular para. 16; UN General Assembly Resolution 77/247 (2022), A/RES/77/247, para. 12.

¹⁴ See *OPT*, paras. 105, 108.

applicable in the OPT, as confirmed by the Court in its advisory opinions in the *Wall* and in the *OPT*,¹⁵ and by the Security Council and General Assembly in relevant resolutions.¹⁶ While Israel is not a State party to the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977 (hereinafter the First Protocol), its provisions concerning humanitarian assistance have attained the status of customary international law. These provisions are therefore legally binding on Israel. Israel has acknowledged the applicability of these provisions both through a statement of its Ministry of Foreign Affairs¹⁷ and in judgments of its Supreme Court.¹⁸

Legal rules on humanitarian assistance in situations of armed conflict

19. The Fourth Geneva Convention and the First Protocol provide legal basis for humanitarian assistance in international armed conflict, including situations of occupation. The Charter and Security Council resolutions provide additional legal authority governing humanitarian assistance. Furthermore, the General Assembly resolutions play an indispensable role in developing and promoting humanitarian assistance rules.

20. Rules of humanitarian assistance in armed conflict form a

¹⁵ See *OPT*, para. 96; *Wall*, para. 101.

¹⁶ See UN Security Council Resolution 2334 (2016), S/RES/2334, preambular para. 3; UN Security Council Resolution 2712 (2023), S/RES/2712, preambular para. 4. See also UN General Assembly Resolution ES-10/14 (2003), A/RES/ES-10/14, preambular para. 8; UN General Assembly Resolution 64/92 (2009), A/RES/64/92, para. 1; UN General Assembly Resolution 64/94 (2009), A/RES/64/94, preambular para. 12; UN General Assembly Resolution ES-10/20 (2018), A/RES/ES-10/20, para. 3; UN General Assembly Resolution 77/247 (2022), A/RES/77/247, para. 19.

¹⁷ See State of Israel Ministry of Foreign Affairs, *Hamas-Israel Conflict 2023: Key Legal Aspects*, updated to 2 November 2023, p. 12 and footnote 10.

¹⁸ See HCJ 9132/07, *Al-Bassiouni et al. v. The Prime Minister et al.*, Judgment of 30 January 2008, paras. 13-15. See also HCJ 201/09, *Physicians for Human Rights v. Prime Minister*, Judgment of 19 January 2009, para. 21.

special legal regime that regulates the rights and obligations of States and international organizations in providing assistance in armed conflict to civilian populations caught in humanitarian crises during armed conflict, and such assistance is delivered through the provision of essential goods and services necessary for their survival.¹⁹

21. The legal regime of humanitarian assistance establishes the rights and obligations for a State party to the conflict (affected State), third States and international organizations regarding humanitarian assistance to the civilian population within the territory of a State party to the conflict or under its jurisdiction or control. This regime consists of two main pillars, with the first being the primary responsibility of a State party to the conflict to meet the basic needs of the civilian population in its territory or in territory under its jurisdiction or control. In the case of occupation, the occupying Power bears the primary responsibility for providing relief to the civilian population of the occupied territory. According to Article 55, paragraph 1, of the Fourth Geneva Convention and Article 69, paragraph 1, of the First Protocol, “[t]o the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population”. When “the resources of the occupied territory are inadequate”, the occupying Power must provide necessary foodstuffs, medical materials, clothing, bedding, means of shelter, and other supplies essential to the survival of the civilian population, as well as objects necessary for religious worship.²⁰ In situations other than occupation during an armed conflict, a State party to the conflict also has an obligation to meet the basic needs of the civilian population under its jurisdiction or control. Article 70, paragraph 1, of the First Protocol stipulates: “If the civilian population of any territory under the control of a Party to the conflict, other than occupied territory, is not adequately provided with the supplies mentioned in Article 69, relief

¹⁹ See the Fourth Geneva Convention, Article 55(1); the First Protocol, Article 69(1).

²⁰ See the Fourth Geneva Convention, Articles 55(1), 59(1); the First Protocol, Articles 69(1), 70(1).

actions which are of humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement of the Parties concerned in such relief actions.” At the same time, according to these treaties, both occupying Powers and other States party to the conflict must provide special care and priority treatment to vulnerable civilian groups, particularly children and expectant mothers.²¹

22. The second pillar addresses the responsibility of third States and international organizations in providing humanitarian assistance under certain conditions. When the occupying Power and other States party to the conflict fail to meet the basic needs of the civilian population, third States and international organizations may provide humanitarian assistance, either on their own initiative or at the request of States party to the conflict. Article 59, paragraph 2, of the Fourth Geneva Convention provides that such humanitarian assistance programmes “may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross.” While the Convention does not define these “States” or “impartial humanitarian organizations”, they are generally understood to mean third States and international organizations other than occupying Power and other States party to the conflict. Importantly, the participation of third States and international organizations in humanitarian assistance should not be regarded as unlawful or unfriendly acts, and Article 70, paragraph 1, of the First Protocol clearly states that “[o]ffers of such relief shall not be regarded as interference in armed conflict or as an unfriendly act.”

Rules for the provision of humanitarian assistance by third Parties

23. In principle, the provision of humanitarian assistance by third States and international organizations serves as a complementary and supplementary means of relief aimed at assisting the State party to a

²¹ See the Fourth Geneva Convention, Articles 23(1), 50(1); the First Protocol, Article 70(1).

conflict in fulfilling its obligation to meet the basic survival needs of the civilian population under its jurisdiction or control. The conduct of humanitarian assistance by third States and international organizations to the civilian population under the jurisdiction or control of States party to the conflict should adhere to the following rules:

24. Firstly, the provision of humanitarian assistance must be premised on the fact that the civilian population under the jurisdiction or control of States party to the conflict is not adequately supplied with the necessities of life. Pursuant to Article 59, paragraph 1, of the Fourth Geneva Convention, and Article 70, paragraph 1, of the First Protocol, third States and international organizations may carry out humanitarian assistance activities with respect to the civilian population “[i]f the whole or part of the population of an occupied territory is inadequately supplied” or “[i]f the civilian population of any territory under the control of a Party to the conflict other than the occupied territory is not adequately supplied with the essential supplies concerned”.²²

25. Secondly, humanitarian assistance requires the consent of the affected State, a requirement rooted in the principle of sovereignty of States. This principle is affirmed in the General Assembly Resolution 46/182 on “Strengthening of the coordination of humanitarian emergency assistance of the United Nations”, which states that “[t]he sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance should be provided with the consent of the affected country and, in principle on the basis of an appeal by the affected country.”²³ However, international humanitarian law places limitations on

²² The Fourth Geneva Convention, Article 59(1); the First Protocol, Article 70(1).

²³ See UN General Assembly Resolution 46/182 (1991), A/RES/46/182, Annex, para. 3.

See also relevant discussions contained in: *Draft Articles on the Protection of Persons in the Event of Disasters, with Commentaries*, adopted by the International Law Commission in 2016, A/71/10, Articles 3(c) and (d), 13, pp. 21, 59; D. Akande and E. Gillard, *Oxford Guidance on the Law Regulating Humanitarian Relief Operations in Situations of Armed*

a State's discretion to withhold consent, with these limitations varying according to the degree of control over the territory by the State party to the conflict. In situations of occupation, the occupying Power shall agree to humanitarian assistance from third states or international organizations,²⁴ effectively creating a presumption against rejection. In other armed conflict situations, States party to the conflict have a duty not to arbitrarily reject humanitarian assistance from third Parties.²⁵ While the First Protocol does not define what constitutes arbitrary refusal, and various opinions exist in practice,²⁶ no international consensus has emerged on this matter. The Security Council may adopt binding decisions requiring a State party to the conflict or third States to accept or provide humanitarian assistance, thereby dispensing with the consent of the State concerned. This authority derives from Article 25 of the Charter, which provides that "[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." The Court has confirmed in its advisory opinion that all Member States are under an obligation to comply with decisions of the Security Council adopted in accordance with the Charter.²⁷

Conflict, commissioned and published by the United Nations Office for the Coordination of Humanitarian Affairs, 2016, paras. 30, 42 D (i); *Resolution on humanitarian assistance*, Institute of International Law, Yearbook, vol. 70, Part II, Session of Bruges (2003), Article IV, para. 2.

²⁴ See the Fourth Geneva Convention, Article 59(1) and (2); the First Protocol, Article 69(2).

See also relevant discussions contained in: D. Akande and E. Gillard, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict*, commissioned and published by the United Nations Office for the Coordination of Humanitarian Affairs, 2016, para. 42 D(iii).

²⁵ See the First Protocol, Article 70(1).

²⁶ See relevant discussions contained in: Yves Sandoz, Christophe Swinarski, Bruno Zimmermann (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, 1987, pp. 819, 1479, paras. 2805, 4885; D. Akande and E. Gillard, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict*, commissioned and published by the United Nations Office for the Coordination of Humanitarian Affairs, 2016, paras. 42 D (i), 44-45, 54 E (i), 54 E (ii); *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, S/2013/689, 22 November 2013, para. 58.

²⁷ See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory

26. Thirdly, the provision of humanitarian assistance must be consistent with the humanitarian principles of humanity, neutrality, impartiality, and independence. These humanitarian principles stand as the cornerstone of international humanitarian assistance and are established in multiple legal instruments. The Fourth Geneva Convention and the First Protocol require that humanitarian assistance be “humanitarian” and “impartial” in character, and be “conducted without any adverse distinction”.²⁸ The Court reinforced this requirement in its 1986 judgment in the *Case concerning Military and Paramilitary Activities in and against Nicaragua* case, emphasizing that “[a]n essential feature of truly humanitarian aid is that it is given ‘without discrimination’ of any kind”.²⁹ The General Assembly Resolution 46/182 requires that “[h]umanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality.”³⁰ The principle of independence was subsequently added through relevant Security Council resolutions³¹ and General Assembly resolutions,³² including Security Council Resolution 2720 (2023) and General Assembly Resolution 58/114, among others.

27. According to international practice, the principle of humanity means that the purpose of humanitarian assistance is to prevent and

Opinion, I.C.J. Reports 1971, paras. 115-116.

²⁸ See the Fourth Geneva Convention, Article 59(2); the First Protocol, Article 70(1).

²⁹ See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. Merits, Judgment, I.C.J. Reports 1986 [hereinafter *Military and Paramilitary Activities*], para. 243.

³⁰ See UN General Assembly Resolution 46/182 (1991), A/RES/46/182, Annex, para. 2.

³¹ See UN Security Council Resolution 2730 (2024), S/RES/2730, preambular para. 14; UN Security Council Resolution 2720 (2023), S/RES/2720, preambular para. 5; UN Security Council Resolution 2712 (2023), S/RES/2712 (2023), S/RES/2712, preambular para. 5; UN Security Council Resolution 1894 (2009), S/RES/1894, para. 13.

³² See UN General Assembly Resolution ES-10/26 (2024), A/RES/ES-10/26, para. 6; UN General Assembly Resolution ES-10/25 (2024), A/RES/ES-10/25, paras. 5, 11; UN General Assembly Resolution 78/73 (2023), A/RES/78/73, preambular para. 24; UN General Assembly Resolution 60/1 (2005), A/RES/60/1, para. 169; UN General Assembly Resolution 58/114 (2003), A/RES/58/114, preambular para. 5.

alleviate suffering, to protect human life and health, and to ensure respect for human dignity. The principle of neutrality means that humanitarian assistance providers must maintain strict non-participation in hostilities and refrain from taking sides in political, racial, religious, or ideological controversies. The principle of impartiality means that humanitarian assistance shall be provided and distributed without any adverse distinction or discrimination on the basis of nationality, gender, race, religious beliefs, or other factors, while taking into account the needs of particularly vulnerable groups.³³ The principle of independence means that in performing the duties of humanitarian assistance, the providers shall not seek or receive instructions from any State or from any other authority external to the humanitarian organization. This principle ensures that humanitarian assistance serves its intended purpose rather than advancing the political, economic, military or other interests of particular third States or international organizations.³⁴

28. Fourthly, the provision of assistance is subject to restrictive arrangements made by the affected State in accordance with the law. Pursuant to Article 59, paragraph 4, and Article 61, paragraph 1, of the Fourth Geneva Convention, and Article 70, paragraphs 1 and 3, of the First Protocol, the affected State is permitted to prescribe necessary technical arrangements for the undertaking of humanitarian assistance, such as carrying out inspections or searches, designating the times and the routes of passage, overseeing the distribution of humanitarian assistance, and concluding agreements on humanitarian assistance, to the extent permitted by international humanitarian law.³⁵ However, the affected State shall not use technical arrangements as a means to deny or impede the delivery of humanitarian assistance.

³³ See Draft Articles on the Protection of Persons in the Event of Disasters, with Commentaries, adopted by the International Law Commission, 2016, A/71/10, pp. 33-35.

³⁴ See UN General Assembly Resolution 58/114 (2003), A/RES/58/114, preambular para. 5.

³⁵ See the Fourth Geneva Convention, Articles 59(4), 61(1); the First Protocol, Article 70(1) and (3).

Humanitarian assistance, “unilateral humanitarian intervention” and the responsibility to protect

29. In humanitarian emergencies, the involvement of third States or international organizations in civilian protection may raise the questions about two distinct concepts: “unilateral humanitarian intervention”, and the responsibility to protect. The former is considered unlawful under international law, while the latter was recognized and defined by the General Assembly in the 2005 World Summit Outcome.

30. Humanitarian assistance shall be clearly distinguished from “unilateral humanitarian intervention”. As stated earlier, the provision of humanitarian assistance by third States or international organizations should not be regarded as interference in an armed conflict or as an unfriendly act. As the Court stated in its 1986 judgment in the *Military and Paramilitary Activities* case, which held that “the provision of strictly humanitarian aid to persons or forces in another country, whatever their political affiliations or objectives, cannot be regarded as unlawful intervention, or as in any other way contrary to international law.”³⁶ In contrast, “unilateral humanitarian intervention” refers to the unilateral use of force by a State without authorization of the Security Council, undertaken on the grounds that massive and systematic violations of human rights or a humanitarian catastrophe are occurring in the territory of another State, and that State is unwilling or unable to address the situation. “Unilateral humanitarian intervention” violates fundamental principles enshrined in the Charter, such as the non-use of force, the sovereignty of States and non-interference in internal affairs. As such, it has not gained widespread support from the international community.

31. The provision of humanitarian assistance by third States and international organizations must also be distinguished from the

³⁶ See *Military and Paramilitary Activities*, para. 242.

responsibility to protect within the framework of the Charter. While both may involve providing assistance to civilians whose basic human rights have been violated during armed conflicts, they differ in terms of the situations involved, the objects of assistance and the means of assistance.

32. The responsibility to protect can only be carried out by the international community within the framework of the Charter. According to the 2005 World Summit Outcome, the international community, acting through the United Nations, fulfills this responsibility through the use of appropriate diplomatic, humanitarian and other peaceful means, as outlined in Chapter VI on peaceful measures and Chapter VIII on regional measures of the Charter. These measures aim “to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.” In this context, if peaceful means prove inadequate and national authorities manifestly fail to protect their populations from these crimes, the international community, as a last resort, may take collective enforcement measures. Such measures must be authorized by and conducted through the Security Council in accordance with Chapter VII of the Charter.³⁷

Obligations of Israel, as the occupying Power, in relation to the third Parties

33. The legal regime of humanitarian assistance in the situations of occupation has distinct characteristics. According to Articles 23 and 59 of the Fourth Geneva Convention and Articles 69 and 71 of the First Protocol, Israel, as the occupying Power, has specific obligations regarding humanitarian assistance activities conducted by the United Nations, other international organizations and third States in the OPT. These obligations encompass four main aspects:

34. Firstly, Israel, as the occupying Power, has a legal obligation to

³⁷ See UN General Assembly Resolution 60/1 (2005), A/RES/60/1, paras. 138-139.

agree to humanitarian assistance by the third Parties. Article 59, paragraph 1, of the Fourth Geneva Convention states that “[i]f the whole or part of the population of an occupied territory is inadequately supplied, the occupying Power shall agree to relief schemes on behalf of the said population”, and such relief actions “shall be implemented without delay.”³⁸ This obligation to consent applies to humanitarian assistance from both third States and international organizations, including the United Nations. Furthermore, under Article 27, paragraph 1, and Article 33, paragraph 1, of the Fourth Geneva Convention and Article 75 of the First Protocol, withholding consent or impeding humanitarian assistance from third States and international organizations may constitute serious violations when it deprives civilians of essential survival necessities such as food, water, and medical supplies. Such actions could amount to either a denial of humane treatment of civilians,³⁹ or collective punishments,⁴⁰ both of which are prohibited.

35. Secondly, Israel, as the occupying Power, is under an obligation to allow and facilitate the provision of humanitarian assistance by the third Parties. Article 59, paragraph 1, of the Fourth Geneva Convention provides that “the occupying Power shall facilitate by all means at its proposal the relief schemes”. This obligation has been reinforced by UN Security Council Resolution 2712(2023), which “calls for ... the full, rapid, safe and unhindered humanitarian access for United Nations humanitarian agencies and their implementing partners, the International Committee of the Red Cross and other impartial humanitarian organizations, to facilitate the continuous, sufficient and unhindered provision of essential goods and services important to the well-being of civilians, especially children, throughout the Gaza Strip.”⁴¹ This

³⁸ See the First Protocol, Article 69(2).

³⁹ See *the Prosecutor. v. Jadranko Prlić et al.*, Case no. IT-04-74-T, Judgment, Vol. 3, 29 May 2013, paras. 1244, 1255-1256.

⁴⁰ See the Fourth Geneva Convention, Article 27(1); the First Protocol, Article 75(1).

⁴¹ See UN Security Council Resolution 2712 (2023), S/RES/2712, para. 2. See also UN Security Council Resolution 2720 (2023), S/RES/2720, para. 2.

obligation to facilitate humanitarian assistance encompasses three specific aspects regarding personnel and supplies:

36. The first aspect concerns facilitating the rapid and unimpeded passage of humanitarian assistance from the third Parties. According to the Fourth Geneva Convention and the First Protocol, States party to conflict shall both actively facilitate and refrain from impeding the passage of humanitarian assistance.⁴² This dual obligation is essential for effective humanitarian assistance delivery and applies to all humanitarian assistance materials, equipment, and personnel. The scope of humanitarian assistance materials is generally understood to include basic necessities such as food, water, clothing, bedding, means of shelter, medical and hospital stores, objects necessary for religious worship, and essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

37. The second aspect addresses the facilitation of the distribution of humanitarian assistance materials by the third Parties. The Fourth Geneva Convention establishes several specific obligations for the occupying Power in this regard. First, it shall facilitate the “rapid distribution”⁴³ of humanitarian assistance materials. Second, it shall in principle allow the civilian population of the occupied territories to “receive the individual relief consignments”.⁴⁴ Third, it shall not “divert”⁴⁵ humanitarian assistance materials from their intended recipients. Finally, it shall not impose “charges, taxes, or customs duties” on relief consignments, “unless these are necessary in the interest of the economy of the territory”.⁴⁶

⁴² See the Fourth Geneva Convention, Article 61(3); the First Protocol, Article 70(2).

⁴³ See the Fourth Geneva Convention, Article 61(2).

⁴⁴ See the Fourth Geneva Convention, Article 62.

⁴⁵ See the Fourth Geneva Convention, Article 60.

⁴⁶ See the Fourth Geneva Convention, Article 61(2).

38. The third aspect concerns the facilitation of humanitarian assistance personnel from the third Parties in performing their tasks. These personnel are responsible for transporting and distributing assistance materials, making them an integral part of humanitarian assistance operations. As such, they are entitled to freedom of movement within the occupied territories that is indispensable for the performance of their tasks. Article 71, paragraph 3, of the First Protocol states that “[e]ach Party in receipt of relief consignments shall, to the fullest extent practicable, assist the relief personnel...in carrying out their relief mission.” Additionally, Article 63 of the Fourth Geneva Convention requires that the occupying Power shall, in principle, refrain from interfering with the activities of National Red Cross and other similar relief societies to “pursue their activities in accordance with Red Cross principles”. This article further stipulates that the occupying Power may not require “any changes in personnel or structure” of these organizations.⁴⁷

39. Thirdly, Israel, as the occupying Power, is obliged to respect and protect humanitarian assistance personnel and materials provided by the third Parties. This obligation has been particularly emphasized in Security Council and General Assembly resolutions following the outbreak of the Gaza crisis, as the safety and security of humanitarian personnel and materials.⁴⁸ The safety and security of humanitarian personnel is a prerequisite for maintaining continuous humanitarian assistance. Article 71, paragraph 2, of the First Protocol states that humanitarian assistance personnel of the third Parties “shall be respected and protected”. The term “respect” in this context imposes a negative obligation, requiring the occupying Power to refrain from causing harm to

⁴⁷ See the Fourth Geneva Convention, Article 63.

⁴⁸ See UN Security Council Resolution 2712 (2023), S/RES/2712, para. 5; UN Security Council Resolution 2720 (2023), S/RES/2720, paras. 10, 13; UN General Assembly Resolution 79/141 (2024), A/RES/79/141, para. 17; UN General Assembly Resolution ES-10/25 (2024), A/RES/ES-10/25, paras. 11, 16; UN General Assembly Resolution ES-10/26 (2024), A/RES/ES-10/26, para. 6; UN General Assembly Resolution ES-10/21 (2023), A/RES/ES-10/21, paras. 1, 8.

such personnel of the third Parties. In addition, the term “protect” entails a positive obligation, requiring the occupying Power to take active measures to ensure the safety of these humanitarian personnel.

40. Furthermore, Israel shall protect humanitarian assistance materials provided by the third Parties. Article 59, paragraph 3, of the Fourth Geneva Convention states that all Contracting Parties shall guarantee the protection of consignments. This obligation is reinforced by Article 70, paragraph 4, of the First Protocol, which explicitly provides that “the parties to the conflict shall protect relief consignments”. The obligation to “protect relief consignments” is generally understood to encompass two obligations: a negative obligation that requires parties to refrain from impeding, attacking, or confiscating consignments provided by the third Parties, and a positive obligation that requires parties to take active measures to ensure their protection.

41. Fourthly, Israel is obliged to refrain from using the impediment of humanitarian assistance to intentionally starve civilians. While international humanitarian law *per se* does not prohibit siege or blockade as methods of warfare,⁴⁹ these tactics become unlawful and constitute prohibited methods of warfare under international humanitarian law, when they are intended to starve civilians in besieged and encircled areas, and result in civilian starvation.⁵⁰ This prohibition is particularly relevant to Gaza, where infrastructure is extremely fragile and heavily dependent on imports from Israel. Therefore, any actions impeding humanitarian assistance that are intended to use starvation as a weapon would violate the fundamental obligation under international humanitarian law not to intentionally starve civilians.

⁴⁹ See Yves Sandoz, Christophe Swinarski, Bruno Zimmermann (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, 1987, pp. 653-654, paras. 2092-2094.

⁵⁰ See the First Protocol, Article 54(1). See also Comment by UN High Commissioner for Human Rights Volker Türk on the risk of famine in Gaza, 19 March 2024, available at: <https://www.ohchr.org/en/press-releases/2024/03/comment-un-high-commissioner-human-rights-volker-turk-risk-famine-gaza>, accessed on 28 February 2025.

42. In this respect, the Security Council and the General Assembly have adopted a series of resolutions that confirm and reaffirm the aforementioned obligations of Israel in relation to the third Parties. These obligations include allowing and facilitating humanitarian assistance activities conducted by the United Nations, other international organizations and third States without imposing obstacles, as well as respecting and protecting humanitarian assistance personnel and supplies. These resolutions provide valuable guidance for the Court in determining Israel's relevant obligations.

43. Among these, Security Council Resolution 2712 (2023) “[c]alls on all parties to refrain from depriving the civilian population in the Gaza Strip of basic services and humanitarian assistance indispensable to their survival, consistent with international humanitarian law”.⁵¹ On this basis, Security Council Resolution 2720 (2023) employs a stronger language, which “demands” that parties to the conflict “allow, facilitate and enable the immediate, safe and unhindered delivery of humanitarian assistance at scale directly to the Palestinian civilian population throughout the Gaza Strip”.⁵² This resolution “[r]ecogniz[es] that the civilian population in the Gaza Strip must have access to sufficient quantities of assistance that they need, including enough food, water, sanitation, electricity, telecommunications and medical services essential for their survival...”.⁵³ It also reaffirms the obligations of all parties “with regard to refraining from attacking, destroying, removing or rendering useless objects that are indispensable to the survival of the civilian population, as well as respecting and protecting humanitarian... consignments used for humanitarian relief operations”.⁵⁴ Both resolutions explicitly demand the facilitation of “the provision of humanitarian assistance... including fuel,

⁵¹ See UN Security Council Resolution 2712 (2023), S/RES/2712, para. 4.

⁵² See UN Security Council Resolution 2720 (2024), S/RES/2720, para. 2; UN Security Council Resolution 2728 (2024), S/RES/2728, para. 2.

⁵³ See UN Security Council Resolution 2720 (2023), S/RES/2720, preambular para. 13.

⁵⁴ See UN Security Council Resolution 2720 (2023), S/RES/2720, para. 10.

food, and medical supplies and emergency shelter assistance... as well as for materials and equipment to repair and ensure the functioning of critical infrastructure and to provide essential services”.⁵⁵

44. Security Council Resolution 2720 (2023) further emphasizes “the need to continue working closely with all relevant parties to expand the delivery and distribution of humanitarian assistance, while... ensuring that it reaches its civilian destination”. The resolution demands that “all parties to the conflict comply with their obligations... including... the protection of humanitarian personnel and their freedom of movement”, “without prejudice to their freedom of movement and access”.⁵⁶ Security Council Resolution 2728 (2024) reinforces these requirements by “emphasiz[ing] the urgent need to expand the flow of humanitarian assistance to and reinforce the protection of civilians in the entire Gaza Strip and reiterates its demand for the lifting of all barriers to the provision of humanitarian assistance at scale”.⁵⁷ Security Council Resolution 2730 (2024) further underscores the “obligations related to the respect and protection of humanitarian personnel and United Nations and associated personnel... as long as they are entitled to the protection given to civilians or civilian objects under international humanitarian law”.⁵⁸ These Security Council resolutions are legally binding on Israel and require full compliance.

45. The UN General Assembly has also adopted a series of resolutions in this regard which, while not legally binding, reflect broad international consensus on these matters. Resolutions 79/232 and ES-10/21 express “deep concern” regarding Israeli measures that impede

⁵⁵ See UN Security Council Resolution 2712 (2023), S/RES/2712, para. 2; UN Security Council Resolution 2720 (2023), S/RES/2720, paras. 3, 8.

⁵⁶ See UN Security Council Resolution 2720 (2023), S/RES/2720, preambular para. 10, paras. 3, 13.

⁵⁷ See UN Security Council Resolution 2728 (2024), S/RES/2728, para. 2.

⁵⁸ See UN Security Council Resolution 2730 (2024), S/RES/2730, para. 3.

humanitarian assistance to the Palestinian people.⁵⁹ Resolutions ES-10/26 and 78/121 emphasize that all parties shall comply with international humanitarian law, including obligations to ensure humanitarian access, permission, and facilitation, as well as maintain the safety and security of humanitarian personnel. These resolutions further require parties to ensure the free movement of persons and goods and guarantee unhindered humanitarian access to the Palestinian people, while explicitly “rejecting any effort to starve Palestinians”. They also demand the delivery of humanitarian assistance “to all Palestinian civilians who need it, including to civilians in besieged north Gaza, who are in urgent need of immediate humanitarian relief”.⁶⁰ Resolution ES-10/25 further specifies that the assistance to be protected shall include “food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care”.⁶¹

46. Based on these obligations, UN General Assembly Resolutions 79/232 and ES-10/25 call upon Israel to rescind “any measures that obstruct the provision of basic services and humanitarian and development assistance to the Palestinian people”, and “to ensure respect for and the protection of all humanitarian personnel and United Nations and associated personnel”.⁶² Resolution ES-10/21 “calls for respect and protection, consistent with international humanitarian law, of all civilian and humanitarian facilities, including hospitals and other medical facilities, as well as their means of transport and equipment, schools, places of worship and United Nations facilities, as well as all of humanitarian and medical personnel and journalists, media professionals and associated personnel”. Additionally, it expresses “strong support for

⁵⁹ See UN General Assembly Resolution 79/232 (2024), A/RES/79/232, preambular para. 20; UN General Assembly Resolution ES-10/21 (2023), A/RES/ES-10/21, preambular para. 11.

⁶⁰ See UN General Assembly Resolution ES-10/26 (2024), A/RES/ES-10/26, preambular para. 6, para. 3; UN General Assembly Resolution 79/141 (2024), A/RES/79/141, para. 15.

⁶¹ See UN General Assembly Resolution ES-10/25 (2024), A/RES/ES-10/25, para. 13.

⁶² See UN General Assembly Resolution 79/232 (2024), A/RES/79/232, para. 7; UN General Assembly Resolution ES-10/25 (2024), A/RES/ES-10/25, para. 16.

all regional and international efforts aimed at achieving an immediate cessation of hostilities, ensuring the protection of civilians and providing humanitarian aid”.⁶³

B. Obligations of Israel under International Human Rights Law

47. In situations of armed conflict, obligations under international human rights law are complementary to obligations under international humanitarian law. Israel is party to several key international human rights conventions, including the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1989 Convention on the Rights of the Child (CRC).⁶⁴ The Court, through its judgments and advisory opinions, has confirmed that international human rights conventions apply within a State’s jurisdiction both in and outside its territory,⁶⁵ and these conventions remain applicable during armed conflicts. As the Court stated in its *Wall* advisory opinion, “the protection offered by human rights conventions does not cease in case of armed conflict.....the Court will have to take into consideration both these branches of international law, namely human rights law and, as *lex specialis*, international humanitarian law”.⁶⁶

48. Israel is bound by international human rights conventions in

⁶³ See UN General Assembly Resolution ES-10/21 (2024), A/RES/ES-10/21, preambular para. 13, para. 8.

⁶⁴ Israel ratified the 1965 International Convention on the Elimination of All Forms of Racial Discrimination on 3 January 1979 [hereinafter CERD], ratified the 1966 International Covenant on Economic, Social and Cultural Rights [hereinafter ICESCR], the 1966 International Covenant on Civil and Political Rights [hereinafter ICCPR], and the 1989 Convention on the Rights of the Child [hereinafter CRC] on 3 October 1991.

⁶⁵ See *Wall*, paras. 107-113; *Armed Activities*, pp. 242-243, para. 216; *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation)*, Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008, p. 353, paras. 108-109.

⁶⁶ See *Wall*, para. 106; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, para. 25; *OPT*, para. 99.

respect of its conduct with regard to the OPT. Article 2, paragraph 1, of the ICCPR specifically provides that each party to the Covenant is under the obligation to respect and ensure relevant human rights for “all individuals within its territory and subject to its jurisdiction”. The CRC contains similar provisions.⁶⁷ While the ICESCR and ICERD do not explicitly define their territorial scope of application, the Court has addressed this matter definitely. In both its *Wall* and *OPT* advisory opinions, the Court found that the above-mentioned conventions apply to “acts done by a state in the exercise of its jurisdiction outside its own territory”, specifically including Israel’s conduct in the OPT is under its control.⁶⁸

49. Israel, as the occupying Power, is obliged to respect, protect and fulfill the human rights and fundamental freedoms of the Palestinian people in the occupied territories. These obligations encompass a full spectrum of rights, including the Palestinian people’s right to self-determination,⁶⁹ their right to life,⁷⁰ their right to work,⁷¹ their right to maintain an adequate standard of living.⁷² The obligations also extend to ensuring the right to food,⁷³ the right to health,⁷⁴ the right to education.⁷⁵ Furthermore, Israel has a particular responsibility to safeguard the human rights of vulnerable groups within the Palestinian population, including children, women, and persons with disabilities.

⁶⁷ Article 2(1) of the CRC provides that: “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction ...”

⁶⁸ See *Wall*, paras. 112-113; *OPT*, paras. 100-101.

⁶⁹ See ICCPR, ICESCR, Common Article 1.

⁷⁰ See ICCPR, Article 6.

⁷¹ See ICESCR, Articles 6, 7.

⁷² See ICESCR, Article 11(1).

⁷³ *Ibid.*

⁷⁴ See ICESCR, Article 12.

⁷⁵ See ICESCR, Article 13.

50. In order to promote the fulfillment of these human rights, Israel is obliged to cooperate with the third Parties regarding humanitarian assistance. International humanitarian cooperation is indispensable for the realization of human rights. Article 2 of the ICESCR provides that “each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” The CRC contains similar provisions regarding international cooperation.⁷⁶ Under these conventions, international cooperation in humanitarian assistance constitutes a fundamental element of human rights obligations, including both positive and negative obligation: States must actively facilitate humanitarian assistance while also refraining from creating obstacles to such assistance.⁷⁷

51. As far as international cooperation for development assistance is concerned, Israel is also obliged to cooperate with the third Parties, which is essential for promoting the right of the Palestinian people to self-determination and development. The Court’s 2024 *OPT* advisory opinion affirmed that self-determination constitutes a collective and fundamental human right, and that the Palestinian people have the right to self-determination.⁷⁸ Such right includes five main aspects. First, it includes the right to preserve territorial integrity. Second, it encompasses the right to maintain national unity, meaning that the Palestinian people, in its group identity, collectively enjoys and exercises the right to self-determination. Third, it guarantees the right to freely determine their

⁷⁶ See ICESCR, Articles 2(1), 11, 15(4), 23; CRC, Preamble, Articles 4, 22(2), 23(4), 24(4), 28(3).

⁷⁷ See UN Security Council Resolution 2720 (2023), S/RES/2720; UN Security Council Resolution 2712 (2023), S/RES/2712.

⁷⁸ See *OPT*, para. 239. See also *Wall*, para. 118.

political status. Fourth, it ensures the right to freely pursue their economic, social and cultural development. Fifth, it protects the right to permanent sovereignty over natural wealth and resources.⁷⁹ Among these aspects, the right of peoples to freely pursue their economic, social and cultural development stands as the central element of self-determination.⁸⁰

52. At the same time, the Palestinian people also enjoy the right to development. The 1986 Declaration on the Right to Development establishes that the right to development is an inalienable human right, inherently linked to the full realization of the right to self-determination. Under this Declaration, both individual human persons and peoples collectively are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development.⁸¹ Development assistance through international cooperation constitutes an integral part of this right to development.

53. Israel's arbitrary denial or restriction of access to relevant assistance for the Palestinian people has seriously undermined their economic, social and cultural development and impeded the realization of their right to self-determination and development.

54. Moreover, Israel is under the obligation to comply with relevant orders of provisional measures in relation to humanitarian assistance issued by the Court. In March 2024, the Court issued an order on provisional measures in the case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide

⁷⁹ See Oral Statement of the People's Republic of China to the International Court of Justice on Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem, 22 February 2024, para. 15, available at: <https://icj-cij.org/sites/default/files/case-related/186/186-20240222-ora-01-00-bi.pdf>, accessed on 28 February 2025. See also *OPT*, paras. 236-242.

⁸⁰ See *OPT*, para. 241.

⁸¹ See Declaration on the Right to Development, UN General Assembly Resolution 41/128 (1986), A/RES/41/128, Annex, Articles 2, 3.

[hereinafter Genocide Convention] to the Gaza Strip. The Court ordered Israel to fulfill two requirements. First, Israel shall take all necessary and effective measures to ensure, without delay and in full cooperation with the United Nations, the unhindered provision at scale of urgently needed basic services and humanitarian assistance. Second, Israel shall ensure with immediate effect that its military refrains from committing any violations of the rights of the Palestinian people in Gaza under the Genocide Convention, including any actions that prevent the delivery of urgently needed humanitarian assistance.⁸² In May 2024, the Court issued an order on provisional measures once again, which reaffirmed these key requirements.⁸³

C. Obligations of Israel under General International Law

55. Under general international law, Israel is under the obligation to respect the State immunity, as well as diplomatic and consular privileges and immunities, enjoyed by third States in the OPT. A critical distinction must be emphasized regarding Israel's legal status in this context: as the occupying Power, Israel functions solely as a temporary administrator of the occupied territory, rather than the legitimate sovereign. Consequently, Israel lacks the authority to exercise sovereign powers in the OPT, including the application of Israeli domestic laws, particularly those relating to State sovereignty such as regulations concerning State immunity and diplomatic and consular privileges and immunities. The Court in its 2024 *OPT* advisory opinion reinforced this principle by referencing two key provisions: Article 43 of the 1907 Hague Regulations and Article 64 of the Fourth Geneva Convention.⁸⁴ These provisions stipulate that an occupying Power is in principle obliged to respect the

⁸² See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* [hereinafter *Application of Genocide Convention*], Order, International Court of Justice, 28 March 2024, paras. 45, 48.

⁸³ See *Application of Genocide Convention*, Order, International Court of Justice, 24 May 2024, para. 57.

⁸⁴ See Regulations concerning the Laws and Customs of War on Land, 1907, Article 43; the Fourth Geneva Convention, Article 64(2).

laws in force in the occupied territory,⁸⁵ and is prohibited from applying its own laws to the occupied territory in a manner that is inconsistent with relevant rules of occupation.⁸⁶

D. Whether there is any justification for Israel to derogate its obligations

56. The international community recognizes that principles and rules of international humanitarian law cannot be derogated from unless explicitly provided for. Common Article 1 of the Geneva Conventions and Article 1 of the First Protocol require Parties “to respect and to ensure respect for” international humanitarian law “in all circumstances”. This obligation includes adhering to the rules on humanitarian assistance and not derogating from obligations regarding humanitarian assistance provided by the third Parties. Restrictions on humanitarian assistance may only be imposed under specific, limited conditions: when justified by military necessity, for security reasons, or when the humanitarian assistance in question violates humanitarian principles.

57. With respect to the invocation of military necessity as a justification, rules of international humanitarian law cannot be derogated from on the basis of military necessity unless the rule itself explicitly provides for such possibility.⁸⁷ While States party to a conflict may invoke military necessity to restrict humanitarian assistance, this power is subject to specific conditions.⁸⁸ Article 71, paragraph 3, of the First Protocol establishes these limitations precisely, stating that “only in case of imperative military necessity may the activities of the relief personnel be limited or their movements temporarily restricted.” The application and

⁸⁵ See *OPT*, para. 134.

⁸⁶ See *OPT*, paras. 139-141.

⁸⁷ See Yves Sandoz, Christophe Swinarski, Bruno Zimmermann (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, 1987, p. 393, para. 1389.

⁸⁸ See the First Protocol, Article 71(3).

scope of limitations or restrictions based on imperative military necessity are subject to certain strict conditions. The restrictions apply exclusively to humanitarian assistance personnel and do not extend to humanitarian assistance materials, and the limitations on personnel activities cannot amount to a complete prohibition of humanitarian assistance activities. Moreover, any restrictions imposed on the movement of humanitarian assistance personnel must be temporary in nature rather than permanent.

58. With respect to the invocation of security reasons as a justification, under the Fourth Geneva Convention and the First Protocol, the invocation of urgent security reasons to restrict humanitarian assistance is only applicable to a limited number of circumstances, such as when terminating the mission of relief personnel who fail to respect “the security requirements of the Party in whose territory they are carrying out their duties”,⁸⁹ or when imposing “temporary and exceptional measures” on humanitarian relief organizations, provided these measures would not “prejudice” their humanitarian activities.⁹⁰ The above provisions indicate that such restrictions may only be imposed on the conduct of humanitarian organizations and their personnel in performing their duties, not on their right of access. In addition, any such restrictions must be both temporary and exceptional in nature, and must not impede the overall conduct of humanitarian assistance activities.

59. Furthermore, with respect to the invocation of violations of humanitarian principles of humanity, neutrality, impartiality, and independence as a justification, States party to a conflict may deny or impede humanitarian assistance from third States and international organizations in cases where humanitarian assistance personnel engage in activities incompatible with the functions and purposes of humanitarian assistance. When invoking such ground, sufficient legal basis and factual evidence shall be provided, and each case shall be evaluated individually.

⁸⁹ See the First Protocol, Article 71(4).

⁹⁰ See the Fourth Geneva Convention, Article 63.

Even when an individual humanitarian worker engages in conduct that violates humanitarian principles, there must be clear evidence demonstrating that such conduct is attributable to the third State or international organization providing the humanitarian assistance.

III. Obligations of Israel as a Member State of the United Nations in relation to the third Parties.

60. Under international law, the obligations of Israel, as a Member State of the United Nations, with respect to the presence and activities of the third Parties in the occupied territories, including humanitarian and development assistance, are mainly governed by law in three areas: the Charter and Security Council resolutions, the conventions on privileges and immunities of the United Nations and other international organizations to which Israel is a party, bilateral agreements between Israel and the UN or other international organizations. In addition, the resolutions of the General Assembly also play a significant role in promoting and developing relevant rules.

61. In accordance with the above-mentioned law, Israel is under the following obligations:

A. Israel's obligation to safeguard and facilitate the provision of humanitarian assistance by the United Nations and other Member States

62. International cooperation is a fundamental principle of international law and to achieve international cooperation is a purpose of the United Nations, both enshrined in the Charter. The cooperation includes cooperation between Member States and the United Nations, as well as among Member States. The Charter establishes the achieving of “international cooperation in solving international problems of an economic, social, cultural, or humanitarian character” as one of the

purposes of the United Nations.⁹¹ Article 56 of the Charter states that “[a]ll members pledge themselves to take joint and separate action in co-operation with the Organization”. Article 2, paragraph 5 of the Charter stipulates that “[a]ll members shall give the United Nations every assistance in any action it takes in accordance with the present Charter”. In practice, the “action” referred to in that Article includes, but is not limited to, enforcement measures under Chapter VII of the Charter. At the same time, Article 2, paragraph 2, of the Charter also requires that “[a]ll Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.” Moreover, the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter, which serves as an authoritative interpretation of the Charter, further clarifies the legal obligations and areas of cooperation between States and the United Nations.⁹²

63. Israel is under an obligation to consult and negotiate with the United Nations with respect to significant differences between them. In the advisory opinion on the *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, the International Court of Justice affirmed that “the paramount consideration both for the organization and the host state in every case must be their clear obligation to co-operate in good faith to promote the objectives and purpose of the organization as expressed in its constitution”. If the host state wishes to terminate the host agreement, it is obliged to consult and negotiate in good faith with the organization.⁹³

⁹¹ See Charter of the United Nations [hereinafter UN Charter], 1945, Article 1.

⁹² See Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations [hereinafter Friendly Relations Declaration], 1970, which states “the duty of States to co-operate with one another in accordance with the Charter”.

⁹³ See *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*,

64. In the present case, Israel, as a Member State of the United Nations, is obligated to cooperate in good faith, not only with the United Nations, but also with third States, in solving international problems of a “humanitarian character”,⁹⁴ to safeguard and facilitate the provision of humanitarian assistance by the third Parties in the OPT, and not to hinder their presence and activities related to humanitarian assistance.

B. Israel’s obligation to ensure the privileges and immunities of the United Nations

65. Articles 104 and 105 of the Charter and the 1946 Convention on the Privileges and Immunities of the United Nations⁹⁵ serve as the primary legal framework determining the privileges and immunities of United Nations agencies, bodies and their personnel. There may be different views on the applicability of the relevant articles of the Charter and the General Convention during armed conflict and/or in the Palestinian territory. Before ascertaining the specific obligations of Israel with regard to the privileges and immunities of the United Nations, it is necessary to clarify the applicability of the relevant articles of the Charter and the General Convention.

66. Does the General Convention apply during armed conflict? International practice shows that armed conflict does not affect the application of the “constituent instruments of international organizations”.⁹⁶ As a constituent instrument of the United Nations, the Charter, including Articles 104 and 105 on privileges and immunities, shall continue to apply during armed conflict. The General Convention, adopted in accordance with the Charter, elaborates and constitutes

Advisory Opinion, I.C.J. Reports 1980, p. 73, paras. 44, 49 and 51.

⁹⁴ See UN Charter, Article 1.

⁹⁵ See the Convention on the Privileges and Immunities of the United Nations [hereinafter General Convention], Preamble, 1946.

⁹⁶ See Draft Articles on the Effects of Armed Conflicts on Treaties, with commentaries, Report of the International Law Commission, 2011, A/66/10, para. 100.

important content of Articles 104 and 105 of the Charter concerning privileges and immunities. Therefore, the Charter and the General Convention shall be applied as a whole during armed conflict. In a series of resolutions, the General Assembly has repeatedly called upon “Israel to abide by Articles 100, 104 and 105 of the Charter and the Convention on the Privileges and Immunities of the United Nations” “in all respects” and “at all times”.⁹⁷

67. Under international humanitarian law, collateral damage to civilians and civilian objects, including United Nations agencies, bodies and personnel, caused by belligerents in armed conflicts is permissible, provided that certain conditions are met. A question might arise, that is, whether this is in contradiction with the inviolability of relevant persons and property under the law of privileges and immunities of the United Nations. It might be contended that, in such a case, international humanitarian law, as *lex specialis*, prevails over the General Convention. However, the General Convention is formulated in accordance with Article 105, paragraph 3, of the Charter, and serves as an elaboration thereof. The obligations under the Convention are thus part of the obligations of the Charter. According to Article 103 of the Charter, the “obligations under the present Charter shall prevail” in the event of a conflict between the obligations of the Member States of the UN under the Charter and their obligations under any other international agreement.⁹⁸ Accordingly, obligations under the Convention shall prevail in the event of a conflict with obligations under international humanitarian law.

68. Do Articles 104 and 105 of the Charter and the General Convention apply to the “territories of non-member States”, including the OPT? Article 104 of the Charter provides that the United Nations “shall

⁹⁷ See UN General Assembly Resolution ES-10/25 (2024), A/RES/ES-10/25; UN General Assembly Resolution 78/73 (2023), A/RES/78/73; UN General Assembly Resolution 77/122 (2022), A/RES/77/122.

⁹⁸ See UN Charter, Article 103.

enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.” Article 105, paragraph 1, stipulates that the United Nations “shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.” The General Convention does not specify its scope of territorial application, but merely cites relevant contents of Articles 104 and 105 of the Charter in its preamble.⁹⁹ The fact that Palestine has not yet been admitted as a Member State of the United Nations, and that the OPT is not part of the territory of the Member State of Israel, does not mean that the Charter and the General Convention do not apply in the OPT.

69. The application of the Charter and the General Convention to States Parties is not limited to the territories of Member States of the UN. Israel is obligated in the OPT to ensure the privileges and immunities enjoyed by the United Nations and its personnel in accordance with the Charter and the General Convention.

70. First, the *travaux préparatoires* of the Charter shows that the Charter’s provisions on the territorial scope of application were intended to avoid imposing obligations on non-member States, rather than precluding the imposition of relevant obligations to Member States in the territories of non-member States.

71. Secondly, from the perspective of its objectives, the Convention’s territorial scope of application is not limited to the territories of Member States. According to Article 105 of the Charter and the preamble to the General Convention, privileges and immunities are accorded to the United Nations and its personnel to ensure the fulfillment of the Organization’s purposes and the independent exercise of their official functions.¹⁰⁰ The enjoyment of privileges and immunities by the

⁹⁹ See General Convention, Preamble.

¹⁰⁰ See UN Charter, Article 105; General Convention, Preamble.

organs and personnel depends on their status and whether they are performing United Nations functions, not on the territory where they are located. The relevant provisions of the General Convention also indicate that its application to State Parties is not limited to the territories of Member States. For example, Sections 2, 3 and 4 of the Convention explicitly provide that the property and assets of the United Nations shall enjoy immunity “wherever located and by whomsoever held”,¹⁰¹ and that the archives and documents of the United Nations shall be “inviolable wherever located”.¹⁰² This means that property, assets, archives, and documents belonging to the United Nations, which are relevant to the activities carried out in the exercise of the official functions of the United Nations or to its personnel, are protected under the Convention regardless of which State’s territory they may be located in.

72. Thirdly, subsequent practice has also demonstrated that the application of the obligation to safeguard the privileges and immunities of the United Nations by Member States on the basis of the Charter and the Convention is not limited to their own territories, but extends also to the territories of non-member States. In the 1967 Exchange of Letters constituting a provisional agreement between UNRWA and Israel concerning assistance to Palestine refugees (hereinafter the “Interim Agreement”), Israel “recognizes” that the Convention on the Privileges and Immunities of the United Nations “shall govern the relations between the Government and UNRWA in all that concerns UNRWA’s functions”.¹⁰³ The General Assembly has also recognized this in numerous resolutions.¹⁰⁴ Even after Israel withdrew from the 1967 Interim Agreement through domestic legislation, the General Assembly,

¹⁰¹ See General Convention, Section 3.

¹⁰² See General Convention, Section 4.

¹⁰³ See Exchange of Letters constituting a provisional agreement between UNRWA and Israel concerning assistance to Palestine refugees, Jerusalem, 14 June 1967.

¹⁰⁴ See UN General Assembly Resolution 70/85 (2015), A/RES/70/85; UN General Assembly Resolution 71/93 (2016), A/RES/71/93; UN General Assembly Resolution 78/73 (2023), A/RES/78/73.

at its Emergency Special Session, adopted resolution ES-10/25, which still “[c]alls upon Israel to abide by Articles 100, 104 and 105 of the Charter and the Convention on the Privileges and Immunities of the United Nations in all aspects and to ensure the safety of the personnel of the Agency, the protection of its installations and the safeguarding of the security of its facilities in the Occupied Palestinian Territory, including East Jerusalem, at all times”.¹⁰⁵

73. Under the Charter and the Convention on the Privileges and Immunities of the United Nations, Israel undertakes a range of obligations toward United Nations agencies and their personnel.

74. The first is Israel’s obligation to ensure the privileges and immunities enjoyed by United Nations bodies themselves, which covers five main aspects:

75. With regard to the inviolability of the premises, the inviolability of the premises is a corollary to the independence of the United Nations to perform its functions without interference. According to Article 2, Section 3, of the Convention, “the premises of the United Nations shall be inviolable.” It is generally recognized that United Nations premises are buildings occupied by the United Nations and related areas under its control.¹⁰⁶ In the practice of the United Nations, United Nations premises, facilities and equipment are inviolable at all times. The inviolability of premises entails three main obligations: to refrain from entering the premises without authorization,¹⁰⁷ to refrain from attacking the premises and causing damage,¹⁰⁸ and to provide protection against threats and

¹⁰⁵ See UN General Assembly Resolution ES-10/25 (2024), A/RES/ES-10/25, para 14.

¹⁰⁶ See The Practice of the United Nations, the Specialized Agencies and the International Atomic Energy Agency Concerning Their Status, Privileges and Immunities: Study Prepared by the Secretariat [hereinafter UN Secretariat Study 1967], Yearbook of the International Law Commission 1967, Vol. II, A/CN.4/L.118, p. 227, para. 90.

¹⁰⁷ *Ibid.*

¹⁰⁸ See Summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry into certain incidents in the Gaza Strip between 27 December 2008 and 19

intrusions.¹⁰⁹ Of these, the first two are negative obligations and the third is a positive obligation.

76. With regard to immunity from execution for property and assets, according to Article 2, Section 3, of the Convention, “the property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether as a result of an executive, administrative, judicial or legislative act.” This Article is intended to ensure that the ability of the United Nations to use its property and assets is not unduly restricted. Property and assets include both immovable property, such as premises, and movable property, such as vehicles, aircraft, ships and office equipment.¹¹⁰ Exempted acts include search, requisition, seizure, expropriation and any other form of interference. In the present case, regardless of who is driving or in possession of a United Nations vehicle, Israel is prohibited from searching it and may only conduct a quick, non-intrusive inspection of the vehicle on the exterior of the vehicle,¹¹¹ or require the driver and passengers of a United Nations vehicle to produce identification at a lawful checkpoint.

77. With regard to the inviolability of archives and documents, Section 4 of the Convention provides that the archives of the United Nations and all documents belonging to or in the possession of the United Nations are inviolable wherever they are located. Inviolability means, *inter alia*, that Member States may not compel access to the archives and

January 2009, A/63/855-S/2009/250 (15 May 2009), para. 91.

¹⁰⁹ See Fourth Report on Relations between States and International Organizations (Second Part of the Topic) in ILC Yearbook vol. II Part I (1989), p. 166, para. 105.

¹¹⁰ See Office of Legal Affairs, Note Verbale to the Permanent Representative of Member State to the United Nations, Illegal seizure of UNICEF property to satisfy court order - Immunity of the United Nations from civil suit - Arbitration - Article VIII, Section 29(a), of the Convention on the Privileges and Immunities of the United Nations (2 February 2000), (2000) UNJYB, pp. 346-347; UN Secretariat Study 1967, p. 235, para. 125.

¹¹¹ See Note from the UN Legal Counsel to the USG for Peacekeeping Operations, United Nations, 11 June 2003, paras. 16-17, (2003) UNJYB, pp. 521-523.

documents in question, nor may they compel the disclosure of relevant information. In the case of UN documents, even if they are not in the possession of the Organization, they are protected as long as they “belong” to the Organization.

78. With regard to tax exemptions and immunity from fiscal control, Article 2, Section 7, of the Convention provides that the assets, income and other property of the United Nations shall be exempted from direct taxes, customs duties and import and export restrictions.¹¹² Pursuant to Article 2, Section 8, “[w]hen the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax”.¹¹³ According to Article 2, Section 5, of the Convention, the United Nations is not subject to any financial control.¹¹⁴ In response to Israel’s collection of taxes and fees from UNRWA and delays in refunding them, the General Assembly has repeatedly adopted resolutions urging Israel to cease collecting taxes, additional fees and charges from the Agency and to return all transit fees collected.¹¹⁵

79. With regard to the protection of communication facilities and the facilitation of communications, in accordance with Article 3, Section 9, of the Convention, the United Nations shall enjoy communications treatment no less favourable than that accorded by Member States to the communications of any other Government, including diplomatic missions.¹¹⁶ Official United Nations correspondence and communications

¹¹² See General Convention, Article 2 Section 7.

¹¹³ See General Convention, Article 2 Section 8.

¹¹⁴ See General Convention, Article 2 Section 5.

¹¹⁵ See UN General Assembly Resolution ES-10/25 (2024), A/RES/ES-10/25; UN General Assembly Resolution 78/73 (2023), A/RES/78/73; UN General Assembly Resolution 77/122 (2022), A/RES/77/122.

¹¹⁶ See General Convention, Article 3 Section 9.

shall not be subject to any censorship. United Nations couriers and bags enjoy the same privileges and immunities as diplomatic couriers and bags, including that they shall not be opened or detained.¹¹⁷

80. Furthermore, under international humanitarian law, United Nations premises, property and assets in the OPT are considered civilian objects and are protected accordingly.

81. The second is Israel's obligation to ensure the privileges and immunities of United Nations personnel. Under the Convention, United Nations personnel enjoying privileges and immunities comprise two categories: United Nations officials and experts on mission for the United Nations, who enjoy different privileges and immunities.

82. As far as United Nations officials are concerned, under Article 5, Section 17, of the Convention, it is for the Secretary-General to determine which persons are United Nations officials.¹¹⁸ The present case is primarily concerned with immunity from legal process and travel facilities for United Nations officials. With regard to immunity from legal process, Article 5, Section 18, subparagraph 1, of the Convention provides that United Nations officials "shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity". The immunity provided for in this provision is limited to words spoken or written and all acts in an "official capacity". In practice, there are no clear and uniform criteria for determining what constitutes "official capacity"; the key is whether the words or acts in question are made in the exercise of United Nations functions.¹¹⁹ Factors to be taken into account when dealing with individual cases include whether they are made in the course of the performance of official duties and whether they are made in an official capacity rather than in a private

¹¹⁷ See Vienna Convention on Diplomatic Relations, 1961, Article 27.

¹¹⁸ See General Convention, Article 5 Section 7.

¹¹⁹ See UN Charter, Article 105(2).

capacity, and so on.¹²⁰

83. At the same time, the scope of immunity of United Nations officials is limited to immunity from “legal process”. Unlike the “immunity from jurisdiction” provided for in the 1961 Vienna Convention on Diplomatic Relations, this immunity from legal process may also include, in addition to immunity from jurisdiction, closely related measures of physical coercion such as arrest and detention.¹²¹

84. With regard to travel facilities for United Nations officials, Article 5, Section 18, subparagraph 4, of the Convention provides that United Nations officials “shall be immune from immigration restrictions and alien registration”.¹²² At the same time, Article 7, Sections 24, 25 and 26, of the Convention provides that Member States shall recognize and accept the *laissez-passer* of the United Nations as “a valid travel document”;¹²³ shall process “as speedily as possible”¹²⁴ the visa applications of holders of the *laissez-passer* or experts and other persons holding certificates of travel on official United Nations business, and such persons should be granted “facilities for speedy travel”.¹²⁵ Under the above-mentioned provisions, exemptions from immigration restrictions mean that Member States may not unreasonably impede the travel of United Nations staff members to or from their countries of origin for the purpose of carrying out their official duties on the basis of their national passport or visa policies.¹²⁶ Facilitation of expedited travel means that

¹²⁰ See Written statement submitted on behalf of the Secretary-General of the United Nations to the ICJ in *Difference Relating to Immunity From Legal Process of a Special Rapporteur of the Commission on Human Rights*, 2 October 1998, paras. 50-51.

¹²¹ See UN Secretariat Study 1967, p. 266, para 250.

¹²² See General Convention, Article 5 Section 18.

¹²³ See General Convention, Article 5 Section 24.

¹²⁴ See General Convention, Article 5 Section 25.

¹²⁵ *Ibid.*

¹²⁶ See Report of the Secretary-General, Personnel Policy, 30 January 1953, A/2364, para. 115. See also 1967 UN Secretariat Study, p. 290, paras. 366-367.

United Nations officials shall be accorded expedited customs clearance, priority in security screening, etc.¹²⁷

85. In addition, United Nations officials enjoy tax exemption on their salaries and emoluments, and facilities for repatriation in the event of an international crisis.¹²⁸ The Secretary-General of the United Nations, the Assistant Secretaries-General and other high-ranking officials of the United Nations enjoy privileges and immunities equivalent to those of diplomatic envoys, including the inviolability of themselves, their residence and papers, as well as jurisdictional immunities.¹²⁹ Israel is obliged to ensure the above-mentioned privileges and immunities for United Nations officials.

86. As far as experts on mission for the United Nations are concerned, the Convention does not specify the scope of such experts, who are generally considered to be persons serving in their personal capacity in the service of a United Nations body, whether or not they are remunerated, under a contract of service, or for a specific period of time. Under the Convention, the privileges and immunities they enjoy are limited to “the period of their mission” and include “privileges and immunities necessary for the independent exercise of their functions”,¹³⁰ in particular, the immunity from personal arrest or detention, the freedom from seizure of their personal baggage, the immunity of speech and conduct in the course of performance of their mission from legal process of every kind, and the inviolability of all papers and documents, etc.¹³¹

87. In this regard, the UN General Assembly has adopted a series of

¹²⁷ See Handbook on the Legal Status, Privileges and Immunities of the United Nations, ST/LEG/2 (2 September 1952), p. 35.

¹²⁸ See General Convention, Section 18.

¹²⁹ See General Convention, Section 19.

¹³⁰ See General Convention, Section 22.

¹³¹ *Ibid.*

resolutions stressing the importance of ensuring the privileges and immunities of United Nations, including its agencies and bodies, and their personnel, which represent a broad consensus of the international community and are of great value to the International Court of Justice for rendering the advisory opinion. Among them, Resolution 78/73 deplores “the endangerment of the safety of the Agency’s staff and the damage and destruction caused to the facilities and properties of the Agency”, and “the breaches of the inviolability of United Nations premises, the failure to accord the property and assets of the Organization immunity from any form of interference, incursions or misuse, the failure to protect United Nations personnel, premises and property and any disruption caused to Agency operations by such violations.”¹³² Relevant UN General Assembly resolutions condemn, and urge ensuring accountability for such violations. Resolution ES-10/25 deplores “any breaches of the inviolability of United Nations premises, and the damage and destruction caused to the facilities and properties of the Agency, including schools sheltering displaced civilians”, and stresses “the need to maintain the neutrality and safeguard the inviolability of United Nations premises, installations and equipment and the immunity of its personnel, and ... the imperative of ensuring accountability.”¹³³ A series of UN General Assembly resolutions also “call upon Israel to abide by Articles 100, 104 and 105 of the Charter and the Convention on the Privileges and Immunities of the United Nations in all aspects,” and “ensure the safety of the personnel of the Agency, the protection of its installations and the safeguarding of the security of its facilities in the Occupied Palestinian Territory, including East Jerusalem.”¹³⁴ Israel shall fulfill in good faith these international law obligations reiterated by General Assembly

¹³² See UN General Assembly Resolution 78/73 (2024), A/RES/78/73, preambular paras. 41-42.

¹³³ See UN General Assembly Resolution ES-10/25 (2024), A/RES/ES-10/25, preambular para. 12.

¹³⁴ See UN General Assembly Resolution 79/232 (2024), A/RES/79/232, para. 8; UN General Assembly Resolution ES-10/25 (2024), A/RES/ES-10/25, para. 14; UN General Assembly Resolution 78/73 (2023), A/RES/78/73, para. 39.

resolutions.

C. Israel's obligations to UNRWA

88. UNRWA is a subsidiary organ of the UN General Assembly, established pursuant to UN General Assembly Resolution 302 (IV) of December 1949,¹³⁵ whose objective is to provide humanitarian assistance to Palestinian refugees displaced as the result of the 1948 Arab-Israeli conflict. UNRWA has long supported refugees in the OPT, including the West Bank and the Gaza Strip, by providing education, healthcare services, social services, shelters, emergency assistance, etc., and has been the backbone of all humanitarian assistance operations in Gaza.¹³⁶ Since October 2023, UNRWA has provided substantial relief and protection to the civilian population in the Gaza Strip, playing an indispensable and irreplaceable role in alleviating the humanitarian catastrophe therein.¹³⁷ In its press statement of 30 October 2024, the Security Council noted that “[t]he Members of the Security Council emphasized the vital role of UNRWA in providing life-saving humanitarian assistance to Palestinian refugees”, “UNRWA remains the backbone of all humanitarian response in Gaza”, and the Members “affirmed that no organization can replace or substitute UNRWA’s capacity and mandate to serve Palestinian refugees and civilians in urgent need of life-saving humanitarian assistance”. UN General Assembly resolutions have also repeatedly affirmed “the necessity for the continuation of the work of the United Nations Relief and Works Agency for Palestine Refugees in the Near East and the

¹³⁵ Since then, the UN General Assembly has continuously extended its mandate by resolution. In 2022, the General Assembly adopted resolution 77/123, extending its mandate to 30 June 2026.

¹³⁶ See Letter dated 28 October 2024 from the Secretary-General addressed to the President of the General Assembly, A/79/558, Secretary-General, 29 October 2024.

¹³⁷ See UN Security Council Resolution 1860 (2009), S/RES/1860; UN General Assembly Resolution 78/73 (2023), A/RES/78/73, para. 1; UN General Assembly Resolution 78/74 (2023), A/RES/78/74, para. 5; UN General Assembly Resolution 78/121 (2023), A/RES/78/121, para. 10; UN General Assembly Resolution 78/251 (2023), A/RES/78/251, para. 1; UN General Assembly Resolution 79/232 (2024), A/RES/79/232, para. 5; UN General Assembly Resolution ES-10/25 (2024), A/RES/ES-10/25, para. 4; UN General Assembly Resolution ES-10/26 (2024), A/RES/ES-10/26, para. 6.

importance of its unimpeded operation and its provision of services, including emergency assistance, for the well-being, protection and human development of the Palestine refugees and for the stability of the region, pending the just solution of the question of the Palestine refugees”,¹³⁸ and its “recogni[tion] that any interruption or suspension of its work would have severe humanitarian consequences for millions of Palestine refugees who depend on the Agency’s services and also implications for the region”.¹³⁹

89. According to the Charter and Security Council resolutions, the Convention on the Privileges and Immunities of the United Nations and international humanitarian law, Israel’s obligations to UNRWA comprise three main aspects:

90. The first is the obligation not to hinder the presence and activities of UNRWA in the OPT. 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”. UNRWA was established as a subsidiary organ of the United Nations in 1949 by a resolution of the General Assembly, its establishment being part of the General Assembly’s actions to address the Palestinian question. Israel, in accordance with its obligations to cooperate under the Charter, shall not hinder the presence and activities of UNRWA, but instead shall take positive measures to provide assistance.

91. Israel may not exercise sovereignty over or sovereign powers in the OPT so as to prohibit UNRWA’s activities. Israel’s enactment of the “Law to Cease UNRWA Operations in the Territory of the State of Israel” in October 2024 and its application to the OPT (including East Jerusalem) constitutes a *de facto* exercise of sovereign powers over these territories.

¹³⁸ See UN General Assembly Resolution 79/88 (2024), A/RES/79/88, para. 3; UN General Assembly Resolution 79/88 (2024), A/RES/79/88, para. 3; UN General Assembly Resolution ES-10/25 (2024), A/RES/ES-10/25, para. 3.

¹³⁹ See UN General Assembly Resolution ES-10/25 (2024), A/RES/ES-10/25, para. 9.

Such actions violate international humanitarian law. Both the Security Council and the General Assembly have expressed deep concern about this legislation, which aims to obstruct the operations of UNRWA; moreover, the General Assembly has already adopted a resolution deploring the legislation.¹⁴⁰ As the International Court of Justice stated in its *OPT* advisory opinion, Israel was not entitled to sovereignty over or to exercise sovereign powers in any part of the OPT on account of its occupation.¹⁴¹ The Secretary-General of the United Nations also stressed this point in his letter to the Permanent Representative of Israel to the United Nations.¹⁴²

92. The second is the obligation to safeguard and facilitate UNRWA's humanitarian assistance activities. As earlier observed, under the Fourth Geneva Convention and the First Protocol, Israel, as the occupying Power and a Member State of the United Nations, shall facilitate the humanitarian assistance activities of third States and international organizations, including UNRWA, in the territory under its jurisdiction and control.

93. The third is the obligation to ensure the privileges and immunities enjoyed by UNRWA. As a subsidiary organ of the United Nations, UNRWA enjoys privileges and immunities under the Charter and the General Convention. Israel's withdrawal from the 1967 Interim Agreement through domestic legislation does not affect Israel's obligations under the Charter and the General Convention to ensure the privileges and immunities of UNRWA, including the inviolability of its premises, immunity from execution of its property and assets, tax exemptions, provision of facilities for communication, and to ensure

¹⁴⁰ See UN General Assembly Resolution ES-10/25 (2024), A/RES/ES-10/25, para. 2; Security Council Press Statement on United Nations Relief and Works Agency for Palestine Refugees in Near East (UNRWA) (30 October 2024), SC/15874.

¹⁴¹ See *OPT*, para. 285.

¹⁴² See Letter dated 27 January 2025 from the Secretary-General of the United Nations to the Permanent Representative of Israel of the Permanent Mission to the United Nations.

immunity of its personnel from legal process and to grant facilities for speedy travel. Moreover, Israel may not invoke domestic law as justification for its refusal to comply with its international obligations.

94. In this aspect, the Security Council and the General Assembly have adopted and issued a series of resolutions or statements on UNRWA, which are intended to safeguard and facilitate its humanitarian assistance activities, protect the safety of humanitarian assistance personnel and facilities, and ensure its privileges and immunities. The Security Council Press Statement dated 30 October 2024 “urged the Israeli Government to abide by its international obligations, respect the privileges and immunities of UNRWA and live up to its responsibility to allow and facilitate full, rapid, safe and unhindered humanitarian assistance in all its forms into and throughout the entire Gaza strip, including the provision of sorely needed basic services to the civilian population.”¹⁴³ Security Council Resolution 564 (1985) “[c]alls upon all parties to take necessary measures ... in particular by facilitating the work of United Nations agencies, especially the United Nations Relief and Works Agency for Palestine Refugees in the Near East, and non-governmental organizations, including the International Committee of the Red Cross, in providing humanitarian assistance to all those affected and emphasizes the need to ensure the safety of all the personnel of these organizations”.¹⁴⁴

95. The UN General Assembly resolutions also call for “immediate, full, sustained, safe and unhindered humanitarian access for the United Nations Relief and Works Agency for Palestine Refugees in the Near East and other United Nations humanitarian agencies”, “[condemn] in the strongest possible terms the killing of Agency staff and all acts of violence against civilians”, “[condemn] in the strongest possible terms the destruction of installations, facilities and vehicles under the United

¹⁴³ See Security Council Press Statement on United Nations Relief and Works Agency for Palestine Refugees in Near East (UNRWA) (30 October 2024), SC/15874.

¹⁴⁴ See UN Security Council Resolution 564 (1985), S/RES/564, para. 3.

Nations flag and bearing the United Nations emblem, including Agency schools sheltering displaced civilians”, and call upon “the Israeli Government to abide by its international obligations, respect the privileges and immunities of the Agency”.¹⁴⁵

96. In addition, UN General Assembly resolutions and the Security Council Press Statement have reaffirmed “the necessity for the continuation of the work of the Agency and the importance of its unimpeded operation and provision of services, including emergency assistance, for the well-being, protection and human development of the Palestine refugees and for the stability of the region, pending the just solution of the question of the Palestine refugees in line with the relevant resolutions”.¹⁴⁶

D. Israel’s obligation to ensure the privileges and immunities of other international organizations

97. United Nations specialized agencies such as the Food and Agriculture Organization (FAO)¹⁴⁷ and the World Health Organization (WHO),¹⁴⁸ as well as other international organizations, also carry out humanitarian and development assistance activities in the OPT. Although Israel is not a party to the 1947 Convention on the Privileges and Immunities of the United Nations Specialized Agencies, a number of its provisions concerning the privileges and immunities of the United Nations specialized agencies in fact reflect customary international law, and Israel remains under an obligation to ensure the privileges and immunities of the

¹⁴⁵ See UN General Assembly Resolution ES-10/21 (2023), A/RES/ES-10/21, para. 4; UN General Assembly Resolution 79/256 (2024), A/RES/79/256, paras. 4, 6; UN General Assembly Resolution ES-10/25 (2024), A/RES/ES-10/25, para. 2.

¹⁴⁶ See UN General Assembly Resolution ES-10/25 (2024), A/RES/ES-10/25, para. 3; UN General Assembly Resolution 79/88 (2024), A/RES/79/88, para. 3; UN General Assembly Resolution 78/74 (2024), A/RES/78/74, para. 3; Security Council Press Statement on United Nations Relief and Works Agency for Palestine Refugees in Near East (UNRWA) (30 October 2024), SC/15874.

¹⁴⁷ Israel became a member of the Food and Agriculture Organization (FAO) in 1949.

¹⁴⁸ Israel became a member of the World Health Organization (WHO) in 1949.

United Nations specialized agencies and other international organizations on the basis of customary international law, the constituent instruments of the relevant international organizations, and the bilateral agreements it has concluded with those international organizations.

E. Israel's obligations in relation to UN peacekeeping operations

98. The work of the United Nations Truce Supervision Organization (UNTSO) is the first United Nations peacekeeping operation.¹⁴⁹ With its main function of supervising the implementation of the Palestinian-Israeli ceasefire agreement,¹⁵⁰ the existence and activities of the UNTSO are closely related to the OPT. As a subsidiary organ established by the UN Security Council under Article 29 of the Charter,¹⁵¹ and by virtue of that, the UNTSO *per se* is entitled to the privileges and immunities accorded to UN bodies and agencies as provided for in Articles 104 and 105 of the Charter as well as the Convention on the Privileges and Immunities of the United Nations.¹⁵² Those privileges and immunities include inviolability of premises and archives, immunity from execution for property and assets, provision of facilities for communication, and immunities from taxation.

99. United Nations peacekeeping personnel may be entitled to different privileges and immunities depending on their status. Those personnel such as civilian personnel of the UN Secretariat assigned to peacekeeping operations and police officers may respectively have the

¹⁴⁹ UNTSO was established pursuant to UN Security Council Resolution 50 (1948). Subsequently, several Security Council resolutions extended or expanded its mandate, such as Resolutions 54 (1948), 73 (1949), 113 (1956), 114 (1956), 127 (1958), 340 (1973). UNTSO was established pursuant to UN Security Council Resolution 50 (1948), 127 (1958), 340 (1973).

¹⁵⁰ See UN Security Council Resolution 50 (1948), S/RES/50.

¹⁵¹ Article 29 of the Charter of the United Nations provides that: "The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions."

¹⁵² See *Mahalwas v. United Nations Truce Supervision Organization and Attorney General (intervening)*, Appeal Decision, PLA 3093/07, ILDC 1070 (IL 2007), 15 August 2007, Israel; Jerusalem (disputed); District Court.

status of UN officials and experts on mission as provided for in Articles 5 and 6 of the Convention on the Privileges and Immunities of the United Nations, and enjoy privileges and immunities provided in the Convention accordingly. Special representatives of peacekeeping operations, military commanders, police chiefs and other senior officials normally have a status equivalent to that of Assistant Secretary-General of the UN. They are therefore entitled to “the privileges and immunities, exemptions and facilities accorded to diplomatic envoys” in accordance with Section 19 of the Convention.¹⁵³

100. There are also personnel in UN peacekeeping operations who are members of the armed forces under the command and control of the sending State. Their privileges and immunities are generally stipulated in Status of Forces Agreements (SOFAs) concluded by the host State and the UN. In the absence of such an agreement, these personnel generally enjoy the sovereign immunities applicable to the armed forces of a State under customary international law, such as immunity from criminal jurisdiction.

101. The protection of peacekeeping personnel may also involve the application of the 1994 Convention on the Safety of United Nations and Associated Personnel. According to Articles 1 and 2 of the Convention, “United Nations personnel” to whom the Convention applies include “[p]ersons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation”.¹⁵⁴ The report of the UN Secretary-General

¹⁵³ Section 19 of the Convention on the Privileges and Immunities of the United Nations provides that: “In addition to the immunities and privileges specified in Section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.”

¹⁵⁴ Article 1 of the Convention on the Safety of United Nations and Associated Personnel, 1984 [hereinafter the Safety Convention] provides that:

“For the purposes of this Convention: (a) ‘United Nations personnel’ means: (i) Persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation; (ii) Other officials and experts on mission of the United Nations or its specialized agencies or the International

states that the Convention applies to “any peacekeeping operation conducted under United Nations command and control, to the exclusion of United Nations authorized operations conducted under national command and control”.¹⁵⁵ Article 2, paragraph 2, of the Convention provides that the Convention “shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations” and other actions constituting armed conflict.¹⁵⁶ The Convention establishes a regime protecting peacekeeping personnel that obliges States parties to, among others, prevent, criminalize and punish attacks against peacekeeping personnel, to establish jurisdiction on such crimes, and to cooperate in prosecuting and extraditing alleged offenders.¹⁵⁷ The 2005 Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel extends the Convention’s scope of protection to include humanitarian assistance personnel under the auspices of the United Nations.¹⁵⁸

Atomic Energy Agency who are present in an official capacity in the area where a United Nations operation is being conducted;”

Article 2 of the Safety Convention provides that: “1. This Convention applies in respect of United Nations and associated personnel and United Nations operations, as defined in article 1.”

¹⁵⁵ See Report of the Secretary-General on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, A/55/637, para.7. See also UN General Assembly Resolution 55/637 (2000), A/RES/55/637.

¹⁵⁶ Article 2 of the Safety Convention provides that:

“2. This Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies.”

¹⁵⁷ See Safety Convention, Articles 7-16.

¹⁵⁸ Article II of the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel provides that:

“The Parties to this Protocol shall, in addition to those operations as defined in article 1 (c) of the Convention, apply the Convention in respect of all other United Nations operations established by a competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control for the purposes of:

- (a) Delivering humanitarian, political or development assistance in peacebuilding, or
- (b) Delivering emergency humanitarian assistance.”

102. Israel is not a party to the Convention, and whether the provisions of the Convention reflect customary international law, whereby applicable to Israel, is unclear. It is also unclear whether Israel and the UN have reached any agreement on the legal status of UN peacekeeping operations.¹⁵⁹ But, in any event, Israel is obliged to protect UN peacekeeping personnel in accordance with the rules of international humanitarian law relating to the protection of civilians.

103. International humanitarian law also applies to UN peacekeeping operations. UN peacekeeping personnel who do not directly participate in hostilities are considered as civilians and, as such, are entitled to the protection afforded to civilians under international humanitarian law. The United Nations Secretary-General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law, issued in August 1999, recognizes that United Nations peacekeepers not participated in an armed conflict are, in principle, civilians, and are "entitled to the protection given to civilians under the international law of armed conflict".¹⁶⁰ Article 20 of the Convention on the Safety of United Nations and Associated Personnel provides that "[n]othing in this Convention shall affect the application of international humanitarian law". UN Security Council Resolution 1993 (868) "urges States and parties to the conflict to cooperate closely with the United Nations to ensure the security and safety of United Nations forces and personnel".¹⁶¹ Furthermore, UN Security Council Resolution 2730 (2024) expands the scope of the protection of persons by demanding "that all parties to armed conflict fully comply with their obligations under international law, including international human rights law, as applicable, and international humanitarian law; including their obligations related to the respect and

¹⁵⁹ No information of such an agreement could be found through public channel, including the treaty registry of the UN. Even if such an agreement existed, since it is not made public, it cannot be invoked in this case according to Article 102 of the UN Charter.

¹⁶⁰ See Secretary-General's Bulletin on the Observance by United Nations forces of international humanitarian law, ST/SGB/1999/1, Section 1.

¹⁶¹ See UN Security Council Resolution 868 (1993), S/RES/868, para.3.

protection of humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel”.¹⁶²

F. Whether there is any justification for Israel to derogate its obligations

104. Can Israel deprive the premises and personnel of the international organization of their privileges and immunities on grounds of “abuse of rights”?

105. The question of whether United Nations premises still enjoy privileges and immunities in the event of misuse involves the interpretation and application of relevant rules. A State should, to the greatest extent possible, avoid unilateral deprivation of such privileges and immunities. Generally speaking, the privileges and immunities of an international organization are the result of the agreement reached between the organization and the State concerned, and the deprivation of the status of the premises and their inviolability should also be made, in principle, by consensus. In practice, if there is sufficient factual evidence indicating that the premises of the United Nations are being used for military purposes, in particular as military shelters or weapons depots in cases where the United Nations has lost control over the premises, the possibility of such premises losing their status and inviolability cannot be ruled out.

106. Whether United Nations personnel engaging in activities incompatible with their status and their duties would result in the loss of privileges and immunities. According to international practices, the privileges and immunities of the United Nations are abused when United Nations officials, for personal purposes rather than in the interest of the United Nations, use such privileges and immunities to “*une activité sans rapport avec leurs fonctions ou mission*” (engage in activities irrelevant to

¹⁶² See UN Security Council Resolution 2730 (2024), S/RES/2730, para. 3.

their functions or missions)”.¹⁶³ In such cases, it is for the Secretary-General of the United Nations to decide whether the relevant words spoken or written and acts performed constitute official activities, and whether to waive the privileges and immunities of the individual concerned.¹⁶⁴ Even if a dispute arises, it should be resolved in good faith through negotiations with the United Nations or in accordance with the dispute settlement provisions of the General Convention.

107. Whether Israel can invoke the state of necessity as a justification for depriving the privileges and immunities of the United Nations. According to customary international law and relevant jurisprudence of the Court, for the purpose of protecting its essential interest, a State may invoke the state of necessity as a ground for precluding the wrongfulness of an act, but its application is subject to strictly defined conditions. First, the act concerned is to protect an essential interest of the State. Second, the interest must be threatened by a grave and imminent peril. Third, the act concerned must be the only means of safeguarding that interest. Fourth, the act concerned must not seriously impair an essential interest of the State(s) towards which the obligation existed, or of the international community as a whole. Fifth, the State which is the author of the act must have not contributed to the situation of necessity.¹⁶⁵

108. In this regard, Israel claimed that its prohibition of UNRWA activities is to protect its national security,¹⁶⁶ which cannot be ruled out as an attempt to invoke the state of necessity to protect its essential interests.

¹⁶³ See UN Secretariat Study 1967, para. 121.

¹⁶⁴ See General Convention, Section 20; 1995 U.N. Juridical Year Book, pp. 403-404.

¹⁶⁵ See *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, pp. 40-41, para. 51-52. See also Draft Articles on Responsibility of States for Internationally Wrongful Acts, Article 25; Draft Articles on the Responsibility of International Organizations, Article 25.

¹⁶⁶ See Letter from the Permanent Representative of Israel to the United Nations dated 24 January 2025 to the Secretary-General of the United Nations.

Even so, under the current circumstances, it cannot be conclusively determined whether Israel's national security faces a grave and imminent peril because of UNRWA, or whether the cessation of UNRWA activities is the only means of safeguarding the national security of Israel.

IV. Conclusions

109. In light of the above analysis, the conclusions are as follows:

110. Firstly, the International Court of Justice has advisory jurisdiction over the questions requested by the General Assembly, and there is no compelling reason for the Court to decline to exercise its jurisdiction in the present case.

111. Secondly, according to international law, regarding the presence and activities of the United Nations, other international organizations and third States (the third Parties) in and in relation to the OPT, Israel has the following obligations:

112. As the occupying Power of the Palestinian territory, Israel's obligations are primarily grounded in international humanitarian law, international human rights law and general international law.

113. Under international humanitarian law, Israel has the obligation to: (i) agree to humanitarian assistance by the third Parties; (ii) allow and facilitate the provision of humanitarian assistance by the third Parties; (iii) respect and protect humanitarian assistance personnel and materials provided by the third Parties; and (iv) refrain from using the impediment of humanitarian assistance to intentionally starve civilians.

114. Under international human rights law, Israel is obliged to cooperate with the third Parties regarding humanitarian assistance to promote the realization of human rights and fundamental freedoms, as well as the right to self-determination and development enjoyed by the

Palestinian people in the OPT.

115. Under general international law, Israel is obligated to respect third States' state immunity as well as diplomatic and consular privileges and immunities in the OPT.

116. As a Member State of the United Nations, Israel is bound by obligations primarily provided in the Charter, the Convention on the Privileges and Immunities of the United Nations, Security Council resolutions, international humanitarian law, other international treaties on privileges and immunities to which Israel is a party and customary international law. Israel is under the following obligations:

- (i) to cooperate with the United Nations and other Member States to ensure and facilitate their humanitarian assistance activities;

- (ii) to ensure the privileges and immunities of the United Nations, in particular the inviolability of United Nations premises and archives, the immunity of property and assets from execution, the exemption from taxation and financial controls, the facilities in respect of communications as well as privileges and immunities of United Nations officials and experts;

- (iii) to ensure and facilitate the humanitarian assistance activities of UNRWA in the OPT, safeguard its privileges and immunities, and refrain from impeding its presence and activities;

- (iv) to ensure the privileges and immunities of other international organizations; and

- (v) to ensure the privileges and immunities of United Nations peacekeeping operations and personnel and protect their safety.

117. Whether or not there are valid justifications for Israel's

aforementioned obligations should be determined case by case, based on the international law and the facts.

V. China's Policies and Proposals

118. The Palestinian question lies at the heart of the Middle East issue. It is rooted in the prolonged deprivation of the Palestinian people's right to self-determination and fundamental human rights. This question concerns upholding the authority of international law and defending international fairness and justice. In its *OPT* advisory opinion, the International Court of Justice concluded that Israel's policies and practices in the OPT violate the principle of self-determination and the prohibition of the acquisition of territory by force, as well as international humanitarian law and international human rights law. Israel is obligated to bring to an end its illegal presence in the OPT as rapidly as possible, immediately cease all new settlement activities, and assume state responsibility for the damage it has caused. The Court affirmed that Israel is not entitled to sovereignty over or to exercise sovereign powers in any part of the OPT on account of its occupation.

119. The General Assembly Emergency Special Session adopted Resolution ES/10-24 on that advisory opinion, urging all States to comply with the obligations specified by the advisory opinion. In particular, it called upon Israel to fulfill all its legal obligations under international law without delay, to end its illegal presence in the OPT as rapidly as possible, and assume state responsibility. All States shall fulfill in good faith the obligations under international law referred to in the advisory opinion of the International Court of Justice and the resolutions of the General Assembly.

120. The humanitarian crisis represents the most severe threat currently facing the Palestinian people. It has been further exacerbated, particularly since the intense escalation of the Palestinian-Israeli conflict in October 2023. As the occupying Power and a Member State of the

United Nations, Israel is expected to, in accordance with international law, fulfill its relevant obligations fully, comprehensively, and in good faith. On the one hand, Israel bears the primary responsibility for effectively respecting, protecting and fulfilling the fundamental human rights and basic survival needs of the Palestinian people in the OPT. On the other hand, Israel is obliged to ensure and facilitate the provision of humanitarian assistance by the United Nations, other international organizations, and third States in the OPT, in particular:

(i) to lift restrictions on humanitarian assistance to the Gaza Strip and ensure full, immediate, rapid, unimpeded and sustained humanitarian access;

(ii) to facilitate the lawful humanitarian assistance activities, including respecting and guaranteeing the safety of humanitarian assistance organizations, personnel and materials;

(iii) to support the United Nations, including its agencies and bodies, and their personnel, in fulfilling their duties, in particular, by ceasing and promptly revoking relevant laws targeting UNRWA; and

(iv) to ensure the privileges and immunities of the United Nations, including its agencies and bodies, other international organizations and their personnel.

121. International humanitarian cooperation serves as a vital supplement to the efforts to alleviate the humanitarian crisis in Gaza, and the international community should play its due role. President Xi Jinping has pointed out that “the humanitarian cause is a shared endeavor of all humanity.”¹⁶⁷ China calls upon the international community to stick to

¹⁶⁷ Remarks by the Chinese President Xi Jinping at a meeting with the President of the International Committee of the Red Cross (ICRC), Georges Guillaume Morel, at the Great Hall of the People on May 13, 2013.

the principles of humanitarianism, build consensus and jointly address the humanitarian crisis in the OPT. The United Nations, as the core of the multilateral international system, should play a unique central role in providing leadership and in coordinating the efforts of humanitarian assistance.¹⁶⁸ As stakeholders in the humanitarian cause, all States should unite and cooperate in providing humanitarian assistance to the Palestinian people.

122. China has steadfastly championed the Palestinian people's just cause to restore their legitimate national rights while maintaining a strong commitment to advancing international humanitarian law and humanitarian cause through active support, participation, and contribution. China is deeply concerned about the humanitarian crisis in Palestine and expresses profound sympathy for the suffering of the Palestinian people. For 12 consecutive years, President Xi Jinping has sent congratulatory messages to the Special Commemorative Meeting in Observance of the "International Day of Solidarity with the Palestinian People", expressing China's firm support for the just cause of Palestine. In September 2024, China, together with Brazil, France, Jordan, Kazakhstan, South Africa and the ICRC, launched a "Global Initiative on International Humanitarian Law" to galvanize political commitment to international humanitarian law, and promote the compliance with and implementation of international humanitarian law, including the law on humanitarian assistance. China advocates adhering to international humanitarian law and Security Council resolutions, ensuring the protection of civilians and civilian objects, conducting humanitarian assistance based on the humanitarian principles of humanity, neutrality, impartiality and independence, guaranteeing the basic survival needs of conflict victims, particularly women and children, safeguarding the safety and security of humanitarian personnel and supplies, and ensuring the full, immediate, rapid, unimpeded and continuous access of humanitarian assistance personnel and materials.

¹⁶⁸ See UN General Assembly Resolution 46/182 (1991), A/RES/46/182, Annex, para. 12.

123. China actively carries out and participates in humanitarian assistance to the Palestinian people, and is committed to improving the humanitarian situation. Since the escalation of the Palestinian-Israeli conflict in October 2023, China has provided several batches of emergency humanitarian supplies to the Palestinian people, including food, medicine, tents, and other materials, as well as multiple rounds of cash assistance. On 30 May 2024, President Xi Jinping announced at the opening ceremony of the 10th Ministerial Conference of the China-Arab States Cooperation Forum that China will provide RMB 500 million in assistance to help alleviate the humanitarian crisis in Gaza and support post-conflict reconstruction.

124. The fundamental solution to the Palestinian question lies in the implementation of the “two-State solution”, with the key being the realization of the Palestinian people’s right to self-determination. Gaza belongs to the Palestinian people, and the forced “cleaning out” of its inhabitants constitutes a gross violation of international humanitarian law. The principle of “the Palestinians governing Palestine” must be upheld in the post-conflict governance of Gaza. At the same time, Israel’s legitimate security concerns should also be respected. The solution of the Palestinian question requires both Palestinian and Israeli sides to move toward each other, as well as the collective efforts of the international community. China encourages both sides to accommodate each other’s legitimate concerns, and properly resolve disputes through political and diplomatic means in accordance with international law, so as to achieve peaceful coexistence between the two States and the joy of their peoples living in harmony. China is ready to work with the international community to make positive contributions to the early solution of the Palestinian question and the realization of lasting peace, stability, and development in the Middle East.