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**INTERNATIONAL COURT OF JUSTICE**

**CASE CONCERNING  
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  
(REQUEST FOR ADVISORY OPINION)**

**WRITTEN STATEMENT OF THE AFRICAN UNION**

**10 March 2025**

*[Translation by the Registry]*

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## INTRODUCTION

1. This written statement is submitted by the African Union in accordance with the Order of the President of the International Court of Justice (hereinafter the “Court” or the “ICJ”), dated 23 December 2024, fixing the time-limits for the presentation of written statements in the advisory proceedings on the *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*, taking into account the Court’s decision of 3 March 2025 authorizing the African Union to file its written statement on 10 March 2025.

2. By resolution 79/232 of 19 December 2024, the General Assembly decided, in accordance with Article 96 of the Charter of the United Nations, to request the Court to render an advisory opinion pursuant to Article 65 of its Statute. The question that is the subject of that request for an advisory opinion appears in paragraph 10 of resolution 79/232 and is worded as follows:

“The General Assembly,

.....

10. *Decides*, 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 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?’”<sup>1</sup>

3. The African Union is pleased that, in a letter from the Registrar dated 20 February 2025, the Court responded favourably to the African Union’s request, transmitted by letter dated 18 February 2025, to be authorized to participate in these proceedings pursuant to Article 66 of the Statute of the Court.

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<sup>1</sup> General Assembly resolution 79/232 (A/RES/79/232), 19 Dec. 2024 (available at: <https://docs.un.org/en/A/RES/79/232>).

4. The African Union, established on 11 July 2000, is an international organization under international law and a “regional agency” within the meaning of Article 52 of Chapter VIII of the Charter of the United Nations (hereinafter the “Charter”). It is composed of 55 member States. Pursuant to its Constitutive Act, the objectives of the African Union include “promot[ing] and defend[ing] African common positions on issues of interest to the continent and its peoples”<sup>2</sup>.

5. The written statement presented by the African Union constitutes its contribution to the work of the Court in these proceedings and reflects the full confidence that the African Union has in the Court’s role in identifying international obligations, particularly through the interpretation and application of the rules of international law. This is why the African Union is participating in these proceedings, as it has participated in four other sets of advisory proceedings before the Court. The African Union notes in this regard that the present request for an advisory opinion on the *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* raises important questions of international law, notably questions concerning the scope of the right of peoples to self-determination, the law of international organizations, including the law of the United Nations and its subsidiary organs, and the right of peoples and civilian populations to international solidarity in the area of humanitarian and development assistance.

6. The interest that the African Union has in these three questions justifies its participation in these proceedings. It is clear that, as an international organization, the African Union cannot remain indifferent to any legal questions raised regarding the rights and activities of international organizations, including in the territories of member States. Nevertheless, it is the parts of the question concerning the right to self-determination of peoples in general, and the right of the Palestinian people to existence, to self-determination and to humanitarian and development assistance in particular, that were the primary motivation for the African Union’s request to be authorized to participate in these proceedings.

7. *First*, the African Union has an interest in questions concerning the exercise of the right of peoples to self-determination given the very history of the African continent, whose peoples and States were for centuries deprived of their right to existence and to self-determination. This is why the complete decolonization of the African continent is one of the objectives of the African Union<sup>3</sup>, as it was previously a goal of its predecessor, the Organization of African Unity (hereinafter the “OAU”), which declared in the preamble of its Charter that African heads of State and government were “[d]etermined to safeguard and consolidate the hard-won independence as well as the sovereignty and territorial integrity of our states, and to fight against neo-colonialism in all its forms”<sup>4</sup>. At the celebration of the OAU’s fiftieth anniversary, the African Union reiterated the continued commitment of its heads of State and government to “[t]he completion of the decolonization process in Africa; to protect the right to self-determination of African peoples still under colonial rule; [to] solidarity with people of African descend[*sic*] and in the Diaspora in their

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<sup>2</sup> Art. 3, para. (d), of the Constitutive Act of the African Union, adopted on 11 July 2000 at Lomé (Togo) (available at: [https://au.int/sites/default/files/pages/34873-file-constitutiveact\\_en.pdf](https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf)).

<sup>3</sup> Art. 1 (d) of the Charter of the OAU, 25 May 1963 (available at: <https://www.peaceau.org/uploads/oau-charter-1963-en.pdf>); see also resolution CIAS/PLEN.2/REV.2 of the Assembly of Heads of State and Government of the OAU on decolonization, apartheid and racial discrimination, adopted during the conference held in Addis Abeba from 22 to 25 May 1963 (available at: [https://au.int/sites/default/files/decisions/32247-1963\\_cias\\_plen\\_2-3\\_cias\\_res\\_1-2\\_e.pdf](https://au.int/sites/default/files/decisions/32247-1963_cias_plen_2-3_cias_res_1-2_e.pdf)).

<sup>4</sup> Para. 6 of the preamble of the Charter of the OAU, adopted at Addis Abeba on 25 May 1963 (available at: <https://www.peaceau.org/uploads/oau-charter-1963-en.pdf>).

struggles against racial discrimination; and [to] resist all forms of influences contrary to the interests of the continent”<sup>5</sup>.

8. *Second*, the African Union is of the view that no people shall be truly free until all other peoples are. In this respect, the right of peoples to self-determination creates an indissoluble link between all peoples. In practical terms, this right enables peoples who have not yet exercised their right to self-determination to receive the necessary assistance of third States and peoples. Article 20, paragraph 3, of the African Charter on Human and Peoples’ Rights articulates this firm belief of African States, providing that “[a]ll peoples shall have the right to the assistance of the States Parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural”<sup>6</sup>. For this reason, the African Union was consistently at the fore of the multilateral efforts that brought an end to three internationally wrongful acts relating to the exercise of the right of peoples to self-determination, namely the liberation of Namibia<sup>7</sup>, the end of apartheid in South Africa<sup>8</sup> and, finally, the decolonization of the Chagos Archipelago<sup>9</sup>.

9. *Third*, the African Union has a specific interest in the exercise of the right of the Palestinian people to self-determination, over and above its overarching commitment to the right of peoples to self-determination, as demonstrated, moreover, by its participation in the most recent set of advisory proceedings before the Court on the Palestinian question<sup>10</sup>. In addition, several member States of the African Union are members of the Arab League and of the Organisation of Islamic Cooperation,

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<sup>5</sup> Section B of the 50th anniversary solemn declaration of the OAU/African Union (OAU/AU/Assembly/AU/Decl.3(XXI)), May 2013 (available at: [https://au.int/sites/default/files/documents/36205-doc-50th\\_anniversary\\_solemn\\_declaration\\_en.pdf](https://au.int/sites/default/files/documents/36205-doc-50th_anniversary_solemn_declaration_en.pdf)).

<sup>6</sup> Art. 20, para. 3, of the African Charter on Human and Peoples’ Rights, OAU doc. CAB/LEG/67/3rev.5 (available at: [https://au.int/sites/default/files/treaties/36390-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf)). In the jurisprudence, see African Court on Human and Peoples’ Rights, *The matter of Bernard Anbataayela Morna v. Republic of Benin, Burkina Faso, Republic of Côte d’Ivoire, Republic of Ghana, Republic of Mali, Republic of Malawi, Republic of Tanzania, Republic of Tunisia* (Application No. 028/2018), Judgment of 22 Sept. 2022 (available at: <https://www.african-court.org/cpmt/storage/app/uploads/public/632e0f3ad/632e0f3ad580e748464681.pdf>).

<sup>7</sup> See, in particular, the decision of the Council of Ministers of the OAU at its 11th ordinary session in Algiers, Algeria, from 4 to 12 Sept. 1968; resolution on Namibia, CM/Res. 150 (XI).

<sup>8</sup> See, in particular, resolution CIAS/PLEN.2/REV.2 of the Assembly of Heads of State and Government of the OAU on decolonization, apartheid and racial discrimination, adopted during the conference held in Addis Abeba from 22 to 25 May 1963 (available at: [https://au.int/sites/default/files/decisions/32247-1963\\_cias\\_plen\\_2-3\\_cias\\_res\\_1-2\\_e.pdf](https://au.int/sites/default/files/decisions/32247-1963_cias_plen_2-3_cias_res_1-2_e.pdf)).

<sup>9</sup> Para. 4 of decision EX.CL/Dec.943 (XXX) of the Executive Council on the 2016 Annual Report of the Chairperson of the AU Commission, adopted at the session held in Addis Abeba from 25 to 27 Jan. 2017 (available at: [https://au.int/sites/default/files/decisions/32521-sc19552\\_e\\_-\\_ex\\_cl\\_decisions\\_939-964-xxx.pdf](https://au.int/sites/default/files/decisions/32521-sc19552_e_-_ex_cl_decisions_939-964-xxx.pdf)); para. 8 of decision EX.CL/Dec.1050 (XXXIV) of the Executive Council on the report of the Union and its organs for the year 2018 and the introductory note of the Chairperson of the Commission, adopted on 7-8 Feb. 2019 (available at: [https://portal.africa-union.org/DVD/Documents/DOC-AU-DEC/EX%20CL%20Dec%201050%20\(XXXIV\)%20\\_E.pdf](https://portal.africa-union.org/DVD/Documents/DOC-AU-DEC/EX%20CL%20Dec%201050%20(XXXIV)%20_E.pdf)); resolution 1 (XXVIII) of the Assembly of the Union on Chagos Archipelago (Assembly/AU/Res.2 (XXVIII)), 2017 (available at: [https://au.int/sites/default/files/decisions/32520-sc19553\\_e\\_original\\_-\\_assembly\\_decisions\\_621-641\\_-\\_xxviii.pdf](https://au.int/sites/default/files/decisions/32520-sc19553_e_original_-_assembly_decisions_621-641_-_xxviii.pdf)); decision 684 (XXX) of the Assembly of the Union on Chagos Archipelago (Assembly/AU/Dec.684(XXX)), 2018 (available at: [https://portal.africa-union.org/DVD/Documents/DOC-AU-DEC/Assembly%20AU%20Dec%20684%20\(XXX\)%20\\_E.pdf](https://portal.africa-union.org/DVD/Documents/DOC-AU-DEC/Assembly%20AU%20Dec%20684%20(XXX)%20_E.pdf)); decision 747 (XXXII) of the Assembly of the Union on decolonisation of Chagos Archipelago (Assembly/AU/Dec.747 (XXXII)), 2019 (available at: [https://portal.africa-union.org/DVD/Documents/DOC-AU-DEC/Assembly%20AU%20Dec%20747%20\(XXXII\)%20\\_E.pdf](https://portal.africa-union.org/DVD/Documents/DOC-AU-DEC/Assembly%20AU%20Dec%20747%20(XXXII)%20_E.pdf)); decision 788 (XXXIII) of the Assembly on decolonisation of Mauritius (Assembly/AU/Dec.788 (XXXIII)), 2020 (available at: [https://au.int/sites/default/files/decisions/38180-assembly\\_au\\_dec\\_749-795\\_xxxiii\\_e.pdf](https://au.int/sites/default/files/decisions/38180-assembly_au_dec_749-795_xxxiii_e.pdf)).

<sup>10</sup> See the written and oral statements of the African Union in the advisory proceedings on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (available at: <https://icj-cij.org/sites/default/files/case-related/186/186-20230725-wri-12-00-en.pdf> and <https://icj-cij.org/sites/default/files/case-related/186/186-20240226-ora-wri-01-00-bi.pdf>).

which have a direct interest in the Palestinian question. The African Union is also an observer member of the Committee on the Exercise of the Inalienable Rights of the Palestinian People<sup>11</sup>.

10. The African Union has adopted numerous resolutions reiterating its positions of principle on the Palestinian question<sup>12</sup>, illustrating its firm interest in the resolution of the Palestinian conflict. In the most recent resolution adopted by the Assembly of Heads of State and Government of the African Union, the highest decision- and policy-making organ of the African Union, the latter noted “with great concern the dangerous developments in the occupied Palestinian territories and the brutal aggression launched by the Israeli/[sic] against the Gaza Strip, which has been besieged for more than 17 years, using internationally prohibited weapons, targeting civilians, property, and infrastructure”<sup>13</sup>. The heads of State and government of the African Union also reiterated their “commitment to the steadfastness of the cause of the Palestinian People for their homeland and [their] continued support for a peaceful and just solution to the Arab-Israeli conflict in accordance with the principles of international law and all relevant United Nations resolutions, which call for the establishment of an independent and sovereign State of Palestine on the borders of 4 June 1967, with East Jerusalem as its capital”<sup>14</sup>. They also reaffirmed their position, which echoes that of the Court<sup>15</sup>,

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<sup>11</sup> Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People (A/79/35), 31 Aug. 2024, para. 30 (available at: <https://docs.un.org/en/A/79/35>).

<sup>12</sup> Declaration 4 (XXXVII) of the Assembly of the Union, Situation in Palestine and the Middle East (Assembly/AU/Decl.4 (XXXVII)), 2024; declaration 2 (XXXVI) of the Assembly of the Union, Situation in Palestine and the Middle East (Assembly/AU/Decl.2 (XXXVI)), 2023; declaration 1 (XXXV) of the Assembly of the Union, Situation in Palestine and the Middle East (Assembly/AU/Decl.1 (XXXV)), 2022; declaration 1 (XXXIV) of the Assembly of the Union, Situation in Palestine and the Middle East (Assembly/AU/Decl.1 (XXXIV)), 2021; declaration 5 (XXXIII) of the Assembly of the Union, Situation in Palestine and the Middle East (Assembly/AU/Decl.5 (XXXIII)), 2020; declaration 7 (XXXII) of the Assembly of the Union, Situation in Palestine and the Middle East (Assembly/AU/Decl.7 (XXXII)), 2019; declaration 2 (XXXI) of the Assembly of the Union, Situation in Palestine and the Middle East (Assembly/AU/Decl.2 (XXXI)), 2018; declaration 1 (XXX) of the Assembly of the Union, Situation in Palestine and the Middle East (Assembly/AU/Decl.1 (XXX)), 2018; declaration 2 (XXIX) of the Assembly of the Union, Situation in Palestine and the Middle East (Assembly/AU/Decl.2 (XXIX)), 2017; declaration 1 (XXVIII) of the Assembly of the Union, Situation in Palestine and the Middle East (Assembly/AU/Decl.1 (XXVIII)), 2017; declaration 2 (XXVII) of the Assembly of the Union, Situation in Palestine and the Middle East (Assembly/AU/Decl.2 (XXVII)), 2016; declaration 1 (XXVI) of the Assembly of the Union, Situation in Palestine and the Middle East (Assembly/AU/Decl.1 (XXVI)), 2016; declaration 4 (XXV) of the Assembly of the Union, Situation in Palestine and the Middle East (Assembly/AU/Decl.4 (XXV)), 2015; declaration 2 (XXIV) of the Assembly of the Union, Situation in Palestine and the Middle East (Assembly/AU/Decl.2 (XXIV)), 2015; declaration 2 (XX) of the Assembly of the Union, Declaration on Palestine (Assembly/AU/Decl.2 (XX)), 2013; decision 421 (XIX) of the Assembly of the Union, Situation in Palestine and the Middle East (Assembly/AU/Dec.421 (XIX)), 2012; declaration 3 (XIX) of the Assembly of the Union, Declaration on Palestine (Assembly/AU/Decl.3 (XIX)), 2012; decision 396 (XVIII) of the Assembly of the Union, Situation in Palestine and the Middle East (Assembly/AU/Dec.396 (XVIII)), 2012; decision 242 (XII) of the Assembly of the Union, Proposal of the Great Socialist People’s Libyan Arab Jamahiriya on the issue of Palestine (Assembly/AU/Dec.242 (XII)), 2009; decision 18[3] (XXXVIII) of the Assembly of Heads of State and Government, Development in the Middle East and Palestine (AHG/Dec.18[3] (XXXVIII)), 2002; resolution 123 (XX) of the Assembly of Heads of State and Government, Question of Palestine (AHG/Res.123 (XX)), 1984; resolution 108 (XIX) of the Assembly of Heads of State and Government, Middle East Question (AHG/Res.108 (XIX)), 1983; resolution 76 (XII) of the Assembly of Heads of State and Government, The Middle East and Occupied Arab Territories (AHG/Res.76 (XII)), 1975; resolution 77 (XII) of the Assembly of Heads of State and Government, Question of Palestine (AHG/Res.77 (XII)), 1975.

<sup>13</sup> Declaration on the situation in Palestine and the Middle East (Assembly/AU/Decl.4 (XXXVII)), 17 and 18 Feb. 2024, preambular para. 2 (available at: [https://au.int/sites/default/files/decisions/44015-ASSEMBLY\\_AU\\_DEC\\_866\\_-\\_902\\_XXXVII\\_E.pdf](https://au.int/sites/default/files/decisions/44015-ASSEMBLY_AU_DEC_866_-_902_XXXVII_E.pdf)). See also preambular paras. 3 and 5.

<sup>14</sup> *Ibid.*, para. 8.

<sup>15</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 200-201, para. 162 (“The Court considers that it has a duty to draw the attention of the General Assembly . . . to the need for these efforts to be encouraged with a view to achieving . . . the establishment of a Palestinian State, existing side by side with Israel and its other neighbours, with peace and security for all in the region.”); *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 283 (“The Court also considers that the realization of the right of the Palestinian people to self-determination, including its right to an independent and sovereign State, living side by side in peace with the State of Israel . . . would contribute to regional stability and the security of all States in the Middle East.”).



that “a political solution based on the two-state vision, is the most feasible way to guarantee peace, stability and security for the people and States in the region”<sup>16</sup> and that

“a just, comprehensive and lasting peace in the Middle East requires the complete Israeli withdrawal from all Palestinian and Arab territories occupied since June 1967, including the Syrian Golan Heights and the territories still occupied in southern Lebanon, and the embodiment of the independence[sic] State of Palestine with East Jerusalem as its capital, and the return of Palestinian refugees to their homes”<sup>17</sup>.

11. In the paragraphs below, the African Union will place the request for an advisory opinion in its factual context (I), before establishing that the Court is duly competent to entertain it and that there is no compelling reason for the ICJ to exercise its discretion not to render the advisory opinion requested (II). The African Union will then determine the meaning and scope of the question posed by the General Assembly (III), before presenting some of the answers that, in its view, should guide the Court’s response (IV). The written statement will close with the conclusions of the African Union.

## **I. THE FACTUAL CONTEXT OF THE REQUEST FOR AN ADVISORY OPINION**

12. In the paragraphs below, the African Union will describe some of the key elements of the factual context that drove the General Assembly to request the Court to render an advisory opinion “on a priority basis and with the utmost urgency”<sup>18</sup>. The African Union considers that this context makes it easier to identify the relevant obligations and to clarify the most important aspects of their scope. Nevertheless, the African Union is not asking the Court to make findings of fact with regard to specific incidents<sup>19</sup>.

13. The African Union is of the view that these advisory proceedings are taking place against a backdrop of unspeakable suffering inflicted on the Palestinian people by Israel (A) and various restrictions imposed by Israel on the presence and activities of the United Nations intended to ease that suffering, in particular through the United Nations Relief and Works Agency for Palestine

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<sup>16</sup> Declaration on the situation in Palestine and the Middle East (Assembly/AU/Decl.4(XXXVII)), 17 and 18 Feb. 2024, para. 20 (available at: [https://au.int/sites/default/files/decisions/44015-ASSEMBLY\\_AU\\_DEC\\_866\\_-\\_902\\_XXXVII\\_E.pdf](https://au.int/sites/default/files/decisions/44015-ASSEMBLY_AU_DEC_866_-_902_XXXVII_E.pdf)).

<sup>17</sup> *Ibid.*, para. 21.

<sup>18</sup> General Assembly resolution 79/232 (A/RES/79/232), 19 Dec. 2024, para. 10 (available at: <https://docs.un.org/en/A/RES/79/232>). The wording of the request echoes the terms of Article 103 of the Rules of Court, which reads as follows:

“When the body authorized by or in accordance with the Charter of the United Nations to request an advisory opinion informs the Court that its request necessitates an urgent answer, or the Court finds that an early answer would be desirable, the Court shall take all necessary steps to accelerate the procedure, and it shall convene as early as possible for the purpose of proceeding to a hearing and deliberation on the request.”

<sup>19</sup> In this regard, these proceedings are similar to those which led to the 2024 Advisory Opinion. See *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 77.

Refugees in the Near East (hereinafter “UNRWA” or the “Agency”) (B), although Israel’s measures and practices also extend to third States and other international organizations (C)<sup>20</sup>.

#### **A. The critical situation of the population and people of Palestine**

14. The factual context in which the present request for an advisory opinion is made consists in the perilous humanitarian, economic, social and cultural situation in the Occupied Palestinian Territory, resulting from the practices and policies of Israel aimed at annexing that territory. Indeed, as the Court noted in its Advisory Opinion of 19 July 2024,

“the Court is of the view that Israel’s policies and practices, including the maintenance and expansion of settlements, the construction of associated infrastructure, including the wall, the exploitation of natural resources, the proclamation of Jerusalem as Israel’s capital, the comprehensive application of Israeli domestic law in East Jerusalem and its extensive application in the West Bank, entrench Israel’s control of the Occupied Palestinian Territory, notably of East Jerusalem and of Area C of the West Bank. These policies and practices are designed to remain in place indefinitely and to create irreversible effects on the ground. Consequently, the Court considers that these policies and practices amount to annexation of large parts of the Occupied Palestinian Territory.”<sup>21</sup>

15. The African Union, while condemning these measures of annexation and permanent control over the Occupied Palestinian Territory, is deeply concerned that they are accompanied by equally serious breaches of the economic, social and cultural rights of the Palestinian population and people. As the Economic and Social Council for Western Asia (hereinafter “ESCWA”) observed in 2023:

“Israeli-imposed restrictions, expansion of the illegal settlements and other practices not only prevent development but have also exacerbated the fragmentation of the Palestinian territory. These policies and practices have had a severe humanitarian, economic, social and political impact on Palestinians and their ability to exercise their fundamental human rights. Their repercussions have had a cumulative, multi-layered and inter-generational impact on Palestinian society, economy and environment, and have caused deterioration of the living conditions of the Palestinians, their forced displacement, de-development of the [Occupied Palestinian Territory], entrenchment of

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<sup>20</sup> Indeed, in the resolution seising the Court of the present request for an advisory opinion, the General Assembly also expressed its

“*deep concern* at measures taken by Israel that impede assistance to the Palestinian people, including through measures that affect the presence, activities and immunities of the United Nations, its agencies and bodies, and those of other international organizations, and the representation of third States in the Occupied Palestinian Territory, including East Jerusalem, aimed at providing, in accordance with international law, basic services and humanitarian assistance in the Occupied Palestinian Territory”.

See General Assembly resolution 79/232 (A/RES/79/232), 19 Dec. 2024, preambular para. 20 (available at: <https://docs.un.org/en/A/RES/79/232>).

<sup>21</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 173.

the Palestinian economy asymmetric dependency on Israel, and exacerbation of Palestinian institutional dependency on foreign aid.”<sup>22</sup>

16. The Court has echoed this, noting

“the impact of Israel’s policies and practices on some aspects of the economic, social and cultural life of Palestinians, in particular by virtue of the impairment of their human rights. The dependence of the West Bank, East Jerusalem, and especially of the Gaza Strip, on Israel for the provision of basic goods and services impairs the enjoyment of fundamental human rights, in particular the right to self-determination . . . In addition to the injury inflicted on individual persons, the violation of Palestinians’ rights — including the right to liberty and security of person, and the freedom of movement — has repercussions on the Palestinian people as a whole, frustrating its economic, social and cultural development.”<sup>23</sup>

17. The Court has further observed that:

“Israel’s policies and practices obstruct the right of the Palestinian people freely to determine its political status and to pursue its economic, social and cultural development . . . As a consequence of Israel’s policies and practices, which span decades, the Palestinian people has been deprived of its right to self-determination over a long period, and further prolongation of these policies and practices undermines the exercise of this right in the future.”<sup>24</sup>

18. Achieving significant and lasting progress in the areas of human security and human development is particularly difficult given that the West Bank (including East Jerusalem) and the Gaza Strip are under the prolonged military occupation of Israel<sup>25</sup>. On this latter point, the Court has also pointed out that Israel’s practices “include . . . the deprivation of the Palestinian people of the enjoyment of the natural resources of the territory and [the] impairment of the Palestinian people’s right to pursue its economic, social and cultural development”<sup>26</sup>.

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<sup>22</sup> Dossier No. N06, United Nations, ESCWA, Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan, 30 June 2023, UN doc. A/78/127-E/2023/95, para. 130. See also the reports of the United Nations Conference on Trade and Development: dossier No. N22, Economic costs of the Israeli occupation for the Palestinian people: the welfare cost of the fragmentation of the occupied West Bank, UN doc. A/78/303, 10 Aug. 2023, paras. 5, 10 and 46 (“The multilayered Israeli control on movements has a significant negative impact on Palestinian economic activity, development and household welfare throughout the Occupied Palestinian Territory.”); and dossier No. N23, Economic costs of the Israeli occupation for the Palestinian people: the economic impact of the Israeli military operation in Gaza from October 2023 to May 2024, UN doc. A/79/343, 10 Sept. 2024, para. 2 (“Prior to October 2023, the economy of Gaza was hollowed out and its people were nearly completely dependent on international aid.”) and para. 23 (“By mid-May 2024, . . . [t]he extensive damage will set human development several decades back and undermine human capital formation for generations to come.”).

<sup>23</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para[s]. 241[-242].

<sup>24</sup> *Ibid.*, paras. 242-243.

<sup>25</sup> United Nations Development Assistance Framework for the State of Palestine, 2014-2016 (available at: [https://planipolis.iiep.unesco.org/sites/default/files/ressources/palestine\\_undaf.pdf](https://planipolis.iiep.unesco.org/sites/default/files/ressources/palestine_undaf.pdf)).

<sup>26</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 256 (cf. paras. 230-243).

19. The African Union considers that the measures of annexation and permanent control over the Palestinian territory, and the grave violations of the economic, social and cultural rights of the Palestinian people, are mutually reinforcing<sup>27</sup>. All these measures contribute, in the words of the Court, to keeping the population and people of Palestine “in a state of suspension and uncertainty, denying them their right to self-determination while integrating parts of their territory into the occupying Power’s own territory”<sup>28</sup>. The same applies to the measures aimed at depriving the Palestinian population and people of the benefits of solidarity and international co-operation in humanitarian matters, development assistance and support for their right to self-determination.

## **B. The vital importance of UNRWA for the population and people of Palestine**

20. The tragic events that necessitated the creation of UNRWA in 1949 attest to the importance of the Agency for the Palestinian population and people (1). Unfortunately, the situation of that population and people has failed to improve, which has led UNRWA to assume a central role in fundamental aspects of the lives of the population and people of Palestine (2).

### **1. The creation of UNRWA as a temporary solution to the displacement of the Palestinian population by Israel during the 1948-1949 war**

21. The African Union recalls that UNRWA was founded in 1949 as a temporary solution to the humanitarian crises caused by the expulsion of Palestinians from their homes by Israel during and after the 1948-1949 war. Indeed, the progress report of the United Nations Mediator of 14 May 1948 states that:

“[a] new and difficult element has entered into the Palestine problem as a result of the exodus of more than 300,000 Arabs from their former homes in Palestine . . . The question of their ultimate resettlement, either in their former abodes or elsewhere, must be faced and solved . . . [T]he right of the refugees to return to their homes if they so desire must be safeguarded. Nevertheless, whether or not this right is exercised, most of these refugees will require assistance in some degree to re-establish themselves.”<sup>29</sup>

22. The United Nations Mediator goes on to note that:

“[a]s a result of the hostilities in Palestine, an alarming number of persons have been displaced from their homes. Arabs form the vast majority of the refugees in Palestine and the neighbouring countries. The future of these Arab refugees is one of the questions under dispute, the solution of which presents very great difficulties.”<sup>30</sup>

23. He further adds that:

“It is, however, undeniable that no settlement can be just and complete if recognition is not accorded to the right of the Arab refugee to return to the home from which he has been dislodged by the hazards and strategy of the armed conflict between Arabs and Jews in Palestine. The majority of these refugees have come from territory

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<sup>27</sup> *Ibid.*, para. 256.

<sup>28</sup> *Ibid.*, para. 257.

<sup>29</sup> Progress report of the United Nations Mediator on Palestine, General Assembly, Official Records, 3rd session, supplement No. 11 (A/648), 14 May 1948, p. 7, para. 14 (available at: <https://digitallibrary.un.org/record/703168?v=pdf>).

<sup>30</sup> *Ibid.*, part V, p. 13, para. 2.

which, under the Assembly resolution of 29 November, was to be included in the Jewish State. The exodus of Palestinian Arabs resulted from panic created by fighting in their communities, by rumours concerning real or alleged acts of terrorism, or expulsion. It would be an offence against the principles of elemental justice if these innocent victims of the conflict were denied the right to return to their homes while Jewish immigrants flow into Palestine, and, indeed, at least offer the threat of permanent replacement of the Arab refugees who have been noted in the land for centuries.”<sup>31</sup>

24. As regards the humanitarian situation of the Palestinian refugees, the United Nations Mediator emphasizes

“the desperate urgency of this problem. The choice is between saving the lives of many thousands of people now or permitting them to die. The situation of the majority of these hapless refugees is already tragic, and to prevent them from being overwhelmed by further disaster and to make possible their ultimate rehabilitation, it is my earnest hope that the international community will give all necessary support to make the measures I have outlined fully effective. I believe that for the international community to accept its share of responsibility for the refugees of Palestine is one of the minimum conditions for the success of its efforts to bring peace to that land.”<sup>32</sup>

25. The General Assembly first sought to address the question of emergency humanitarian assistance for Palestinians through United Nations Relief for Palestine Refugees<sup>33</sup>, and then, in view of the scale of the task, through UNRWA. Indeed, the Acting Mediator, appointed following the assassination by Jewish extremists of Count Folke Bernadotte, confirmed that the situation of Palestine was critical and that it was now necessary not only to continue this assistance, but also to increase it substantially if disaster were to be averted<sup>34</sup>. It was on the basis of this report that the General Assembly, in adopting the resolution establishing UNRWA, thus recognized that,

“without prejudice to the provisions of paragraph 11 of General Assembly resolution 194 (III) of 11 December 1948 [on the right to return of Palestine refugees], continued assistance for the relief of the Palestine refugees is necessary to prevent conditions of starvation and distress among them and to further conditions of peace and stability”<sup>35</sup>.

26. On the basis of this finding, the General Assembly created UNRWA as a subsidiary organ of the United Nations, within the meaning of Article 22 of the Charter, with the following mandate in particular: “[t]o carry out in collaboration with local governments the direct relief and works

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<sup>31</sup> *Ibid.*, part V, p. 14, para. 6.

<sup>32</sup> *Ibid.*, part V[I], p. [52], para. [2].

<sup>33</sup> General Assembly resolution 212 (III), Assistance to Palestine Refugees (A/RES/212 (III)), 1948 (available at: [https://docs.un.org/en/A/RES/212\(III\)](https://docs.un.org/en/A/RES/212(III))).

<sup>34</sup> Progress report of the United Nations Acting Mediator for Palestine submitted to the Secretary-General for transmission to the Members of the United Nations, UN doc. A/689, 18 Oct. 1948, paras. 1-8 (available at: <https://digitallibrary.un.org/record/703169?ln=en&v=pdf/sic/>).

<sup>35</sup> General Assembly resolution 302 (IV), Assistance to Palestine Refugees (A/RES/302/IV), 1949 (available at: [https://docs.un.org/en/A/RES/302%20\(IV\)](https://docs.un.org/en/A/RES/302%20(IV))).

programmes as recommended by the Economic Survey Mission”<sup>36</sup>, notably humanitarian assistance and actions contributing to the economic and social recovery of the Palestinian refugees<sup>37</sup>.

27. The African Union is of the view that the establishment of UNRWA by the General Assembly is one of the realizations of the responsibility of the United Nations that “has its origin in the Mandate and the Partition Resolution concerning Palestine”<sup>38</sup>. As General Assembly resolution 57/107 reaffirms, “the United Nations has a permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy”<sup>39</sup>.

## **2. The vital role played by UNRWA in the Occupied Palestinian Territory**

28. The African Union contends that UNRWA’s role in the Palestinian territories is vital for three reasons.

29. *First*, the Palestinian refugees have not yet exercised their right to return to their homes and continue to need assistance and international support. The African Union would recall that the establishment of UNRWA was a temporary solution, aimed at resolving the humanitarian crisis caused by the displacement of the Palestinian population during the 1948-1949 war. Indeed, as stated in the above-cited passage from the General Assembly resolution establishing UNRWA, the assistance for the Palestinian refugees was without prejudice to the provisions of paragraph 11 of General Assembly resolution 194 (III), which provides for the Palestinians’ right to return. In the latter resolution, the General Assembly:

“[r]esolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible; [and]

[i]nstructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations”<sup>40</sup>.

30. *Second*, the need of Palestinian refugees for humanitarian and development assistance has only grown since the establishment of UNRWA in 1949. *To start with*, the number of Palestinian refugees has increased in the wake of numerous conflicts in the region. For example, during the

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<sup>36</sup> *Ibid.*

<sup>37</sup> Report of the Secretary-General on the Assistance to Palestine Refugees, UN doc. A/1060, 4 Nov. 1949; Financial Statement of the United Nations Relief for Palestine Refugees for the period 1 December 1948 to 3 June 1949; Report of the Board of Auditors, UN doc. A/1060/Add.1, 4 Nov. 1949 (available at: <https://digitallibrary.un.org/search?ln=en&p=A%2F1060&f=&c=Resource%20Type&c=UN%20Bodies&sf=&so=d&rg=50&fti=0>).

<sup>38</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 159, para. 49.

<sup>39</sup> General Assembly resolution 57/107, Committee on the Exercise of the Inalienable Rights of the Palestinian People (A/RES/57/107), 3 Dec. 2002.

<sup>40</sup> General Assembly resolution 194 (III), Palestine — Progress Report of the United Nations Mediator (A/RES/194 (III)), 11 Dec. 1948 (available at: <https://www.un.org/unispal/wp-content/uploads/2016/06/ARES194III.pdf>).

Six-Day War in 1967, Israel occupied the West Bank, the Gaza Strip, East Jerusalem, the Sinai Peninsula and the Golan Heights, placing more than a million Palestinians under military administration and provoking the exodus of a further 300,000 people<sup>41</sup>. Illegal settlement in the West Bank and in East Jerusalem has also led to the forced displacement of Palestinians and the confiscation of their lands<sup>42</sup>. The General Assembly, particularly in its resolution 46/199, emphasizes the negative effects of this policy on the economic and social development of Palestinians<sup>43</sup>. Furthermore, the problems encountered by Palestinian refugees have only become greater and more complex over time. This worsening of the situation of the Palestinian refugees has been reflected in a broadening of the mandate of UNRWA through a series of successive resolutions<sup>44</sup>. In this regard, the African Union further recalls the orders indicating provisional measures in which the Court recognized the existence of a “further risk of irreparable prejudice to the plausible rights” of Palestinians under the Convention on the Prevention and Punishment of the Crime of Genocide<sup>45</sup>.

31. *Third*, there is no other institution capable of dealing with the question of the Palestinian refugees. As the United Nations Secretary-General has repeatedly reaffirmed, UNRWA has been the backbone of humanitarian and development assistance in the Near East since its establishment in 1949<sup>46</sup>. The members of the Security Council have made similar assertions<sup>47</sup>. No other organization

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<sup>41</sup> Letter from the Chairman of the Advisory Commission of UNRWA, Mr Adrian T. Middleton, to the [Commissioner-General of UNRWA], 15 Sept. 1967, in the report of the Commissioner-General, 1 July 1966-30 June 1967, General Assembly, Official Records, 22nd session, para. 1 (available at: <https://www.un.org/unispal/document/auto-insert-198325/>).

<sup>42</sup> General Assembly resolution 46/199, Adverse economic effects of Israeli settlements in the occupied Palestinian territory, including Jerusalem, and other Arab territories occupied since 1967 (A/RES/46/199), 20 Dec. 1991.

<sup>43</sup> *Ibid.*

<sup>44</sup> See General Assembly resolution 2252 (ES-V), Humanitarian assistance (A/L.56 and Add.1-3), 4 July 1967, enlarging the mandate of UNRWA to persons newly displaced following the Six-Day War (available at: [https://docs.un.org/en/A/RES/2252%20\(ES-V\)](https://docs.un.org/en/A/RES/2252%20(ES-V))); see also General Assembly resolution 43/57, United Nations Relief and Works Agency for Palestine Refugees in the Near East (A/RES/43/57), 6 Dec. 1988, requesting the relocation of the headquarters of the Agency to within its area of operations (available at: [https://digitallibrary.un.org/record/192666?ln=zh\\_CN&v=%5B%27pdf%27%5D](https://digitallibrary.un.org/record/192666?ln=zh_CN&v=%5B%27pdf%27%5D)); General Assembly resolution 74/83, Assistance to Palestine refugees (A/RES/74/83), 13 Dec. 2019, extending the mandate of UNRWA until 2023 (available at: <https://docs.un.org/en/A/RES/74/83>).

<sup>45</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024, para. 66; *ibid.*, Order of 28 March 2024, para. 4; *ibid.*, Order of 24 May 2024, para. 47.

<sup>46</sup> Dossier No. N301, Letter dated 28 October 2024 from the Secretary-General addressed to the Prime Minister of Israel; General Assembly resolution ES-10/25, 11 Dec. 2024, on support for the mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (A/RES/ES-10/25); see also Security Council Press Statement on United Nations Relief and Works Agency for Palestine Refugees in Near East (UNRWA), dated 30 Oct. 2024 (SC/15874): “The members of the Security Council underscored that UNRWA remains the backbone of all humanitarian response in Gaza” (available at: <https://press.un.org/en/2024/sc15874.doc.htm>).

<sup>47</sup> Security Council Press Statement on United Nations Relief and Works Agency for Palestine Refugees in Near East (UNRWA), 30 Oct. 2024 (SC/15874) (The members of the Security Council “emphasized the vital role of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in providing life-saving humanitarian assistance to Palestinian refugees through essential education, health, relief and social services programmes and emergency assistance in the Occupied Palestinian Territory, Jordan, Lebanon and the Syrian Arab Republic”, and the fact that “UNRWA remains the backbone of all humanitarian response in Gaza, and 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”). (available at: <https://press.un.org/en/2024/sc15874.doc.htm>).

can replace UNRWA, particularly during the current crisis<sup>48</sup>, given, *inter alia*, the extent of its operations, its proven expertise and its unrivalled understanding of the terrain and of local issues, acquired over decades. Today, UNRWA operates in Jordan, Lebanon, Syria and the occupied Palestinian territories, including East Jerusalem, and provides essential services to 5.9 million registered refugees<sup>49</sup>. The Agency's services cover a variety of areas, including education, health care, social services, infrastructure, microfinance and emergency assistance<sup>50</sup>. In 2023, its annual budget was US\$1.46 billion<sup>51</sup>, and it employed 32,000 people, 99 per cent of whom were locally recruited<sup>52</sup>. In normal times, UNRWA manages 400 schools attended by 350,000 children<sup>53</sup> and 65 health centres that carry out more than 5 million annual consultations<sup>54</sup>, representing 63 per cent of all primary health care consultations in Gaza<sup>55</sup>. Since 7 October 2023, it has carried out 4.3 million consultations and provided psychological support for 520,000 children<sup>56</sup>. It thus provides vital assistance: it has supplied 1.9 million people with food and 600,000 with drinking water<sup>57</sup>. In December 2024, it converted 100 facilities into emergency shelter for 400,000 displaced persons<sup>58</sup>.

32. The African Union considers that any impediment to the presence and activities of UNRWA places Palestinian refugees in a worse situation than the one that necessitated the Agency's creation.

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<sup>48</sup> Dossier No. N301, Letter dated 28 October 2024 from the Secretary-General addressed to the Prime Minister of Israel ("considering that there is currently no realistic alternative to UNRWA which could adequately provide the services and assistance required", which point the Secretary-General repeatedly emphasized.) See also his letters to the President of the General Assembly and the President of the Security Council, dossier No. N65, Letter dated 28 October 2024 from the Secretary-General addressed to the President of the General Assembly; dossier No. N66, Identical letters dated 9 December 2024 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, UN doc. A/79/684-S/2024/892; and dossier No. N68, Identical letters dated 8 January 2025 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, UN doc. A/79/716-S/2025/18.

<sup>49</sup> See "United Nations Relief and Works Agency for Palestine Refugees in the Near East: Who we are" (available at: <https://www.unrwa.org/who-we-are>).

<sup>50</sup> *Ibid.*

<sup>51</sup> See UNRWA, Annual Operational Report 2023 (available at: [https://www.unrwa.org/sites/default/files/aor\\_2023\\_remos.pdf](https://www.unrwa.org/sites/default/files/aor_2023_remos.pdf)).

<sup>52</sup> Final Report for the United Nations Secretary-General: Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality (the "Colonna Report"), 20 Apr. 2024, p. 18 (available at: [https://www.un.org/unispal/wp-content/uploads/2024/04/unrwa\\_independent\\_review\\_on\\_neutrality.pdf](https://www.un.org/unispal/wp-content/uploads/2024/04/unrwa_independent_review_on_neutrality.pdf)).

<sup>53</sup> Dossier No. N301, Letter dated 28 October 2024 from the Secretary-General addressed to the Prime Minister of Israel; dossier No. N65, Letter dated 28 October 2024 from the Secretary-General addressed to the President of the General Assembly, UN doc. A/79/558, p. 3; dossier No. N66, Identical letters dated 9 December 2024 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, UN doc. A/79/684-S/2024/892, p. 3.

<sup>54</sup> Dossier No. N301, Letter dated 28 October 2024 from the Secretary-General addressed to the Prime Minister of Israel.

<sup>55</sup> See "UNRWA in Gaza: the backbone of the humanitarian response", Dec. 2024 (available at: <https://www.un.org/unispal/document/unrwa-in-gaza-the-backbone-of-the-humanitarian-response-factsheet/>).

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*



### **C. The restrictions imposed by Israel on the presence and activities of States and international organizations, including their subsidiary organs**

33. The African Union recalls that Israel has already repeatedly obstructed the presence and activities of UNRWA in the Occupied Palestinian Territory<sup>59</sup>. The information contained in the dossier submitted by the United Nations Secretariat shows that these impediments to UNRWA's presence and activities have intensified over the last five years (1), culminating in the adoption by the Israeli Parliament of two laws that aim to render the Agency ineffective (2), and the extension of the restrictions put in place by Israel beyond UNRWA to affect the activities of States and other international organizations (3). These measures, which seek to paralyse all support for the population and people of Palestine, undermine fundamental elements of the right of the Palestinian people to existence, to development and to international solidarity.

#### **1. The restrictions imposed by Israel on the activities of UNRWA**

34. The African Union notes that the restrictions imposed by Israel on the presence and activities of UNRWA in the Occupied Palestinian Territory take many forms. The dossier submitted by the Secretary-General in these advisory proceedings shows that the Israeli Defense Forces have frequently infringed the physical integrity and security of UNRWA personnel, notably by firing on humanitarian convoys led by the Agency<sup>60</sup>. Israeli defence and security forces have also infringed the inviolability of UNRWA's premises. Not only have they frequently entered those premises without the authorization of the competent UNRWA officials, but, worse still, they have also made widespread use of tear gas close to UNRWA installations<sup>61</sup>. Infringements of the inviolability of UNRWA's premises have also occurred through the destruction of the medical centres it manages, particularly in the refugee camps in Jenin<sup>62</sup>. Finally, the Israeli authorities are attempting to place UNRWA in an economic stranglehold. Despite the Agency's well-known financial difficulties, the

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<sup>59</sup> See, by way of illustration, dossier No. N65, Letter dated 28 October 2024 from the Secretary-General addressed to the President of the General Assembly, UN doc. A/79/558; dossier No. N66, Identical letters dated 9 December 2024 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, UN doc. A/79/684-S/2024/892; dossier No. N68, Identical letters dated 8 January 2025 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, UN doc. A/79/716-S/2025/18. See also dossier No. N295, Letter dated 31 December 2023 from the Commissioner-General of UNRWA addressed to the Coordinator of Government Activities in the Territories of the Ministry of Defense of Israel; dossier No. N296, Letter dated 29 January 2024 from the Director of UNRWA Affairs in the West Bank of UNRWA addressed to the Director of the Department of UN Political Affairs of the Ministry of Foreign Affairs of Israel; dossier No. N298, Letter dated 28 August 2024 from the Director of UNRWA Affairs in the West Bank of UNRWA addressed to the Director of the Department of UN Political Affairs of the Ministry of Foreign Affairs of Israel; dossier No. N300, Letter dated 4 October 2024 from the Secretary-General addressed to the Prime Minister of Israel; dossier No. N301, Letter dated 28 October 2024 from the Secretary-General addressed to the Prime Minister of Israel; dossier No. N302, Letter dated 3 November 2024 from the Director General of the Ministry of Foreign Affairs of Israel addressed to the President of the General Assembly; dossier No. N303, Note Verbale dated 18 November 2024 from the Office of Legal Affairs of the Secretariat of the United Nations addressed to the Ministry of Foreign Affairs of Israel; dossier No. N304, Letter dated 19 November 2024 from the Secretary-General addressed to the Minister for Foreign Affairs of Israel; dossier No. N305, Note Verbale dated 4 December 2024 from the Office of Legal Affairs of the Secretariat of the United Nations addressed to the Ministry of Foreign Affairs of Israel; dossier No. N306, Note verbale dated 8 January 2025 from the Office of Legal Affairs of the Secretariat of the United Nations addressed to the Ministry of Foreign Affairs of Israel; dossier No. N308, Letter dated 27 January 2025 from the Secretary-General addressed to the Permanent Representative of Israel to the United Nations; dossier No. N309, Note Verbale dated [18] February 2025 from the Office of Legal Affairs of the Secretariat of the United Nations addressed to the Ministry of Foreign Affairs of Israel.

<sup>60</sup> See dossier No. N295, Letter dated 31 December 2023 from the Commissioner-General of UNRWA addressed to the Coordinator of Government Activities in the Territories of the Ministry of Defense of Israel. See also "UN Aid convoy under Israeli fire", 22 July 2024 (available at: <https://news.un.org/en/story/2024/07/1152351>; consulted on 11 Feb. 2025).

<sup>61</sup> Dossier No. N296, Letter dated 29 January 2024 from the Director of UNRWA Affairs in the West Bank of UNRWA addressed to the Director of the Department of UN Political Affairs of the Ministry of Foreign Affairs of Israel.

<sup>62</sup> Dossier No. N298, Letter dated 28 August 2024 from the Director of UNRWA Affairs in the West Bank of UNRWA addressed to the Director of the Department of UN Political Affairs of the Ministry of Foreign Affairs of Israel.

Israeli authorities are refusing to reimburse the value added tax it has paid on locally procured goods and services, in breach of Article II, Section 7 (b), of the United Nations Convention on the Privileges and Immunities of the United Nations<sup>63</sup>, and are subjecting imports essential to the functioning of UNRWA to undue charges, including customs duties<sup>64</sup>.

## **2. The measures taken by Israel to bring an end to the presence and activities of UNRWA in the Occupied Palestinian Territory**

35. The African Union notes that Israel is not content simply to take measures that render the presence and activities of UNRWA difficult. It has also taken measures that seek to bring the presence and activities of UNRWA in the Occupied Palestinian Territory to an end.

36. First, on 28 October 2024, the Israeli Parliament promulgated two laws entitled, respectively, the Law to Cease UNRWA Operations and the Law to Cease UNRWA Operations in the Territory of the State of Israel. The Law to Cease UNRWA Operations, translated from Hebrew by the United Nations Secretariat, reads as follows:

### *“Expiration of the exchange of letters between Israel and UNRWA*

1. (a) The invitation to UNRWA, based on an exchange of letters between Israel and UNRWA from 6 Sivan 5727 (14 June A.D. 1967), will expire on 5 Tishrei 5785 (7 October A.D. 2024).
- (b) The Minister for Foreign Affairs shall notify the United Nations of the expiration under subsection (a) within seven days of the passage of this law by the Knesset.

### *No contact with UNRWA*

2. A government authority, including other bodies and individuals performing public duties according to law, shall not have any contact with UNRWA or anyone acting on its behalf.

### *Retention of laws*

3. Nothing in the provisions of this law shall preclude any criminal proceeding against UNRWA employees, including such proceedings related to the events of 7 October 2023 or the Swords of Iron War, or any other criminal proceeding under Counter-Terrorism Law 5776-2016, or the exercise of powers against them within the framework of such proceedings.

### *Entry into force*

4. This law shall come into force three months from the date of its publication. However, section 1 shall come into force on 5 Tishrei 5785 (7 October A.D. 2024) or on the date of the publication of this law, whichever is later.

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<sup>63</sup> Dossier No. N305, Note Verbale dated 4 December 2024 from the Office of Legal Affairs of the Secretariat of the United Nations addressed to the Ministry of Foreign Affairs of Israel.

<sup>64</sup> *Ibid.*; see also dossier No. N303, Note Verbale dated 18 November 2024 from the Office of Legal Affairs of the Secretariat of the United Nations addressed to the Ministry of Foreign Affairs of Israel (referring to the decision of the Jerusalem Customs Office of 6 November 2024).

*Reporting to the Knesset*

5. The National Security Council Director or their representative shall report to the Knesset Foreign Affairs and Defence Committee every six months and in the first year from the commencement of this law, every two months, on the implementation of the provisions of this law.”<sup>65</sup>

37. The exchange of letters referred to in the Law to Cease UNRWA Operations is the exchange of letters constituting a provisional agreement between UNRWA and Israel concerning assistance to Palestine refugees. The notification of its expiration, referred to in the law, was made on 3 November 2024<sup>66</sup>.

38. The text of the 1967 exchange of letters constituting a provisional agreement reads as follows:

“I

MINISTRY FOR FOREIGN AFFAIRS  
JERUSALEM, ISRAEL

14 June 1967

Dear Commissioner-General,

I wish to refer to the conversations I have had with you and your colleagues within the last two days, and to confirm our agreement that, at the request of the Israel Government, UNRWA would continue its assistance to the Palestine refugees, with the full co-operation of the Israel authorities, in the West Bank and Gaza Strip areas.

For its part, the Israel Government will facilitate the task of UNRWA to the best of its ability, subject only to regulations or arrangements which may be necessitated by considerations of military security. On this understanding, we are prepared to agree in principle:

- (a) To ensure the protection and security of the personnel, installations and property of UNRWA;
- (b) To permit the free movement of UNRWA vehicles into, within and out of Israel and the areas in question;
- (c) To permit the international staff of the Agency to move in, out and within Israel and the areas in question; they will be provided with identity documents and any other passes which might be required;
- (d) To permit the local staff of the Agency to move within the areas in question under arrangements made or to be made with the military authorities;
- (e) To provide radio, telecommunications and landing facilities;

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<sup>65</sup> See dossier No. N66, Identical letters dated 9 December 2024 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, UN doc. A/79/684-S/2024/892, pp. 1-2.

<sup>66</sup> Dossier No. N302, Letter dated 3 November 2024 from the Director General of the Ministry of Foreign Affairs of Israel addressed to the President of the General Assembly.

- (f) Pending a further supplementary agreement, to maintain the previously existing financial arrangements with the governmental authorities then responsible for the areas in question, concerning:
- (i) Exemptions from customs duties, taxes and charges on importation of supplies, goods and equipment;
  - (ii) provision free of charge of warehousing, labour for offloading and handling, and transport by rail or road in the areas under our control;
  - (iii) such other costs to the Agency as were previously met by the governmental authorities concerned.
- (g) To recognize that the Convention on the Privileges and Immunities of the United Nations of 13 February 1946,<sup>1</sup> to which Israel is a party, shall govern the relations between the Government and UNRWA in all that concerns UNRWA's functions.

The present letter and your acceptance in writing will be considered by the Government of Israel and by UNRWA as a provisional agreement which will remain in force until replaced or cancelled.

I have the honour to be,

Michael COMAY,  
Political Adviser to the Foreign Minister  
and Ambassador-at-Large.

Dr. Lawrence Michelmore  
Commissioner-General  
United Nations Relief and Works Agency

## II

### UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST

14 June 1967,

Your Excellency,

I refer to your letter of to-day's date, and wish to confirm that UNRWA is willing to continue its assistance to the Palestine refugees in the West Bank and Gaza Strip areas on the basis proposed in your letter. This will be subject to such further supplementary agreements as may be required, and to detailed arrangements which UNRWA representatives will make with the authorities in the two areas concerned.

Naturally, this co-operation implies no commitment or position by UNRWA with regard to the status of any of the areas in question or of any instrument relating to them, but is concerned solely with the continuation of its humanitarian task.

As I explained in our conversation, the facilities enumerated in paras. (a) to (g) of your letter are essential if the Agency is to operate effectively. For this reason I expect that such restrictions as may for the time being be placed on the full use of those facilities will be removed as soon as considerations of military security permit this.

I agree that your letter and this reply constitute a provisional agreement between UNRWA and the Government of Israel, to remain in force until replaced or cancelled. UNRWA's agreement is subject to any relevant instructions or resolutions emanating from the United Nations.

I have the honour to be, Yours faithfully,

Lawrence MICHELMORE,  
Commissioner-General.

His Excellency Michael Comay  
Political Adviser to the Foreign Minister of Israel  
and Ambassador-at-Large<sup>67</sup>

39. For its part, the Law to Cease UNRWA Operations in the Territory of the State of Israel, translated from Hebrew by the United Nations Secretariat, reads as follows:

*“Purpose*

1. The purpose of this law is to prevent any UNRWA operations within the territory of the State of Israel.

*Prohibition of operations within the territory of the State of Israel*

2. UNRWA (United Nations Relief and Works Agency) shall not operate any representative office, provide any services or carry out any activities, directly or indirectly, within the sovereign territory of the State of Israel.

*Entry into force*

3. This law shall come into force three months from the date of its publication.

*Reporting to the Knesset*

4. The National Security Council Director or their representative shall report to the Knesset Foreign Affairs and Defence Committee every six months and in the first year from the commencement of this law, every two months, on the implementation of the provisions of this law.”<sup>68</sup>

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<sup>67</sup> Dossier No. 283, Exchange of letters constituting a provisional agreement between the United Nations Relief and Works Agency for Palestine Refugees in the Near East and Israel concerning assistance to Palestine refugees, Jerusalem, 14 June 1967, United Nations, *Treaty Series* (“UNTS”), Vol. 620, 1968, pp. 185-189.

<sup>68</sup> See dossier No. N65, Letter dated 28 October 2024 from the Secretary-General addressed to the President of the General Assembly, UN doc. A/79/558, pp. 2-3; dossier No. N66, Identical letters dated 9 December 2024 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, UN doc. A/79/684-S/2024/892, p. 2.

40. The African Union notes that both laws have been published and are considered as having entered into force on 30 January 2025<sup>69</sup>.

41. The African Union would recall that the Chairperson of the African Union Commission expressed his profound concern at the devastating effects of these two laws on the access of Palestinians to humanitarian assistance:

“The Chairperson of the African Union Commission H.E. Moussa Faki Mahamat expresses deepest concern at the adoption of two laws by the Israeli Parliament to ban the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) in defiance of international law and which, if implemented, would prevent UN humanitarian assistance to Palestinian people under Israeli occupation and already under unprecedented and continued physical attack for the past year.”<sup>70</sup>

42. The African Union fully supports the assessment made by the United Nations Secretary-General regarding the scope of these two laws. The Secretary-General explains that:

“These laws, if implemented, could prevent UNRWA from continuing its essential work in the Occupied Palestinian Territory, including East Jerusalem, as mandated by the General Assembly. The cessation of or restrictions on UNRWA activities in the Occupied Palestinian Territory would have devastating consequences for Palestine refugees, considering that there is currently no realistic alternative to UNRWA which could adequately provide the services and assistance required.

.....

Any cessation of UNRWA activities in the Occupied Palestinian Territory would mean that millions of Palestine refugees who have been benefiting from UNRWA services and assistance would no longer be receiving them.”<sup>71</sup>

43. The Secretary-General further recalls that:

“In the event that UNRWA is compelled to cease its activities in the Occupied Palestinian Territory, Israel would be left to ensure that the range of services and assistance which UNRWA has been providing are provided in accordance with its obligations under international humanitarian law and international human rights law.”<sup>72</sup>

44. The African Union also subscribes to the assessment of the members of the Security Council regarding the measures affecting UNRWA:

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<sup>69</sup> The two laws concerning the cessation of UNRWA operations and the cessation of UNRWA operations in the territory of the State of Israel (including East Jerusalem) entered into force on 30 January 2025. See dossier No. N302, Letter dated 3 November 2024 from the Director General of the Ministry of Foreign Affairs of Israel addressed to the President of the General Assembly; dossier No. N307, Letter dated 24 January 2025 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General.

<sup>70</sup> Statement of the chairperson of the African Union Commission on Israeli legislation on UNRWA, 30 Oct. 2024 (available at: [https://au.int/sites/default/files/pressreleases/44220-pr-Statement\\_of\\_the\\_Chairperson\\_of\\_the\\_African\\_Union\\_On\\_Israeli\\_legislation\\_on\\_UNRWA.pdf](https://au.int/sites/default/files/pressreleases/44220-pr-Statement_of_the_Chairperson_of_the_African_Union_On_Israeli_legislation_on_UNRWA.pdf)).

<sup>71</sup> Dossier No. N66, Identical letters dated 9 December 2024 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, UN doc. A/79/684-S/2024/892.

<sup>72</sup> *Ibid.*

“The members of the Security Council strongly warned against any attempts to dismantle or diminish UNRWA’s operations and mandate, recognizing that any interruption or suspension of its work would have severe humanitarian consequences for millions of Palestinian refugees who depend on the Agency’s services and also implications for the region.

The members of the Security Council expressed their grave concern over legislation adopted by the Israeli Knesset. In this regard, they 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.”<sup>73</sup>

### **3. The measures taken by Israel in relation to the presence and activities of third States and other international organizations in the Occupied Palestinian Territory**

45. The African Union would draw the Court’s attention to the fact that third States and other international organizations are also subject to measures taken by Israel aimed at undermining their presence and activities in the Occupied Palestinian Territory. Indeed, in its resolution 79/232, the General Assembly expressed its deep concern

“at measures taken by Israel that impede assistance to the Palestinian people, including through measures that affect the presence, activities and immunities of the United Nations, its agencies and bodies, and those of other international organizations, and the representation of third States in the Occupied Palestinian Territory, including East Jerusalem, aimed at providing, in accordance with international law, basic services and humanitarian assistance in the Occupied Palestinian Territory”<sup>74</sup>.

46. The African Union notes, among these measures, the restrictions imposed by Israel on the presence and activities in the Occupied Palestinian Territory of other international organizations and third States, when the latter act in support of the exercise by the Palestinian people of its inalienable right to self-determination. For example, on 16 August 2024, Norway was forced to close its representation in Palestine following Israel’s decision to revoke the diplomatic status of eight Norwegian diplomats who had had dealings with the Palestinian Authority<sup>75</sup>. Similarly, Israel threatened to force the closure of the Spanish Consulate in Jerusalem if the latter continued to provide

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<sup>73</sup> Security Council Press Statement on United Nations Relief and Works Agency for Palestine Refugees in Near East (UNRWA), 30 Oct. 2024 (SC/15874) (available at: <https://www.un.org/unispal/document/security-council-press-statement-on-unrwa-30oct24/>).

<sup>74</sup> General Assembly resolution 79/232 (A/RES/79/232), 19 Dec. 2024, preambular para. 20 (available at: <https://docs.un.org/en/A/RES/79/232>).

<sup>75</sup> See press release of the Norwegian Ministry of Foreign Affairs, “Norway’s Representative Office in Palestine is closed until further notice”, 16 Aug. 2024 (available at: <https://www.regjeringen.no/en/aktuelt/norways-representative-office-in-palestine-is-closed-until-further-notice/id3050105/>); Swedish Ministry of Foreign Affairs, Joint Nordic statement on the Norwegian representative office in the Palestinian territories, 22 Aug. 2024 (available at: <https://www.government.se/statements/2024/08/joint-nordic-statement-on-the-norwegian-representative-office-in-the-palestinian-territories/>); *Times of Israel*, “Norway shuts Palestinian office after Israel revokes diplomats’ accreditation”, 18 Aug. 2024 (available at: <https://www.timesofisrael.com/norway-shutters-palestinian-office-after-israel-revokes-diplomats-accreditation/>).

consular services to Palestinians living in the West Bank<sup>76</sup>. These punitive measures were taken by Israel in response to the official recognition of the State of Palestine by Norway and Spain on 22 May 2024<sup>77</sup>. Moreover, Israel has also frequently demolished humanitarian structures which it claims were illegal under its zoning laws<sup>78</sup>.

## II. THE COURT MUST ENTERTAIN THIS REQUEST FOR AN ADVISORY OPINION

47. The African Union contends that the Court has jurisdiction to render the advisory opinion requested by the General Assembly (A). Furthermore, there is no compelling reason for the Court to exercise its discretion to decline to give the advisory opinion sought (B).

### A. The Court has jurisdiction to render the requested advisory opinion

48. The African Union notes that under Article 65, paragraph 1, of the Statute of the Court, “[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request”.

49. This provision sets two conditions for determining whether the Court has jurisdiction to entertain a request for an advisory opinion. These relate, respectively, to the author of the request for an advisory opinion and to the nature of the question put to the Court, which must be a “legal question”.

50. As regards the author of the request for an advisory opinion, the African Union recalls that, under Article 96, paragraph 1, of the Charter, “[t]he General Assembly . . . may request the International Court of Justice to give an advisory opinion on any legal question”. The General Assembly is thus authorized under Article 65 of the Statute of the Court to seise the ICJ of the present request for an advisory opinion.

51. As regards the legal character of the question posed, the African Union observes that the question submitted by the General Assembly is eminently legal in nature. In accordance with the jurisprudence of the Court, a question is of a legal character when it is “framed in terms of law and raise[s] problems of . . . law”<sup>79</sup>. The Court has also stated that “a request from the General Assembly

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<sup>76</sup> *Times of Israel*, “Israel orders Spanish consulate to stop providing services to Palestinians”, 27 May 2024 (available at: <https://www.timesofisrael.com/israel-orders-spanish-consulate-to-stop-providing-services-to-palestinians/>); Reuters, “Israel stops Spanish consulate from providing services to Palestinians”, 24 May 2024 (available at: <https://www.reuters.com/world/middle-east/israel-stops-spanish-consulate-providing-services-palestinians-2024-05-24/>); *Cadena Ser*, “Israel amenaza a España con cerrar su consulado en Jerusalén si da servicio a los palestinos”, 31 May 2024 (available at: <https://cadenaser.com/nacional/2024/05/31/israel-amenaza-a-espana-con-cerrar-su-consulado-en-jerusalensi-da-servicio-a-los-palestinos-cadena-ser/>).

<sup>77</sup> See S. Morel, “L’Espagne, l’Irlande et la Norvège décide de reconnaître ensemble la Palestine comme un Etat”, 22 May 2024 (available at: [https://www.lemonde.fr/international/article/2024/05/22/l-espagne-l-irlande-et-la-norvege-decident-de-reconnaitre-ensemble-la-palestine-comme-un-etat\\_6234803\\_3210.html](https://www.lemonde.fr/international/article/2024/05/22/l-espagne-l-irlande-et-la-norvege-decident-de-reconnaitre-ensemble-la-palestine-comme-un-etat_6234803_3210.html)).

<sup>78</sup> See Euro-Med Human Rights Monitor, “Squandered Aid: Israel’s repetitive destruction of EU-funded projects in Palestine”, 6 June 2016 (available at: <https://euromedmonitor.org/en/videos/137/Squandered-Aid:-%20Israel%E2%80%99s-repetitive-destruction-of-EU-funded-projects-in-Palestine->).

<sup>79</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 153, para. 37 (referring to *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 18, para. 15).



for an advisory opinion to examine a situation by reference to international law concerns a legal question”<sup>80</sup>.

52. The African Union contends that the question posed by the General Assembly is framed in terms of law. Indeed, the General Assembly’s question asks the Court, “considering the rules and principles of international law”, to determine the obligations of Israel, as an occupying Power and a Member of the United Nations, in relation to the presence and activities of international organizations and their subsidiary organs and third States, in particular as regards the right of the Palestinian people to self-determination and its right to support and international assistance<sup>81</sup>. In this sense, the Court is being requested in these proceedings, as it has been in other earlier proceedings, to exercise its jurisdiction, i.e. to “identify the existing principles and rules, interpret them and apply them . . . , thus offering a reply to the question posed based on law”<sup>82</sup>.

**B. There is no compelling reason for the Court to exercise its discretion  
not to render the advisory opinion requested**

53. The African Union notes that the Court has affirmed, on the basis of the terms of Article 65 of the Statute, particularly the verb “may” that appears therein<sup>83</sup>, that it has a discretionary power to decline to respond to the requests for advisory opinions that may be submitted to it. According to the Court, this discretion exists so as to protect “the integrity of the Court’s judicial function as the principal judicial organ of the United Nations”<sup>84</sup>.

54. The African Union notes, however, that the Court has never exercised its discretionary power to decline to respond to a request for an advisory opinion. Indeed, the Court has always been mindful of the fact that its answer to a request for an advisory opinion represents “its participation in the activities of the Organization, and, in principle, should not be refused”<sup>85</sup>. The Court considers that “only ‘compelling reasons’ should lead [it] to refuse its opinion in response to a request falling within its jurisdiction”<sup>86</sup>.

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<sup>80</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 112, para. 58.

<sup>81</sup> General Assembly resolution 79/232 (A/RES/79/232), 19 Dec. 2024 (available at: <https://docs.un.org/en/A/RES/79/232>). The wording of the resolution illustrates these rules and principles of international law and refers in particular to

“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 the Court of 9 July 2004, and the advisory opinion of the Court of 19 July 2024”.

<sup>82</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 233-234, para. 13.

<sup>83</sup> Article 65 of the Statute reads as follows: “The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.”

<sup>84</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 113, para. 64.

<sup>85</sup> *Ibid.*, para. 65; *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, pp. 415-416, para. 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 156-157, para. 44.

<sup>86</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 156-157, para. 44; *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, p. 416, para. 30.

55. The African Union contends that there is no compelling reason for the Court to exercise its discretion in these proceedings. The jurisprudence of the Court appears, at least in theory, to allow the Court to exercise its discretion in two situations: if the request for an advisory opinion seeks to circumvent the principle of consent<sup>87</sup>, or if the Court lacks all the facts needed to answer the questions posed<sup>88</sup>.

56. Neither reason is relevant in the present advisory proceedings. *First*, the enormous amount of documentation transmitted to the Court by the United Nations Secretary-General and the facts that will be presented by the participants in the proceedings will provide the Court with the complete factual basis needed to answer the question posed. *Second*, the question put to the Court is general and does not fall within the scope of a bilateral inter-State dispute. Indeed, it concerns the rights and obligations of Israel, as a Member of the United Nations and as an occupying Power, in relation to the presence and activities of States and international organizations with respect to the provision of humanitarian assistance and support for the right of the Palestinian people to self-determination. As the Court noted in its Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, the fact that States or international organizations may express divergent views on a legal question does not suffice to transform the relevant advisory proceedings into a bilateral dispute<sup>89</sup>. The Court has further observed, in its Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, that a legal question arising in the context of the “Palestinian question” cannot be considered as a “bilateral matter”, and that an advisory opinion requested by the General Assembly in this context cannot be regarded as intended to “circumven[t] the principle of consent to judicial settlement”. According to the Court,

“[t]he involvement of the United Nations organs, and before that the League of Nations, in questions relating to Palestine dates back to the Mandate System . . . Since resolution 181 (II) concerning the partition of Palestine was adopted by the General Assembly in 1947, the Palestinian question has been before the General Assembly, which has considered, debated and adopted resolutions on it almost annually. Thus, this issue is a matter of particular interest and concern to the United Nations. It has been described by the General Assembly as ‘a permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy’ (General Assembly resolution 57/107 of 3 December 2002). The Court therefore considers that the issues raised by the request are part of the Palestinian question, including the General Assembly’s role relating thereto . . . Consequently, the Court cannot, in the exercise of its discretion, decline to give the opinion requested on the ground of circumventing the principle of consent to judicial settlement.”<sup>90</sup>

57. The African Union considers that the question posed by the General Assembly in these proceedings forms part of the “Palestinian question” and cannot therefore be considered a bilateral

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<sup>87</sup> *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 25, para. 33 (“[T]herefore, the lack of consent of an interested State may render the giving of an advisory opinion incompatible with the Court’s judicial character . . . when the circumstances disclose that to give a reply would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent.”).

<sup>88</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 27, para. 40.

<sup>89</sup> *Ibid.*, p. 24, para. 34. See also *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 34.

<sup>90</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 35.

dispute of any kind; nor can the advisory proceedings relating to it be perceived as a means of circumventing the principle of consent. Rather the question arises “in the broader frame of reference” of the Palestinian question and, in particular, the role of the General Assembly therein<sup>91</sup>. Indeed, the General Assembly’s question asks the Court to determine the obligations of Israel in relation to the presence and activities of States and international organizations in 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”<sup>92</sup>.

58. The African Union notes that the question of the Palestinian refugees arose at the same time as the Palestinian question, of which it is an integral part. Indeed, United Nations Mediator Count Folke Bernadotte observed in his progress report of 14 May 1948 that “[a] new and difficult element has entered into the Palestine problem as a result of the exodus of more than 300,000 Arabs from their former homes in Palestine”<sup>93</sup>. He also made clear that “[i]t is, however, undeniable that no settlement can be just and complete if recognition is not accorded to the right of the Arab refugee to return to the home from which he has been dislodged by the hazards and strategy of the armed conflict between Arabs and Jews in Palestine”<sup>94</sup>.

59. The African Union concludes, in the light of the relevant and well-established jurisprudence of the Court, that there is nothing to prevent the latter from exercising its jurisdiction in these advisory proceedings. The Court’s advisory opinion would represent its participation in the activities of the United Nations. It would enable the General Assembly to exercise its prerogatives based on the right of peoples to self-determination, in particular by ensuring the implementation of States’ obligations in this regard<sup>95</sup>, and the “measure of discretion” left to it under international law “with respect to the forms and procedures by which that right is to be realized”<sup>96</sup> in the context of the Palestinian question, in view of the obstacles imposed by Israel to the activities of States and international organizations.

### III. MEANING AND SCOPE OF THE QUESTION POSED BY THE GENERAL ASSEMBLY

60. In the paragraphs below, the African Union will examine the meaning and scope of the General Assembly’s question. The African Union recalls that the question posed by the General Assembly reads as follows:

“The General Assembly,

.....

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<sup>91</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 118, para. 8[8].

<sup>92</sup> General Assembly resolution 79/232 (A/RES/79/232), 19 Dec. 2024 (available at: <https://docs.un.org/en/A/RES/79/232>).

<sup>93</sup> Progress report of the United Nations Mediator on Palestine, General Assembly, Official Records, 3rd session, supplement No. 11 (A/648), 14 May 1948, p. 7, para. 14 (available at: <https://digitallibrary.un.org/record/703168?v=pdf>).

<sup>94</sup> *Ibid.*, part V, p. 14, para. 6.

<sup>95</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 135, para. 163.

<sup>96</sup> *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 36, para. 71.

10. *Decides*, 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 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?’<sup>97</sup>

61. The African Union considers that the Court must interpret this General Assembly resolution in the light of the rules on the interpretation of the resolutions of international bodies and organizations as set out in its jurisprudence<sup>98</sup>. In this regard, the question posed by the General Assembly requires first that the Court take into account its earlier advisory opinions on the Palestinian question (A) and that it determines certain obligations of Israel (B).

**A. The Court’s mandate in these advisory proceedings requires it to take into account its jurisprudential *acquis* relating to the Palestinian question**

62. In the present request for an advisory opinion, the General Assembly asks the Court to examine, “on a priority basis and with the utmost urgency”, “certain additional questions to supplement the Court’s advisory opinion of 19 July 2024”<sup>99</sup>. Even though the sources of international

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<sup>97</sup> See operative para. 10 of General Assembly resolution 79/232 (A/RES/79/232), 19 Dec. 2024 (available at: <https://docs.un.org/en/A/RES/79/232>).

<sup>98</sup> See, by analogy with the rules on the interpretation of resolutions of the Security Council, *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, p. 442, para. 94. The Court notes therein that:

“While the rules on treaty interpretation embodied in Articles 31 and 32 of the Vienna Convention on the Law of Treaties may provide guidance, differences between Security Council resolutions and treaties mean that the interpretation of Security Council resolutions also require that other factors be taken into account. Security Council resolutions are issued by a single, collective body and are drafted through a very different process than that used for the conclusion of a treaty. Security Council resolutions are the product of a voting process as provided for in Article 27 of the Charter, and the final text of such resolutions represents the view of the Security Council as a body. Moreover, Security Council resolutions can be binding on all Member States . . . , irrespective of whether they played any part in their formulation. The interpretation of Security Council resolutions may require the Court to analyse statements by representatives of members of the Security Council made at the time of their adoption, other resolutions of the Security Council on the same issue, as well as the subsequent practice of relevant United Nations organs and of States affected by those given resolutions.”

<sup>99</sup> See preambular para. 23 of General Assembly resolution 79/232 (A/RES/79/232), 19 Dec. 2024 (available at: <https://docs.un.org/en/A/RES/79/232>).

law identified in the question are numerous and not binding on the Court, which may enlarge its examination to include other sources, the Court's task, as set out in the present request for an advisory opinion, is to provide additional guidance on certain questions that were not addressed in its 2024 Opinion. The African Union draws two conclusions from this observation.

63. *First*, the African Union notes that the Court excluded from the scope of its 2024 Advisory Opinion "conduct by Israel in the Gaza Strip in response to the attack carried out against it by Hamas and other armed groups on 7 October 2023"<sup>100</sup>. The African Union contends that these policies and practices of Israel do fall within the scope of the present request for an advisory opinion in so far as they are relevant for answering the question posed by the General Assembly.

64. *Second*, the Court's advisory opinion must be based on the essential components of the Court's jurisprudential *acquis* on the Palestinian question, in particular as regards the right of the Palestinian people to self-determination and to its territory, the legal status of the Occupied Palestinian Territory and Israel's obligations in relation thereto.

65. As concerns the right of the Palestinian people to self-determination, the African Union would recall that, according to the Court, "the existence of a 'Palestinian people' is no longer in issue"<sup>101</sup>. In addition, like any people within the meaning of the principle of the right of peoples to self-determination, the Palestinian people enjoys sovereignty over its territory and has the right to respect for its territorial integrity<sup>102</sup>. Furthermore, "from a legal standpoint, the Occupied Palestinian Territory constitutes a single territorial unit, the unity, contiguity and integrity of which are to be preserved and respected"<sup>103</sup>. Consequently, "Israel, as the occupying Power, has the obligation not to impede the Palestinian people from exercising its right to self-determination, including its right to an independent and sovereign State, over the entirety of the Occupied Palestinian Territory"<sup>104</sup>. By virtue of its right to self-determination, the Palestinian people is "protected against acts aimed at dispersing the population and undermining its integrity as a people"<sup>105</sup>. It enjoys permanent sovereignty over its natural resources<sup>106</sup> and has the right freely to determine its political status and to pursue its economic development<sup>107</sup>.

66. As regards the legal status of the Palestinian territory, the Court has considered that, owing to the authority exercised over that territory by Israel, it is an "occupied territory" within the meaning of Article 42 of the Hague Regulations on the Laws and Customs of War, in respect of which Israel has the status of an occupying Power. Indeed, in its 2004 Opinion, the Court explained that "[t]he territories situated between the Green Line . . . and the former eastern boundary of Palestine under

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<sup>100</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 81. (The Court stated: "Thus, the Court is of the view that the policies and practices contemplated by the request of the General Assembly do not include conduct by Israel in the Gaza Strip in response to the attack carried out against it by Hamas and other armed groups on 7 October 2023.")

<sup>101</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 182-183, para. 118; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 230.

<sup>102</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 237.

<sup>103</sup> *Ibid.*, para. 78.

<sup>104</sup> *Ibid.*, para. 237.

<sup>105</sup> *Ibid.*, para. 239.

<sup>106</sup> *Ibid.*, para. 240.

<sup>107</sup> *Ibid.*, para. 24[1].

the Mandate [i.e. the West Bank and East Jerusalem] were occupied by Israel”<sup>108</sup>. Those territories are still occupied<sup>109</sup>. The Court also observed, based on the information before it, that

“Israel remained capable of exercising, and continued to exercise, certain key elements of authority over the Gaza Strip, 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, despite the withdrawal of its military presence in 2005. This is even more so since 7 October 2023.”<sup>110</sup>

67. As regards Israel’s obligations in the Occupied Palestinian Territory, the Court has concluded that, as an occupying Power, Israel is bound by all the obligations arising under international humanitarian law in respect of the West Bank and East Jerusalem, and that “Israel’s obligations [as an occupying Power] have remained commensurate with the degree of its effective control over the Gaza Strip” following the withdrawal of the Israeli military presence in 2005<sup>111</sup>. In this connection, the Court has observed that:

“the conclusion that Israel’s continued presence in the Occupied Palestinian Territory is illegal does not release it from its obligations and responsibilities under international law, particularly the law of occupation, towards the Palestinian population and towards other States in respect of the exercise of its powers in relation to the territory until such time as its presence is brought to an end. It is the effective control of a territory, regardless of its legal status under international law, which determines the basis of the responsibility of a State for its acts affecting the population of the territory or other States”<sup>112</sup>.

68. Specifically, the Court has observed that Israel is bound by its international obligations under the Geneva Convention relative to the Protection of Civilian Persons in Time of War, which it signed on 12 August 1949, and which entered into force for it on 21 October 1950, in accordance with Article 153 of that instrument. The Court has also determined that Israel is bound by the obligations arising from the Hague Regulations on the Laws and Customs of War, which codify international customary law<sup>113</sup>. Israel is further bound by its obligations under international human rights law in the Occupied Palestinian Territory, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights<sup>114</sup>, as well

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<sup>108</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 167, para. 78.

<sup>109</sup> *Ibid.*, p. 171, para. 87.

<sup>110</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 93.

<sup>111</sup> *Ibid.*, para. 94.

<sup>112</sup> *Ibid.*, para. 264.

<sup>113</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 172, para. 89; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 96.

<sup>114</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 100; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 180-181, paras. 111-112.

as the International Convention on the Elimination of All Forms of Racial Discrimination<sup>115</sup> and the United Nations Convention on the Rights of the Child<sup>116</sup>.

69. In assessing Israel's practices and policies in Palestinian territory, the Court has found that Israel's very presence in the Occupied Palestinian Territory is unlawful. According to the Court,

“the violations by Israel of the prohibition of the acquisition of territory by force and of the Palestinian people's right to self-determination have a direct impact on the legality of the continued presence of Israel, as an occupying Power, in the Occupied Palestinian Territory. The sustained abuse by Israel of its position as an occupying Power, through annexation and an assertion of permanent control over the Occupied Palestinian Territory and continued frustration of the right of the Palestinian people to self-determination, violates fundamental principles of international law and renders Israel's presence in the Occupied Palestinian Territory unlawful.”<sup>117</sup>

70. In the Court's view:

“This illegality relates to the entirety of the Palestinian territory occupied by Israel in 1967. This is the territorial unit across which Israel has imposed policies and practices to fragment and frustrate the ability of the Palestinian people to exercise its right to self-determination, and over large swathes of which it has extended Israeli sovereignty in violation of international law. The entirety of the Occupied Palestinian Territory is also the territory in relation to which the Palestinian people should be able to exercise its right to self-determination, the integrity of which must be respected.”<sup>118</sup>

71. The Court concluded from this that Israel has an obligation to bring an end to its presence in the Occupied Palestinian Territory as rapidly as possible:

“With regard to the Court's finding that Israel's continued presence in the Occupied Palestinian Territory is illegal, the Court considers that such presence constitutes a wrongful act entailing its international responsibility. It is a wrongful act of a continuing character which has been brought about by Israel's violations, through its policies and practices, of the prohibition on the acquisition of territory by force and the right to self-determination of the Palestinian people. Consequently, Israel has an obligation to bring an end to its presence in the Occupied Palestinian Territory as rapidly as possible.”<sup>119</sup>

72. As regards third States, the Court has considered that “all States must co-operate with the United Nations to put th[e] modalities [to ensure the realization of the right of the Palestinian people to self-determination] into effect”. Furthermore,

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<sup>115</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, paras. 100 and 101.

<sup>116</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 189, para. 131.

<sup>117</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 261.

<sup>118</sup> *Ibid.*, para. 262.

<sup>119</sup> *Ibid.*, para. 267.

“Member States are under an obligation not to recognize any changes in the physical character or demographic composition, institutional structure or status of the territory occupied by Israel on 5 June 1967, including East Jerusalem, except as agreed by the parties through negotiations and to distinguish in their dealings with Israel between the territory of the State of Israel and the Palestinian territory occupied since 1967. The Court considers that the duty of distinguishing dealings with Israel between its own territory and the Occupied Palestinian Territory encompasses, *inter alia*, the obligation to abstain from treaty relations with Israel in all cases in which it purports to act on behalf of the Occupied Palestinian Territory or a part thereof on matters concerning the Occupied Palestinian Territory or a part of its territory; to abstain from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof which may entrench its unlawful presence in the territory; to abstain, in the establishment and maintenance of diplomatic missions in Israel, from any recognition of its illegal presence in the Occupied Palestinian Territory; and to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory”<sup>120</sup>.

73. Lastly, “[i]t is for all States, while respecting the Charter of the United Nations and international law, to ensure that any impediment resulting from the illegal presence of Israel in the Occupied Palestinian Territory to the exercise of the Palestinian people of its right to self-determination is brought to an end”<sup>121</sup>.

74. As regards international humanitarian law, the Court has found that “all the States parties to the . . . Geneva Convention [relative to the Protection of Civilian Persons in Time of War] have the obligation, while respecting the Charter of the United Nations and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention”<sup>122</sup>.

**B. The obligations to be determined by the Court in these advisory proceedings  
include the obligations of Israel itself with respect to the provision  
of humanitarian and development assistance**

75. The question posed by the General Assembly identifies the obligations to be determined by the Court by reference to three elements: the debtor of the obligations, the creditors of the obligations and, finally, the conduct required. The debtor of the obligations to be identified by the Court is “Israel, as an occupying Power and as a member of the United Nations”. The creditors are “the United Nations, including its agencies and bodies, other international organizations and third States, in and in relation to the Occupied Palestinian Territory”. As for the conduct required, the obligations concerned are those relating to “the presence and activities” of third States and international organizations, “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”<sup>123</sup>. In other words, the obligations in question are those relating to the provision of humanitarian and development

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<sup>120</sup> *Ibid.*, para. 278.

<sup>121</sup> *Ibid.*, para. 279.

<sup>122</sup> *Ibid.*

<sup>123</sup> See operative para. 10 of General Assembly resolution 79/232 (A/RES/79/232), 19 Dec. 2024 (available at: <https://docs.un.org/en/A/RES/79/232>).



assistance and those relating to support for the Palestinian people in the exercise of its right to self-determination.

76. On this final point, the African Union considers that the scope of the obligations concerned also encompasses the obligations of Israel itself with respect to the provision of humanitarian and development assistance to the Palestinian population and people<sup>124</sup>. These are *erga omnes* obligations and, as such, are owed to the international community as a whole, including, therefore, to third States and international organizations whose mandate extends to these matters. Indeed, the Court has stated in respect of the Geneva Convention relative to the Protection of Civilian Persons in Time of War that:

“[a] great many of the rules of that Convention are so fundamental to the respect of the human person, and elementary considerations of humanity, that they are ‘to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law’ . . . These rules incorporate obligations which are essentially of an *erga omnes* character”<sup>125</sup>.

77. Furthermore, the presence and activities of third States and international organizations in the Occupied Palestinian Territory are the result of the fact that Israel, as the principal debtor, has not fulfilled its obligations to provide the requisite humanitarian and development assistance to the Palestinian population and people<sup>126</sup>. Israel’s obligations in respect of humanitarian and development assistance and support for the right of the Palestinian people to self-determination are therefore linked to the presence and activities of third States and international organizations in the Occupied Palestinian Territory.

78. Lastly, the Court’s mandate requires it to clarify the obligations of Israel concerning the provision of humanitarian and development assistance to the population and people of Palestine. This mandate states that the Court must provide additional guidance to supplement its Advisory Opinion of 19 July 2024 by pronouncing on “certain additional questions”. The African Union contends that the Court’s advisory opinion in the present proceedings would not supplement its 2024 Opinion if it did not determine the obligations of Israel in respect of the above-mentioned questions. Indeed, the 2024 Advisory Opinion devotes just one sentence to the question of humanitarian assistance in the Occupied Palestinian Territory and does not address the question of development assistance. The Court briefly observed that Israel, as an occupying Power, “has the continuing duty to ensure that the local population has an adequate supply of foodstuffs, including water (Article 55 of the Fourth Geneva Convention)”<sup>127</sup>.

79. The African Union notes, however, that, in the contentious proceedings between South Africa and Israel, the Court has recognized that the actions and practices of Israel pose a risk of irreparable prejudice to the plausible rights of the Palestinian people under the Convention on the Prevention and Punishment of the Crime of Genocide. In its Order of 26 January 2024, the Court expressed concern that “the catastrophic humanitarian situation in the Gaza Strip is at serious risk of

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<sup>124</sup> As mentioned above, the Court has previously ruled on the obligations of Israel relating to the right of the Palestinian people to self-determination. See *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, paras. 102, 230 *et seq.*

<sup>125</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 96.

<sup>126</sup> *Ibid.*, paras. 124, 126-133, 241.

<sup>127</sup> *Ibid.*, para. 124. The African Union further observes that nor did the 2004 *Wall* Opinion address Israel’s obligations in respect of humanitarian relief and development assistance in the Palestinian territory.

deteriorating further before the Court renders its final judgment”<sup>128</sup>. It indicated a provisional measure ordering “Israel [to] take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip”<sup>129</sup>. In its Order of 28 March 2024, the Court further stipulated that Israel was obliged to

“[t]ake all necessary and effective measures to ensure, without delay, in full co-operation with the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance, including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians throughout Gaza, including by increasing the capacity and number of land crossing points and maintaining them open for as long as necessary”<sup>130</sup>.

80. Less than [two] month[s] later, on 24 May 2024, the Court found that the changed circumstances of the case called for the adoption of an order modifying the previously indicated provisional measures. In this final Order indicating provisional measures, the Court instructed Israel to “[i]mmediately halt its military offensive, and any other action in the Rafah Governorate, which may inflict on the Palestinian group in Gaza conditions of life that could bring about its physical destruction in whole or in part” and to “[m]aintain open the Rafah crossing for unhindered provision at scale of urgently needed basic services and humanitarian assistance”<sup>131</sup>.

81. The African Union recalls that the Court’s orders indicating provisional measures are binding<sup>132</sup>. They thus impose specific legal obligations pending the final decision of the Court in the case. Nevertheless, the African Union notes that these orders indicating provisional measures do not clarify the content of Israel’s obligations in respect of the provision of humanitarian and development assistance to the Palestinian population and people. Indeed, the principal proceedings between South Africa and Israel concern the latter’s obligations under the Convention on the Prevention and Punishment of the Crime of Genocide and not Israel’s obligations relating to the provision of relief and development assistance to the population and people of Palestine. However, these provisional measures do attest to the disastrous situation in which the Palestinian people finds itself. They also confirm that the question of humanitarian assistance remains an essential part of the Palestinian question and suggest that there is an urgent need to clarify Israel’s obligations in this regard.

82. *In conclusion*, the African Union considers that the question posed by the General Assembly asks the Court to examine: (1) the scope of Israel’s obligation to provide the requisite humanitarian and development assistance to the Palestinian people in the Occupied Palestinian Territory; (2) the scope of Israel’s obligation in respect of the presence and activities of third States and international organizations relating to the provision of humanitarian and development assistance to the Palestinian people under international humanitarian law; (3) Israel’s obligation in respect of the presence and activities of the United Nations and its subsidiary organs in the Occupied Palestinian Territory, in relation to the provision of humanitarian and development assistance and in support of

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<sup>128</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024, para. 72.

<sup>129</sup> *Ibid.*, para. 86 (4); see also *ibid.*, para. 80.

<sup>130</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 28 March 2024, para. 51 (2) (a).

<sup>131</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 24 May 2024, para. 57 (2) (a) and (b).

<sup>132</sup> *LaGrand (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, pp. 502-503, para. 102.

the right of the Palestinian people to self-determination; and (4) Israel's obligation as regards the presence and activities of other international organizations in relation to development assistance and support for the right of the Palestinian people to self-determination.

#### **IV. THE AFRICAN UNION'S ANSWERS TO THE QUESTION POSED IN THE REQUEST FOR AN ADVISORY OPINION**

83. In this section of its written statement, the African Union will provide the Court with some answers in response to the question posed by the General Assembly. In its view, Israel has the following obligations in the Occupied Palestinian Territory. *First*, Israel must guarantee the effective enjoyment of human rights in the Occupied Palestinian Territory, in particular by providing the humanitarian and development assistance required under international humanitarian law **(A)**. *Second*, Israel must respect, protect and facilitate the presence and activities of third States and international organizations in relation to the provision of humanitarian and development assistance in the Occupied Palestinian Territory in accordance with international humanitarian law **(B)**. *Third*, Israel must respect the mandate of the United Nations, including that of subsidiary organs such as UNRWA **(C)**. *Fourth*, Israel must respect its obligations under the Comay-Michelmores Agreement **(D)**. *Fifth*, Israel must respect the privileges and immunities of the United Nations **(E)**. *Sixth*, Israel must immediately repeal the two October 2024 laws and, pending their repeal, render them ineffective **(F)**. *Seventh*, Israel must respect the activities and presence of States in support of the Palestinian people's right to self-determination **(G)**. In light of the importance of the obligations in question and the state of uncertainty in which Israel's overall conduct places the Palestinian people, third States and international organizations, the African Union considers that Israel must provide assurances that it will comply with its above-mentioned obligations **(H)**.

##### **A. Israel must guarantee the effective enjoyment of human rights in the Occupied Palestinian Territory, including the Palestinian people's right to existence and not to be deprived of its own means of subsistence**

84. In the African Union's opinion, Israel's obligations under international humanitarian law must be interpreted and applied in the light of the contemporary system of international law. Indeed, the rules of the law of occupation — most of which were codified before the emergence of the right of peoples to self-determination as a customary rule of international law and before the conclusion of major human rights treaties such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child — have to be interpreted and applied in the light of the entire contemporary legal system. As the Court explained in its Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*,

“an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation. In the domain to which the present proceedings relate, the last fifty years, as indicated above, have brought important developments”<sup>133</sup>.

85. The Court further noted that if it was “faithfully to discharge its functions”, it could not ignore the enrichment of the *corpus juris gentium* that had taken place since the mandates system

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<sup>133</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p. 31, para. 53.

had been established<sup>134</sup>. The same applies in the present proceedings: the Court could not faithfully discharge its functions if it were to ignore that the *corpus juris gentium* of the law of occupation has been fertilized and enriched by human rights, including the right of peoples to self-determination, and in particular their rights to existence and to economic, social and cultural development. Accordingly, the determination and interpretation of the rules of international law with a view to identifying Israel's obligations in relation to humanitarian and development assistance and support for the right of peoples to self-determination must take into account "the substantive development of international law" prompted by human rights and the right of peoples to self-determination<sup>135</sup>. The standards established by this body of rules are used to interpret the content of obligations arising from international humanitarian law in contemporary international law.

86. The African Union would therefore argue that the effective enjoyment by the people of the occupied territory of their human rights, including their rights to existence, self-determination and development, is the standard of conduct to be observed by the occupying Power in respect of the populations of the occupied territory<sup>136</sup>. The African Union notes that the Court has already taken into account the fertilization of international humanitarian law by human rights, including the rights of peoples. In the case concerning *Armed Activities on the Territory of the Congo*, the Court decided that the occupying Power's obligation to protect public order and life had to be interpreted in the light of the enrichment of the law of military occupation by human rights. In that case, the Court held that Uganda was the occupying Power in the territory of Ituri. It concluded that Uganda

"was under an obligation, according to Article 43 of the Hague Regulations of 1907, to take all the measures in its power to restore, and ensure, as far as possible, public order and safety in the occupied area, while respecting, unless absolutely prevented, the laws in force in the DRC. This obligation comprised the duty to secure respect for the applicable rules of international human rights law and international humanitarian law, to protect the inhabitants of the occupied territory against acts of violence, and not to tolerate such violence by any third party."<sup>137</sup>

87. In the paragraphs below, the African Union will interpret the relevant obligations under the law of occupation in the light of the contemporary system of international law, in particular human rights and the rights of peoples to self-determination, including the right of the Palestinian people to existence and to economic, social and cultural development. On this basis, the African Union contends that international humanitarian law places an obligation on Israel to ensure the provision of food and medical supplies (1), to ensure and maintain medical services in the Occupied Palestinian Territory (2), to facilitate the proper working of all institutions devoted to the care and education of children in the Occupied Palestinian Territory (3), and to ensure the enjoyment and effective exercise by the Palestinian people of its right to development (4).

## **1. Israel, as an occupying Power, is under an obligation to ensure the provision of food and medical supplies to the Palestinian population**

88. The African Union maintains that Israel, as an occupying Power, is under an obligation to ensure the provision of food and medical supplies to the Palestinian population. Article 55,

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<sup>134</sup> *Ibid.*

<sup>135</sup> *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Preliminary Objections, Judgment, I.C.J. Reports 2007 (II), p. 599, para. 39.

<sup>136</sup> *Ibid.*

<sup>137</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 231, para. 178.

paragraph 1, of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, which was ratified by Israel on 6 July 1951, provides:

“To 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; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.”<sup>138</sup>

89. The Commentary of the International Committee of the Red Cross (hereinafter the “ICRC”) explains both the importance and the content of this obligation in the following terms:

“During recent conflicts thousands of human beings suffered from starvation during the occupation of the country. Their destitution was made still worse by requisitioning. The absence of food and medical supplies and unhygienic conditions encouraged the spreading of epidemics. The spirit behind Article 55 represents a happy return to the traditional idea of the law of war, according to which belligerents sought to destroy the power of the enemy State, and not individuals. The rule that the Occupying Power is responsible for the provision of supplies for the population places that Power under a definite obligation to maintain at a reasonable level the material conditions under which the population of the occupied territory lives. The inclusion of the phrase ‘to the fullest extent of the means available to it’ shows, however, that the authors of the Convention did not wish to disregard the material difficulties with which the Occupying Power might be faced in wartime (financial and transport problems, etc.); but the Occupying Power is nevertheless under an obligation to utilize all the means at its disposal.”<sup>139</sup>

90. In the light of the contemporary legal system, in particular human rights, including the right of peoples to “existence” and not to be “deprived of [their] own means of subsistence”<sup>140</sup>, Israel, as an occupying Power, is under an obligation to, among other things, guarantee the right of the Palestinian population in the Occupied Palestinian Territory “to have regular, permanent and unrestricted access — either directly or by means of financial purchases — to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective,

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<sup>138</sup> Art. 55, para. 1, of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, signed on 12 Aug. 1949 and entered into force on 21 Oct. 1950 (available at: [https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280158b1a&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280158b1a&clang=_en)). See also, as a reflection of a customary norm of international law, Art. 69, para. 1, of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 (available at: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-71/commentary/1987>) (providing that: “In addition to the duties specified in Article 55 of the Fourth Convention concerning food and medical supplies, the Occupying Power shall, to the fullest extent of the means available to it and without any adverse distinction, also ensure the provision of clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship.”).

<sup>139</sup> O. M. Uhler *et al.* (eds.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. IV (*Geneva Convention relative to the Protection of Civilian Persons in Time of War*), Geneva, ICRC, 1956, p. 333.

<sup>140</sup> Art. 1, para. 2, of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, *UNTS*, Vol. 999, p. 171 (available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en)). See also Art. 20, para. 1, of the African Charter on Human and Peoples’ Rights, 1 June 1981, (available at: [https://au.int/sites/default/files/treaties/36390-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf)). Regarding this provision, see M. Hébié, “Article 20 alinéa 1” in M. Kamto (ed.), *La Charte africaine des droits de l’Homme et des peuples et le protocole y relatif portant création de la Cour africaine des droits de l’Homme*, Brussels, Bruylant, 2011, pp. 452-487.

fulfilling and dignified life free of fear”<sup>141</sup>. Israel must ensure, under these same conditions, regular, permanent and unrestricted access to quantitatively and qualitatively adequate medical supplies.

## **2. Israel is under an obligation to ensure and maintain medical and hospital services in the Occupied Palestinian Territory and not to impede their functioning**

91. The African Union is of the view that Israel is under an obligation to guarantee the effective enjoyment of the right to health in the Occupied Palestinian Territory<sup>142</sup>. Indeed, Article 56, paragraph 1, of the Geneva Convention relative to the Protection of Civilian Persons in Time of War provides that:

“To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the co-operation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories shall be allowed to carry out their duties.”<sup>143</sup>

92. According to the ICRC Commentary to that provision, the occupying Power must take the following measures, among others:

“supervision of public health, education of the general public, the distribution of medicines, the organization of medical examinations and disinfection, the establishment of stocks of medical supplies, the despatch of medical teams to areas where epidemics are raging, the isolation and accommodation in hospital of people suffering from communicable diseases, and the opening of new hospitals and medical centres”<sup>144</sup>.

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<sup>141</sup> See the definition provided by the Special Rapporteur on the right to food, “The right to food defined” (available at: <https://www.ohchr.org/en/special-procedures/sr-food/about-right-food-and-human-rights>). This definition is based on the criteria formulated by the Committee on Economic, Social and Cultural Rights: Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment 12, E/C.12/1999/5, 12 May 1999, paras. 6-7 (available at: <https://docs.un.org/en/E/C.12/1999/5>).

<sup>142</sup> World Health Organization, Health conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan: Report by the Director-General, Seventy-sixth World Health Assembly, provisional agenda item 18, A76/15, 17 May 2023, p. 4 (available at: [https://apps.who.int/gb/ebwha/pdf\\_files/WHA76/A76\\_15-en.pdf](https://apps.who.int/gb/ebwha/pdf_files/WHA76/A76_15-en.pdf)) (stating that: “As the occupying power, Israel retains responsibilities for upholding respect, protection, and fulfilment of the right to health of all Palestinians living under occupation in the West Bank, including east Jerusalem, and Gaza Strip. Israel’s responsibilities extend to ensuring equity and non-discrimination in its provision of health care, including non-discrimination on grounds of race, age and sex; to upholding progressive realization and ensuring non-retrogression of the right to health for Palestinians under its effective control”).

<sup>143</sup> Art. 56, para. 1, of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, signed on 12 Aug. 1949 and entered into force on 21 Oct. 1950 (available at: [https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280158b1a&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280158b1a&clang=_en)).

<sup>144</sup> O. M. Uhler *et al.* (eds.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. IV (*Geneva Convention relative to the Protection of Civilian Persons in Time of War*), Geneva, ICRC, 1956, pp. 337-338.

93. In the light of contemporary international human rights law, including the right of peoples to “existence” and not to be “deprived of [their] own means of subsistence”<sup>145</sup>, Israel must ensure that the population in the Occupied Palestinian Territory enjoys “equal and timely access to basic preventive, curative, rehabilitative health services and health education; regular screening programmes; appropriate treatment of prevalent diseases, illnesses, injuries and disabilities, preferably at community level; the provision of essential drugs; and appropriate mental health treatment and care”<sup>146</sup>. Israel must also ensure “the improvement and furtherance of participation of the population in the provision of preventive and curative health services, such as the organization of the health sector, the insurance system and, in particular, participation in political decisions relating to the right to health taken at both the community and national levels”<sup>147</sup>.

### **3. Israel must take measures to guarantee the effective enjoyment of the right to education in the Occupied Palestinian Territory**

94. The African Union contends that children living in the Occupied Palestinian Territory, like the entire civilian population, are protected persons within the meaning of Article 6 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War. As such, they are entitled to all the protections associated with this status, as provided for by Article 27 of the Convention, which reads as follows:

“Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.”<sup>148</sup>

95. The African Union would note, however, that in addition to the rights and immunities deriving from their status as protected persons, Palestinian children are entitled to further protection, in particular as regards education. Indeed, according to Article 50 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War:

“The Occupying Power shall, with the co-operation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.

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<sup>145</sup> Art. 1, para. 2, of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, *UNTS*, Vol. 999, p. 171 (available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-4&chapter=4&clang=_en)). See also Art. 20, para. 1, of the African Charter on Human and Peoples’ Rights, 1 June 1981 (available at: [https://au.int/sites/default/files/treaties/36390-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_f.pdf](https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_f.pdf)). On this provision, see M. Hébié, “Article 20 alinéa 1” in M. Kamto (ed.), *La Charte africaine des droits de l’Homme et des peuples et le protocole y relatif portant création de la Cour africaine des droits de l’Homme*, Brussels, Bruylant, 2011, pp. 452-487.

<sup>146</sup> Committee on Economic, Social and Cultural Rights, Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 14, E/C.12/2000/4, 11 Aug. 2000, para. 17 (available at: <https://docs.un.org/en/E/C.12/2000/4>).

<sup>147</sup> *Ibid.*

<sup>148</sup> Art. 27 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, signed on 12 Aug. 1949 and entered into force on 21 Oct. 1950 (available at: [https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280158b1a&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280158b1a&clang=_en)).

Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education”<sup>149</sup>.

96. The ICRC interprets the verb “facilitate” in this provision as obliging the occupying Power “not only to avoid interfering with their activities, but also to support them actively and even encourage them if the responsible authorities of the country fail in their duty”<sup>150</sup>.

97. The African Union considers that, read in the light of human rights, this obligation requires Israel to

“respect the availability of education by not closing private schools; protect the accessibility of education by ensuring that third parties, including parents and employers, do not stop girls from going to school; fulfil (facilitate) the acceptability of education by taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality for all; fulfil (provide) the adaptability of education by designing and providing resources for curricula which reflect the contemporary needs of students in a changing world; and fulfil (provide) the availability of education by actively developing a system of schools, including building classrooms, delivering programmes, providing teaching materials, training teachers and paying them domestically competitive salaries”<sup>151</sup>.

98. The African Union recalls that, by resolution 57/188 of 6 February 2003 on the Situation of and assistance to Palestinian children, the General Assembly demanded that

“Israel, the occupying Power, respect relevant provisions of the Convention on the Rights of the Child and comply fully with the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in order to ensure the well-being and protection of Palestinian children and their families”<sup>152</sup>.

#### **4. Israel is under an obligation to take positive measures to guarantee the effective enjoyment by the Palestinian people of its right to social, economic and cultural development**

99. The African Union recalls that Israel is bound by the 1907 Hague Regulations, in so far as they reflect customary international law<sup>153</sup>. Pursuant to Article 43 of the Regulations:

“The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far

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<sup>149</sup> *Ibid.*, Art. 50, para. 1.

<sup>150</sup> O. M. Uhler *et al.* (eds.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. IV (*Geneva Convention relative to the Protection of Civilian Persons in Time of War*), Geneva, ICRC, 1956, p. 308.

<sup>151</sup> Economic and Social Council, Implementation of the International Covenant on Economic, Social and Cultural Rights; General Comment No. 13 (Twenty-first session, 1999), The right to education (article 13 of the Covenant), E/C.12/1999/10, para. 50 (available at: <https://docs.un.org/en/E/C.12/1999/10>).

<sup>152</sup> General Assembly resolution 58/155 (A/RES/58/155), Situation of and assistance to Palestinian children, 26 Feb. 2004 (available at: <https://documents.un.org/doc/undoc/gen/n03/503/89/pdf/n0350389.pdf>).

<sup>153</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 172, para. 89; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 96.



as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”<sup>154</sup>

100. In the African Union’s view, this provision must be interpreted in accordance with the customary rules of interpretation as codified in Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties<sup>155</sup>, in the light of the principle of the right of peoples to economic, social and cultural development. In this respect, the African Union considers that in contemporary international law, measures to ensure “public order and safety” include those to be taken to guarantee the effective enjoyment by peoples of their right to social, economic and cultural development. The *travaux préparatoires* of the Hague Regulations suggest that the term “public order” in Article 43 of the Regulations refers to “material, civil, social and political order”. The term “public . . . safety”, for its part, refers to the “social functions and ordinary transactions forming part of everyday life”<sup>156</sup>.

101. In this regard, the African Union asserts that the occupying Power’s obligation under Article 43 of the Hague Regulations to take all the measures in its power to “ensure, as far as possible, public order and safety” must be interpreted in the light of the Palestinian people’s right freely to pursue its economic, social and cultural development, as a “key element of the right to self-determination”<sup>157</sup>. Indeed, the Palestinian people’s inalienable right to economic, social and cultural development cannot be put to one side pending the termination of the occupation. Therefore, Israel must not only abstain from obstructing the Palestinian people’s right to development<sup>158</sup>; it must also take the necessary positive measures to allow them to exercise and effectively enjoy that right. Only then will the Palestinian people not be kept in “a state of suspension and uncertainty”, to use the words of the Court<sup>159</sup>.

#### **B. Israel must respect, facilitate and protect the presence and activities of third States and international organizations in relation to the provision of humanitarian and development assistance in the Occupied Palestinian Territory**

102. The African Union maintains that Israel, as an occupying Power, is under an obligation to allow the population and people of Palestine to benefit from international solidarity, in particular

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<sup>154</sup> Art. 43 of the Regulations concerning the Laws and Customs of War on Land, annexed to Convention (IV) respecting the Laws and Customs of War on Land, adopted on 18 Oct. 1907 and entered into force on 26 Jan. 1910 (available at: <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907>).

<sup>155</sup> *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, p. 598, para. 106.

<sup>156</sup> See *Actes de la conférence de Bruxelles de 1874*, Paris, Librairie des publications législatives, 1874, p. 23 (according to the *Actes de la conférence*, “Mr le Baron asked what was meant by *order*. There was material, civil, social and political order. The delegate from Belgium presumed that only safety or general security was intended; as for the term ‘public . . . safety’, he thought it referred to social functions and ordinary transactions forming part of everyday life. The Commission interpreted this word in the same way as Baron Lambermont.” [*Translation by the Registry.*]) (available at: <https://bibliotheque-numerique.diplomatie.gouv.fr/ark:/12148/bpt6k5813563c/f23.item.texteImage>).

<sup>157</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 241 (in which the Court affirms that “a key element of the right to self-determination is the right of a people freely to determine its political status and to pursue its economic, social and cultural development. This right is reflected in resolutions 1514 (XV) and 2625 (XXV), and it is enshrined in common Article 1 of the ICCPR and the ICESCR”).

<sup>158</sup> *Ibid.*, para. 242 (in which the Court observes that “the violation of Palestinians’ rights — including the right to liberty and security of person, and the freedom of movement — has repercussions on the Palestinian people as a whole, frustrating its economic, social and cultural development” and concludes that “Israel’s policies and practices obstruct the right of the Palestinian people freely to determine its political status and to pursue its economic, social and cultural development”).

<sup>159</sup> *Ibid.*, para. 257.

by receiving any relief provided to them by third States and international organizations (1). In this regard, Israel must protect humanitarian personnel and allow them to provide due support to the Palestinian population and people in a secure environment (2).

**1. Israel must not impede but must rather facilitate the provision of humanitarian and development assistance to the Palestinian people**

103. The African Union contends that as an occupying Power, Israel is under an obligation to facilitate relief schemes on behalf of the Palestinian population and people in the Occupied Palestinian Territory<sup>160</sup>. Under the terms of Article 59 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War:

“If 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 shall facilitate them by all the means at its disposal.

Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing.

All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection.

A Power granting free passage to consignments on their way to territory occupied by an adverse Party to the conflict shall, however, have the right to search the consignments, to regulate their passage according to prescribed times and routes, and to be reasonably satisfied through the Protecting Power that these consignments are to be used for the relief of the needy population and are not to be used for the benefit of the Occupying Power.”<sup>161</sup>

104. The African Union will discuss below a few aspects of the meaning and scope of this provision.

105. *First*, the African Union considers that “relief schemes”, within the meaning of Article 59 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, include not only humanitarian assistance, but also actions in support of the economic, social and cultural

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<sup>160</sup> General Assembly resolution 46/182, Strengthening of the coordination of humanitarian emergency assistance of the United Nations, 19 Dec. 1991 (the General Assembly emphasized this obligation requiring Israel to authorize and facilitate access to humanitarian assistance in the most vulnerable areas of the Occupied Palestinian Territory).

<sup>161</sup> Art. 59, para. 1, of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, signed on 12 Aug. 1949 and entered into force on 21 Oct. 1950, (available at: [https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280158b1a&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280158b1a&clang=_en)).

development of the Palestinian people. Indeed, humanitarian assistance goes hand in hand with development assistance in the case of the Palestinian people<sup>162</sup>.

106. *Second*, there is no question that the Palestinian territory is inadequately supplied. Indeed, the restrictions imposed by Israel, in particular the blockade on Gaza and the constraints on trade and transport in the West Bank, limit the provision of essential goods<sup>163</sup>. The African Union recalls that, in its Order of 26 January 2024 in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, the Court indicated that “[t]he State of Israel shall take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip”<sup>164</sup>.

107. Moreover, it is a matter of public record that the Palestinian economy is largely dependent on international aid. In its 2024 Advisory Opinion, the Court observed that Israel’s unlawful policies and practices have “repercussions on the Palestinian people as a whole”, causing the “entrenchment of the Palestinian economy’s asymmetric dependence on Israel, and exacerbation of Palestinian institutional dependence on foreign aid”<sup>165</sup>.

108. *Third*, the African Union notes that in providing that the occupying Power “shall agree to” relief schemes on behalf of the population of the occupied territory, and that it “shall facilitate” them by all the means at its disposal, the above-mentioned Article 59 expressly calls upon the Power to “co-operate wholeheartedly in the rapid and scrupulous execution of these schemes”<sup>166</sup>. The means by which the occupying Power may co-operate are many and varied, including transport, stores and facilities for distributing and supervising agencies<sup>167</sup>.

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<sup>162</sup> See United Nations Sustainable Development Cooperation Framework, State of Palestine, 2023-2025, p. 39 (available at: [https://palestine.un.org/sites/default/files/2023-03/UNSDCF%202023-2025\\_Final.pdf](https://palestine.un.org/sites/default/files/2023-03/UNSDCF%202023-2025_Final.pdf)) (stating that: “The strategy outlined in this UNSDCF [United Nations Sustainable Development Cooperation Framework, State of Palestine, 2023-2025] is complementary to the humanitarian operations in Palestine as articulated in the Humanitarian Response Plan (HRP), given the common focus on addressing vulnerability. The UN’s humanitarian and development interventions in Palestine will target some of the same vulnerable groups, with the HRP addressing immediate needs and protection concerns as well as life-threatening shocks, while the UNSDCF will focus on medium term and longer-term structural drivers of vulnerability. An important area of intersection between humanitarian and development efforts aims to improve the resilience of vulnerable groups and enhance coping strategies”).

<sup>163</sup> United Nations, Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan, Note by the Secretary-General, 18 July 2024 (available at: <https://documents.un.org/doc/undoc/gen/n24/214/80/pdf/n2421480.pdf>).

<sup>164</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024, para. 80.

<sup>165</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 242 (quoting from Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan, UN doc. A/78/127-E/2023/95, 30 June 2023, para. 130). See also J. Wildeman and A. Tartir, “Political Economy of Foreign Aid in the Occupied Palestinian Territories: A Conceptual Framing”, in A. Tartir, T. Dana and T. Seidel (eds.), *Political Economy of Palestine, Middle East Today: Critical, Interdisciplinary, and Decolonial Perspectives*, Cham, Palgrave Macmillan, 2021, p. 227 (available at: <https://alaatartir.com/wp-content/uploads/2021/06/chapter-10-political-economy-of-palestine.pdf>) (asserting that “[t]he Palestinian economy is an aid-dependent economy surviving under an ongoing Israeli settler colonial occupation”).

<sup>166</sup> O. M. Uhler *et al.* (eds.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. IV (*Geneva Convention relative to the Protection of Civilian Persons in Time of War*), Geneva, ICRC, 1956, p. 345.

<sup>167</sup> *Ibid.*

109. *Fourth*, the occupying Power must agree to these relief schemes regardless of who implements them. They may thus be carried out by neutral States, by the occupying Power itself or by humanitarian organizations. Pursuant to Article 63 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, recognized National Red Cross Societies must be able to pursue their activities in accordance with Red Cross Principles. Other relief societies must be permitted to continue their humanitarian activities under similar conditions<sup>168</sup>. In the same vein, under Article 62 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, “[s]ubject to imperative reasons of security, protected persons in occupied territories shall be permitted to receive the individual relief consignments sent to them”.

110. *Fifth*, the occupying Power must facilitate the timely availability of relief consignments, including the transit and transport, free of charge, of relief consignments on their way to occupied territories. To facilitate such relief, the occupying Power must also exempt relief consignments from customs duties. Pursuant to Article 61 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War:

“Such consignments shall be exempt in occupied territory from all charges, taxes or customs duties unless these are necessary in the interests of the economy of the territory. The Occupying Power shall facilitate the rapid distribution of these consignments. All Contracting Parties shall endeavour to permit the transit and transport, free of charge, of such relief consignments on their way to occupied territories.”

111. In conclusion, the African Union would emphasize that the above-mentioned obligations relating to the facilitation of relief schemes implemented by third parties in no way relieves the occupying Power itself of its obligations. Indeed, pursuant to Article 60 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War:

“Relief consignments shall in no way relieve the Occupying Power of any of its responsibilities under Articles 55, 56 and 59. The Occupying Power shall in no way whatsoever divert relief consignments from the purpose for which they are intended, except in cases of urgent necessity, in the interests of the population of the occupied territory and with the consent of the Protecting Power.”

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<sup>168</sup> Art. 63 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, signed on 12 Aug. 1949 and entered into force on 21 Oct. 1950 (available at: [https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280158b1a&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280158b1a&clang=_en)). This provision reads as follows:

“Subject to temporary and exceptional measures imposed for urgent reasons of security by the Occupying Power:

- (a) recognized National Red Cross (Red Crescent, Red Lion and Sun) Societies shall be able to pursue their activities in accordance with Red Cross Principles, as defined by the International Red Cross Conferences. Other relief societies shall be permitted to continue their humanitarian activities under similar conditions;
- (b) the Occupying Power may not require any changes in the personnel or structure of these societies, which would prejudice the aforesaid activities.

The same principles shall apply to the activities and personnel of special organizations of a non-military character, which already exist or which may be established, for the purpose of ensuring the living conditions of the civilian population by the maintenance of the essential public utility services, by the distribution of relief and by the organization of rescues.”

## **2. Israel is under an obligation to protect personnel participating in relief schemes in aid of the Palestinian population**

112. The African Union maintains that, as an occupying Power, Israel is under an obligation to ensure the protection of humanitarian personnel and personnel providing development assistance to the Palestinian population and people. The African Union would note that, as civilians, such personnel must not be made the object of any attacks<sup>169</sup>. This point has notably been recalled by the Security Council<sup>170</sup>.

113. In addition to this general protection, relief personnel are entitled to specific protection. In this regard, Israel is under an obligation to respect and protect personnel whose presence and activities are intended to provide humanitarian or development assistance in the Occupied Palestinian Territory. To this effect, Article 20 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War provides that:

“Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases, shall be respected and protected.”<sup>171</sup>

114. The terms “protected” and “respected” in this provision are to be understood in the sense that medical personnel must not be deliberately attacked or hindered in the exercise of their activities. State practice as it emerges from military manuals confirms this interpretation<sup>172</sup>. Moreover, under the customary norm of international law reflected in Article 71 of Additional Protocol I to the Geneva Conventions<sup>173</sup>, it is incumbent on Israel to respect and protect personnel participating in relief actions<sup>174</sup>.

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<sup>169</sup> Art. 20 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, signed on 12 Aug. 1949 and entered into force on 21 Oct. 1950, (available at: [https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280158b1a&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280158b1a&clang=_en)).

<sup>170</sup> Security Council resolution 2730 (2024), adopted on 24 May 2024 (available at: [https://docs.un.org/en/S/RES/2730\(2024\)](https://docs.un.org/en/S/RES/2730(2024))).

<sup>171</sup> Art. 20, para. 1, of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, signed on 12 Aug. 1949 and entered into force on 21 Oct. 1950, (available at: [https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280158b1a&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280158b1a&clang=_en)).

<sup>172</sup> J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law*, Vol. I (*Rules*), ICRC, Bruylant, 2006, pp. 83-84 (Rule 25) (stating that: “According to the UK Military Manual and US Field Manual, the term ‘respect and protection’ means that medical personnel ‘must not knowingly be attacked, fired upon, or unnecessarily prevented from discharging their proper functions’. Germany’s Military Manual and Switzerland’s Basic Military Manual contain a similar understanding. Spain’s LOAC Manual states that protection includes the duty to defend, assist and support medical personnel when needed. The military manuals of Benin, Croatia, Madagascar, Nigeria and Togo state that medical personnel may not be attacked, and must be allowed to carry out their tasks as long as the tactical situation permits.”).

<sup>173</sup> See *ibid.*, p. 105 (explaining that: “State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts. Respect for and protection of humanitarian relief personnel is a corollary of the prohibition of starvation (see Rule 53), as well as the rule that the wounded and sick must be collected and cared for (see Rules 109-110), which are applicable in both international and non-international armed conflicts. The safety and security of humanitarian relief personnel is an indispensable condition for the delivery of humanitarian relief to civilian populations in need threatened with starvation.”).

<sup>174</sup> Art. 71 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 (available at: <https://ihl-databases.icrc.org/fr/ihl-treaties/api-1977/article-71/commentary/1987>) (providing that: “1. Where necessary, relief personnel may form part of the assistance provided in any relief action, in particular for the transportation and distribution of relief consignments; the participation of such personnel shall be subject to the approval of the Party in whose territory they will carry out their duties. 2. Such personnel shall be respected and protected.”).

115. The African Union cannot fail to draw attention to Article 8 of the Rome Statute of the International Criminal Court, according to which war crimes include:

“Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict”<sup>175</sup>.

116. The African Union would also recall that by resolution 2730 (2024), the Security Council called upon all States to respect and protect not only United Nations and associated personnel, but all humanitarian personnel, including national and locally recruited personnel, in accordance with their obligations under international law<sup>176</sup>. By resolution 1502 (2003), the Security Council previously urged Israel,

“as set forth in international humanitarian law, including the Geneva Conventions and the Hague Regulations, to allow full unimpeded access by humanitarian personnel to all people in need of assistance . . . and to promote the safety, security and freedom of movement of humanitarian personnel and United Nations and its associated personnel and their assets”<sup>177</sup>.

117. The African Union further recalls that the obligation to protect and respect humanitarian personnel includes the prohibition of harassment, intimidation and arbitrary detention of humanitarian workers. In practice, “mistreatment, physical and psychological violence, murder, beating, abduction, hostage-taking, harassment, kidnapping, illegal arrest and detention”, among other things, have been considered a breach of this obligation<sup>178</sup>. The International Residual Mechanism established to complete the remaining work of the International Criminal Tribunal for the former Yugoslavia condemned the hostage-taking and detention of United Nations personnel in Serbia in the case of *Prosecutor v. Ratko Mladić*<sup>179</sup>.

118. The African Union deplores the fact that Israel has carried out airstrikes against humanitarian convoys and premises used by humanitarian workers despite the fact that their respective organizations communicated their itinerary or location to the authorities in the hope that they would be protected<sup>180</sup>. These deliberate and wholly illegal attacks have caused many casualties and injuries as well as substantial material damage among both United Nations personnel and staff members of other humanitarian organizations, such as the American Near East Refugee Aid Organization (Anera), Medical Aid for Palestine (MAP), Doctors without Borders (MSF), the

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<sup>175</sup> Art. 8, para. 2 (b) (i), of the Rome Statute of the International Criminal Court, signed on 17 July 1998 and entered into force on 1 July 2002 (available at: [https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280025774&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280025774&clang=_en)).

<sup>176</sup> Security Council resolution 2730 (2024), 24 May 2024 (available at: [https://docs.un.org/en/S/Res/2730\(2024\)](https://docs.un.org/en/S/Res/2730(2024))).

<sup>177</sup> Security Council resolution 1502 (2003), 26 Aug. 2003 (available at: <https://documents.un.org/doc/undoc/gen/n03/478/03/pdf/n0347803.pdf>).

<sup>178</sup> J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law*, Vol. I (*Rules*), ICRC, Bruylant, 2006, p. 108.

<sup>179</sup> *Prosecutor v. Ratko Mladić* (MICT-13-56-A), Appeals Chamber, International Residual Mechanism for Criminal Tribunals, Judgement of 8 June 2021, para. 501.

<sup>180</sup> Human Rights Watch, “Gaza: Israelis Attacking Known Aid Worker Locations”, 14 May 2024 (available at: <https://www.hrw.org/news/2024/05/14/gaza-israelis-attacking-known-aid-worker-locations>).

International Rescue Committee (IRC) and World Central Kitchen (WCK). According to the United Nations Office at Geneva, the attacks made 2024 the “deadliest year ever for aid workers”<sup>181</sup>.

**C. Israel is under an obligation to give every assistance to United Nations organs in the fulfilment of their mission**

119. The African Union contends that, as a Member State of the United Nations, Israel is under an obligation to respect the mandate of the Organization’s organs **(1)** and must give them every assistance in its fulfilment **(2)**. This conclusion follows from an interpretation of the relevant provisions of the United Nations Charter, taking into account its “special characteristics” as an instrument establishing an international organization<sup>182</sup>. As the Court noted in its Advisory Opinion on the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*,

“[f]rom a formal standpoint, the constituent instruments of international organizations are multilateral treaties, to which the well-established rules of treaty interpretation apply.

.....

But the constituent instruments of international organizations are also treaties of a particular type; their object is to create new subjects of law endowed with a certain autonomy, to which the parties entrust the task of realizing common goals. Such treaties can raise specific problems of interpretation owing, *inter alia*, to their character which is conventional and at the same time institutional; the very nature of the organization created, the objectives which have been assigned to it by its founders, the imperatives associated with the effective performance of its functions, as well as its own practice, are all elements which may deserve special attention when the time comes to interpret these constituent treaties.”<sup>183</sup>

**1. Israel is under an obligation to respect the mandate of United Nations organs, in particular that of UNRWA, pursuant to Article 2, paragraph 2, of the Charter**

120. The African Union asserts that Israel must respect the mandate of the principal and subsidiary organs of the United Nations. Indeed, pursuant to Article 2, paragraph 2, of the Charter: “All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.”<sup>184</sup>

121. The African Union considers that the “obligations assumed” by States under the Charter necessarily include the obligation to respect its provisions setting out the matters falling within the competence of the Organization’s various organs. Indeed:

“The Charter has not been content to make the Organization created by it merely a centre ‘for harmonizing the actions of nations in the attainment of these common ends’

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<sup>181</sup> United Nations Office at Geneva, 2024, “2024 deadliest year ever for aid workers”, 22 Nov. 2024 (available at: <https://www.ungeneva.org/en/news-media/news/2024/11/100596/2024-deadliest-year-ever-aid-workers-un-humanitarian-office-reports>).

<sup>182</sup> *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion, I.C.J. Reports 1962, p. 157 (stating that treaties establishing international organizations “hav[e] certain special characteristics”).

<sup>183</sup> *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, I.C.J. Reports 1996 (I), pp. 74-75, para. 19.

<sup>184</sup> Art. 2, para. 2, of the United Nations Charter.

(Article 1, para. 4). It has equipped that centre with organs, and has given it special tasks. It has defined the position of the Members in relation to the Organization by requiring them to give it every assistance in any action undertaken by it (Article 2, para. 5)”<sup>185</sup>.

122. To this end, Member States of the United Nations must not in any way impede the exercise by the principal and subsidiary organs of the United Nations of their competence and prerogatives under the Charter. For both the General Assembly and for Security Council decisions adopted under Article 25 of the Charter, “[t]o hold otherwise would be to deprive this principal organ of its essential functions and powers under the Charter”<sup>186</sup>.

123. The African Union contends that Israel must respect the exercise by the General Assembly of its full competence, in particular its “role”<sup>187</sup> in relation to the exercise of the right of peoples to self-determination. The African Union recalls that the General Assembly has broad competence and that, pursuant to Article 1[0] of the Charter, it may “discuss any questions or any matters within the scope of the present Charter”<sup>188</sup>. This includes matters relating to decolonization. Indeed, the Charter includes respect for the principle of equal rights and self-determination of peoples as one of the purposes of the Organization. In practice, the General Assembly “has a long and consistent record in seeking to bring colonialism to an end” and has “[f]rom the earliest days of the United Nations, . . . played an active role in matters of decolonization”<sup>189</sup>. Moreover, the African Union observes that pursuant to Article 1, paragraph 3, of the Charter, solving problems of a humanitarian character, among others, is one of the Organization’s fundamental purposes<sup>190</sup>. Such matters therefore fall within its competence.

124. In the African Union’s view, respect for the competence of the General Assembly entails respect for that of its subsidiary organs. Indeed, Article 22 of the Charter provides that: “The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.”

125. In its Advisory Opinion on *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, the Court clarified that “the functions and powers conferred by the Charter on the General Assembly are not confined to discussion, consideration, the initiation of studies and the making of recommendations” and that “they are not merely hortatory”<sup>191</sup>. The Court accordingly noted that “when the Organization takes action which warrants the assertion that it was

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<sup>185</sup> *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, I.C.J. Reports 1949, p. 178.

<sup>186</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p. 54, para. 116.

<sup>187</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019 (I), p. 118, para. 88.

<sup>188</sup> Art. 12 of the Charter.

<sup>189</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019 (I), p. 118, para. 87.

<sup>190</sup> See Art. 1, para. 3, of the United Nations Charter. See also Arts. 55 and 56 of the Charter.

<sup>191</sup> *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion, I.C.J. Reports 1962, p. 163.



appropriate for the fulfilment of one of the stated purposes of the United Nations, the presumption is that such action is not *ultra vires* the Organization”<sup>192</sup>.

126. The African Union thus considers that Israel is under an obligation to give every assistance in the actions taken by UNRWA within the framework of its mandate, as a subsidiary organ established by the General Assembly in the exercise of the functions conferred on it by the Charter. According to resolution 302 (IV), which defines the mandate in question, the General Assembly

“[e]stablishe[d] the United Nations Relief and Works Agency for Palestine Refugees in the Near East:

- (a) To carry out in collaboration with local governments the direct relief and works programmes as recommended by the Economic Survey Mission;
- (b) To consult with the interested Near Eastern Governments concerning measures to be taken by them preparatory to the time when international assistance for relief and works projects is no longer available”<sup>193</sup>.

127. The African Union recalls that UNRWA’s immediate objective was to provide “continued assistance for the relief of the Palestine refugees [in order] to prevent conditions of starvation and distress among them and to further conditions of peace and stability”<sup>194</sup>.

128. The African Union therefore concludes that Israel must respect UNRWA’s mandate as it emerges from various United Nations resolutions, in accordance with Article 2, paragraph 2, of the Charter. Specifically, Israel must refrain from impeding in any way the fulfilment by UNRWA of its mandate.

## **2. Israel is under an obligation to give every assistance in any action taken by the United Nations, in accordance with Article 2, paragraph 5, of the Charter**

129. The African Union asserts that Israel must give every assistance in any action taken by the United Nations, in particular through UNRWA. Article 2, paragraph 5, of the United Nations Charter provides that: “All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.”<sup>195</sup>

130. The African Union considers that the obligation under Article 2, paragraph 5, of the Charter is very broad in scope. *First*, by requiring Members of the Organization to give “every assistance”, Article 2, paragraph 5, obliges them to take all measures available to them in order to assist United Nations organs in carrying out their mission. No reservations, including mental reservations, are allowed. The African Union observes that the obligation to give “every assistance” goes beyond the normal obligations of co-operation and good faith associated with membership of

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<sup>192</sup> *Ibid.*, p. 168.

<sup>193</sup> General Assembly resolution 302 (IV), Assistance to Palestine refugees (A/RES/302/IV) (1949), para. 7.

<sup>194</sup> *Ibid.*, para. 5.

<sup>195</sup> Art. 2, para. 5, of the United Nations Charter.

an international organization<sup>196</sup>. *Second*, the obligation under Article 2, paragraph 5, of the Charter to give every assistance concerns “any action” taken by the United Nations in accordance with the Charter. This obligation encompasses all aspects of the Organization’s functioning. It thus covers the obligation to give every assistance on the ground, providing any support required by United Nations personnel in order to carry out their duties. In this regard, Israel must give United Nations personnel, including humanitarian personnel, experts and other United Nations personnel on assignment, any assistance necessary for their presence and activities in the Occupied Palestinian Territory while performing their duties.

131. The obligation to give every assistance also covers the implementation of decisions and recommendations of United Nations organs by the Organization’s subsidiary organs and personnel. On this point, the African Union notes that both the General Assembly and the Security Council have called on Israel to engage in certain conduct in accordance with the obligation to give every assistance in any action taken by the United Nations. Indeed, in its resolution 302 (IV) establishing UNRWA, the Security Council previously

“[c]all[ed] upon the Governments concerned to accord to the United Nations Relief and Works Agency for the Palestine Refugees in the Near East the privileges, immunities, exemptions and facilities which have been granted to the United Nations Relief for Palestine Refugees, together with all other privileges, immunities, exemptions and facilities necessary for the fulfilment of its functions”<sup>197</sup>.

132. Several other resolutions followed, the most relevant of which concerned “The situation in the Middle East”<sup>198</sup>, “Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem”<sup>199</sup>, “Assistance to the Palestinian people”<sup>200</sup> and, finally, the “Peaceful settlement of the question of Palestine”<sup>201</sup>. The African Union would also draw the Court’s attention to resolution ES-10/25 dated 16 December 2024, by which the General Assembly, recalling its resolution 302 (IV) and Security Council resolution 2730 (2024), demanded that

“Israel respect the mandate of the Agency and its privileges and immunities and act forthwith to enable its operations to proceed without impediment or restriction in the Gaza Strip and the West Bank, including East Jerusalem, including, inter alia, to allow and facilitate full, rapid, safe and unhindered humanitarian assistance in all its forms

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<sup>196</sup> *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, pp. 92-93, para. 43 (recalling that the very fact of membership in an international organization entails “mutual obligations of co-operation and good faith” for both the organization and member States). See also *ibid.*, p. 95, para. 48.

<sup>197</sup> General Assembly resolution 302 (IV), Assistance to Palestine refugees (A/RES/302/IV) (1949), para. 17.

<sup>198</sup> General Assembly resolution 45/83, The situation in the Middle East, adopted 13 Dec. 1990 (A/RES/45/83 B), paras. 12 and 13; *ibid.* (A/RES/45/83 C), paras. 2 and 3; General Assembly resolution 46/82, The situation in the Middle East, adopted 16 Dec. 1991 (A/RES/46/82 A), paras. 10 and 11; *ibid.* (A/RES/46/82 B), paras. 2 and 3; General Assembly resolution 47/63, The situation in the Middle East, adopted 22 Mar. 1993 (A/RES/47/63 B), paras. 2 and 3; General Assembly resolution 48/59, The situation in the Middle East, adopted 31 Jan. 1994 (A/RES/48/59 A), paras. 2 and 3; General Assembly resolution 50/22, The situation in the Middle East (A/RES/50/22 A) (Jerusalem), paras. 2 and 3.

<sup>199</sup> General Assembly resolution 63/98, Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, adopted 5 Dec. 2008 (A/RES/63/98), para. 11; General Assembly resolution 64/94, Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, adopted 10 Dec. 2009 (A/RES/64/94), para. 11.

<sup>200</sup> General Assembly resolution 64/125, Assistance to the Palestinian people, adopted 16 Dec. 2009 (A/RES/64/125), paras. 5, 12, 14, 15 and 19.

<sup>201</sup> General Assembly resolution 57/110, Peaceful settlement of the question of Palestine, adopted 3 Dec. 2002 (A/RES/57/110), para. 9.

into and throughout the entire Gaza Strip in accordance with the mandate of the Agency and to alleviate the humanitarian catastrophe”<sup>202</sup>.

133. The African Union further notes that by resolution ES-10/25 adopted on 11 December 2024, the General Assembly “demand[ed] that Israel respect the mandate of the Agency and its privileges and immunities” and

“[c]all[ed] upon Israel to abide by Articles 100, 104 and 105 of the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations in all aspects . . . and to cease obstructing the movement and access of the staff, vehicles and supplies of the Agency and levying taxes, extra fees and charges on the Agency”<sup>203</sup>.

134. The African Union observes that, in its Advisory Opinion on *Certain Expenses of the United Nations*, the Court recognized that pursuance of the General Assembly resolutions relating to peacekeeping, including the resolution establishing subsidiary organs, was an “action” taken by the Organization within the meaning of this term as it is used in the Charter<sup>204</sup>. Member States must therefore give every assistance to the United Nations in implementing such actions<sup>205</sup>.

135. The African Union cannot overemphasize the fundamental importance of Article 2, paragraph 5, for the effective functioning of the Organization. As the Court noted in its Advisory Opinion on *Reparation for Injuries Suffered in the Service of the United Nations*,

“the Court must stress the importance of the duty to render to the Organization ‘every assistance’ which is accepted by the Members in Article 2, paragraph 5, of the Charter.

It must be noted that the effective working of the Organization — the accomplishment of its task, and the independence and effectiveness of the work of its agents — require that these undertakings should be strictly observed.”<sup>206</sup>

#### **D. Israel must respect its obligations under the Comay-Michelmores exchange of letters**

136. The African Union is of the view that Israel remains bound by the obligations assumed by it under the Comay-Michelmores exchange of letters (the Comay-Michelmores Agreement). Indeed, this Agreement is a valid treaty between Israel and the United Nations under international law (1). However, it is not a headquarters agreement. Therefore, Israel’s purported withdrawal from it has no effect on UNRWA’s presence and activities in the Occupied Palestinian Territory (2).

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<sup>202</sup> Dossier No. N219, UN doc. A/RES/ES-10/25, 11 Dec. 2024, para. 12.

<sup>203</sup> *Ibid.*, para. 14.

<sup>204</sup> *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962*, pp. 151, 165; See also, *Repertory of Practice of United Nations Organs*, Supplement No. 1 (1954-1955), Vol. 1, p. 15, para. 29 (stating: “The actions taken by the United Nations in accordance with the Charter are wide in scope and varied in nature. In a sense many decisions taken by the organs of the United Nations which requested Member States to co-operate in such actions may be said to bear upon Article 2 (5).”) (available at: [https://legal.un.org/repertory/art2/english/rep\\_supp1\\_vol1\\_art2\\_1\\_5.pdf#page=9](https://legal.un.org/repertory/art2/english/rep_supp1_vol1_art2_1_5.pdf#page=9)).

<sup>205</sup> *Ibid.*

<sup>206</sup> *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949*, p. 183. See also *ibid.*, p. 186.

## 1. The Comay-Michelmores Agreement is a treaty implementing Israel's obligations under the Charter

137. The African Union would recall that the Comay-Michelmores Agreement was concluded in 1967, following Israel's occupation of Palestinian territory, including East Jerusalem, during the Six-Day War. It is based on an exchange of letters between Mr Comay, Political Adviser to the Israeli Foreign Minister and Ambassador-at-Large, on the one hand, and Mr Michelmores, Commissioner-General of UNRWA, on the other. UNRWA's presence and activities in the Occupied Palestinian Territory thus predated the conclusion of the Comay-Michelmores Agreement, as can be seen from the content of the exchange of letters<sup>207</sup>.

138. The African Union considers that the Comay-Michelmores Agreement is a treaty in accordance with Article 2, paragraph 1, of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, which reflects customary international law in this regard<sup>208</sup>. By this treaty, Israel "request[ed]" UNRWA to continue "its assistance to the Palestine refugees, with the full co-operation of the Israel authorities, in the West Bank and Gaza Strip areas", in the Occupied Palestinian Territory, and set out the protections that would be provided in respect of its presence and activities; UNRWA accepted this<sup>209</sup>.

139. With regard to the legal nature of the Comay-Michelmores Agreement, the African Union contends that it is not a "headquarters agreement" within the meaning of international law. Indeed, the African Union would recall that UNRWA is present and its activities take place in the Occupied Palestinian Territory, including East Jerusalem. As an occupying Power, Israel has no right to conclude treaties on behalf of the Palestinian people or to represent them in any way in international relations<sup>210</sup>. This finding forms the basis of the Court's 2024 Advisory Opinion when it examines the legal consequences of the wrongful acts attributable to Israel:

"Taking note of the resolutions of the Security Council and General Assembly, the Court is of the view that Member States are under an obligation not to recognize any changes in the physical character or demographic composition, institutional structure or status of the territory occupied by Israel on 5 June 1967, including East Jerusalem, except as agreed by the parties through negotiations and to distinguish in their dealings with Israel between the territory of the State of Israel and the Palestinian territory occupied since 1967. The Court considers that the duty of distinguishing dealings with Israel between its own territory and the Occupied Palestinian Territory encompasses, *inter alia*, the obligation to abstain from treaty relations with Israel in all cases in which

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<sup>207</sup> See dossier No. 283, Exchange of letters constituting a provisional agreement between the United Nations Relief and Works Agency for Palestine Refugees in the Near East and Israel concerning assistance to Palestine refugees, Jerusalem, 14 June 1967, *UNTS*, Vol. 620, 1968, pp. 185. See also the similar exchanges of letters with Egypt and Jordan: Agreement between the Government of the Kingdom of Egypt and the United Nations Relief and Works Agency for Palestine Refugees in the Near East and Egypt, Alexandria, 12 Sept. 1950, *UNTS*, Vol. 121, 1952, doc. No. 1630, p. 108; Agreement between the Government of the Hashemite Kingdom of the Jordan and the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 14 Mar. and 20 Aug. 1951, *UNTS*, Vol. 120, 1952, doc. No. 394, p. 283.

<sup>208</sup> See, in particular, Art. 2, para. 1, of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 21 Mar. 1986 (not yet in force) (available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXIII-3&chapter=23&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXIII-3&chapter=23&clang=_en)).

<sup>209</sup> See dossier No. 283, Exchange of letters constituting a provisional agreement between the United Nations Relief and Works Agency for Palestine Refugees in the Near East and Israel concerning assistance to Palestine refugees, Jerusalem, 14 June 1967, *UNTS*, Vol. 620, 1968, doc. No. 8955, p. 185.

<sup>210</sup> Incidentally, UNRWA concluded separate agreements with the Palestinian Authority relating to its activities in the Occupied Palestinian Territory. See the report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 1 January-31 December 2011, UN doc. A/67/13, para. 48 (available at: <https://docs.un.org/en/A/67/13>).

it purports to act on behalf of the Occupied Palestinian Territory or a part thereof on matters concerning the Occupied Palestinian Territory or a part of its territory; to abstain from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof which may entrench its unlawful presence in the territory; to abstain, in the establishment and maintenance of diplomatic missions in Israel, from any recognition of its illegal presence in the Occupied Palestinian Territory; and to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory”<sup>211</sup>.

140. Moreover, this obligation to distinguish in dealings with Israel between its territory and Palestinian territory also applies to the United Nations, of which the Court is the principal judicial organ<sup>212</sup>.

141. Finally, the Comay-Michelmores Agreement came after UNRWA was already present in the Occupied Palestinian Territory and had begun to carry out its activities. The African Union therefore considers that the Comay-Michelmores Agreement is rather an agreement that clarifies the content of Israel’s obligations under Article 2, paragraphs 2 and 5, of the Charter. It elaborates on Israel’s obligations to respect UNRWA’s mandate in accordance with Article 2, paragraph 2, of the Charter, on the one hand, and to give every assistance in any action taken in the fulfilment of that mandate, pursuant to Article 2, paragraph 5, on the other.

## **2. The purported withdrawal from the Comay-Michelmores Agreement is devoid of legal effect**

142. The African Union notes that a letter dated 3 November 2024 from the Director General of the Ministry of Foreign Affairs of the State of Israel to the President of the General Assembly, HE Mr Philemon Yang, contained the following:

“Excellency,

Further to legislation passed by the Knesset of Israel on 28 October 2024, I write this letter to notify the United Nations that the State of Israel withdraws its request issued to UNRWA, as referred to in the ‘EXCHANGES OF NOTES BETWEEN ISRAEL AND UNRWA CONSTITUTING AN AGREEMENT CONCERNING THE OPERATIONS OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST’ dated 14 June 1967. The legislation will enter into effect following a three-month period. During this time, and thereafter, Israel will continue to work with international partners, including other United Nations agencies, to ensure the facilitation of humanitarian aid to civilians in Gaza in a way that does not undermine Israel’s security. Israel expects the United Nations to contribute to and cooperate in this effort.”<sup>213</sup>

143. The African Union further notes that the aforementioned notification relating to the Comay-Michelmores Agreement can have no effect on UNRWA’s right to be present and to carry out its activities in the Occupied Palestinian Territory, since the Comay-Michelmores Agreement is not a headquarters agreement. Moreover, this notification in no way affects Israel’s obligations under

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<sup>211</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 278.

<sup>212</sup> *Ibid.*, para. 280.

<sup>213</sup> Dossier No. N302, Letter dated 3 November 2024 from the Director General of the Ministry of Foreign Affairs of Israel addressed to the President of the General Assembly.

Article 2, paragraphs 2 and 5, of the Charter. Finally, as an occupying Power, Israel cannot put an end to the presence and activities of an institution of the occupied territory which predated the occupation, especially when the mission of that institution consists in providing humanitarian and development assistance to Palestinian refugees<sup>214</sup>.

144. Notwithstanding the inherent limitations of this withdrawal, the African Union wishes to point out that Israel, like any other State, cannot unilaterally withdraw from the guarantees accorded in a bilateral agreement. Indeed, the transitional clauses of the Comay-Micheltore exchange of letters contain a provision relating to its cancellation. In that provision, Mr Comay states that “[t]he present letter and your acceptance in writing will be considered by the Government of Israel and by UNRWA as a provisional agreement which will remain in force until replaced or cancelled.”

In French: “*La présente lettre et votre acceptation donnée par écrit seront considérées par le Gouvernement d’Israël et par l’Office comme un accord provisoire qui restera en vigueur jusqu’à ce qu’il soit remplacé ou résilié.*”<sup>215</sup>

145. Mr Micheltore’s response to this proposed transitional clause reads in relevant part as follows: “I agree that your letter and this reply constitute a provisional agreement between UNRWA and the Government of Israel, to remain in force until replaced or cancelled. UNRWA’s agreement is subject to any relevant instructions or resolutions emanating from the United Nations.”

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<sup>214</sup> See Art. 43 of the Regulations concerning the Laws and Customs of War on Land, annexed to Convention (IV) respecting the Laws and Customs of War on Land, adopted on 18 Oct. 1907 and entered into force on 26 Jan. 1910 (available at: <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907>) (providing that: “The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country”); Art. 47 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, signed on 12 Aug. 1949 and entered into force on 21 Oct. 1950 (available at: [https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280158b1a&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280158b1a&clang=_en)) (providing that: “Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.”).

According to the Commentary to Article 47 of the Fourth Convention:

“This provision of the Hague Regulations [Article 43] is not applicable only to the inhabitants of the occupied territory; it also protects the separate existence of the State, its institutions and its laws. This provision does not become in any way less valid because of the existence of the new Convention, which merely amplifies it so far as the question of the protection of civilians is concerned.

Interference by the Protecting Power with the institutions or government of an occupied country has the effect of transforming the country’s structure and organizations more or less radically. Such a transformation may make the position of the inhabitants worse, and the present Article is intended to prevent from harming protected persons measures taken by the Occupying Power with a view to restoring and maintaining law and order. It does not expressly prohibit the Occupying Power from modifying the institutions or government of the occupied territory (3). Certain changes might conceivably be necessary and even an improvement; besides, the text in question is of an essentially humanitarian character; its object is to safeguard human beings and not to protect the political institutions and government machinery of the State as such. The main point, according to the Convention, is that changes made in the internal organization of the State must not lead to protected persons being deprived of the rights and safeguards provided for them.”

See O. M. Uhler *et al.* (eds.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. IV (*Geneva Convention relative to the Protection of Civilian Persons in Time of War*), Geneva, ICRC, 1956, pp. 294-295.

<sup>215</sup> Dossier No. 283, Exchange of letters constituting a provisional agreement between the United Nations Relief and Works Agency for Palestine Refugees in the Near East and Israel concerning assistance to Palestine refugees, Jerusalem, 14 June 1967, *UNTS*, Vol. 620, 1968, pp. 186-187.

In French:

*“J’accepte que votre lettre et la présente réponse constituent un accord provisoire entre l’Office de secours et de travaux des Nations Unies pour les réfugiés de Palestine dans le Proche-Orient et le Gouvernement d’Israël qui restera en vigueur jusqu’à ce qu’il soit remplacé ou résilié. L’accord de l’Office est subordonné aux instructions ou aux résolutions pertinentes pouvant être formulées par l’Organisation des Nations Unies.”*<sup>216</sup>

146. The African Union is of the view that the Comay-Michelmore Agreement does not allow for unilateral withdrawal. *First*, the agreement contains no clause providing for a right of unilateral withdrawal, let alone a right of unilateral withdrawal with three months’ notice. The African Union contends that by including a clause relating to the termination of the Comay-Michelmore Agreement, without making provision for the possibility of unilateral withdrawal, the parties intended for any termination of the Agreement to be effected by mutual agreement between the parties.

147. *Second*, the historical and normative context of the conclusion of the Comay-Michelmore Agreement suggests that the parties did not intend for the Agreement to be subject to unilateral withdrawal. As mentioned above, UNRWA was already in the Occupied Palestinian Territory on the date the Agreement was concluded. Thus, the Agreement was not intended to authorize UNRWA to be present in or carry out its activities in the Occupied Palestinian Territory. In addition, the possibility of unilateral withdrawal from the Comay-Michelmore Agreement could not be envisaged by the parties since such withdrawal would have had no legal effect on Israel’s obligations under Article 2, paragraphs 2 and 5, of the Charter. Moreover, the Agreement’s “provisional” character suggested that it was subject to replacement with a final agreement rather than to unilateral withdrawal, especially since the parties contemplated adopting supplemental provisions.

148. *Finally*, the African Union considers that the Comay-Michelmore Agreement cannot be withdrawn, pursuant to the rules of international law applicable to the withdrawal from a treaty between a State and an international organization. Although it is not a headquarters agreement, the Comay-Michelmore Agreement concerns the presence and activities of the United Nations in the Occupied Palestinian Territory. In its Advisory Opinion on the *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, the Court noted, after examining “a considerable number of host agreements of different kinds, concluded by States with various international organizations”, that “international organizations and host States [recognize] the existence of mutual obligations incumbent upon them to resolve the problems attendant upon a revision, termination or denunciation of a host agreement”<sup>217</sup>. It further noted that both parties had an obligation “to act in good faith and have reasonable regard to the interests of the other party to the treaty”<sup>218</sup>. The Court also 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 purposes of the Organization as expressed in its Constitution”<sup>219</sup>.

149. The African Union asserts that these dicta of the Court apply to all agreements between States and international organizations relating to the latter’s presence and activities in a territory, and

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<sup>216</sup> *Ibid.*, pp. 188-189.

<sup>217</sup> *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, p. 94, para. 46.

<sup>218</sup> *Ibid.*, pp. 94-95, para. 47.

<sup>219</sup> *Ibid.*, pp. 95-96, para. 49.

not only to headquarters agreements. They reflect the general obligation of States to co-operate in good faith with the international organizations of which they are members. They imply that Israel must consult in good faith with the United Nations regarding the Comay-Micheltmore Agreement and the means by which Israel will discharge its obligations to respect UNRWA's mandate and to give every assistance to the Organization in all its actions. In this regard, the African Union would recall that:

“UNRWA is the principal means by which essential assistance is supplied to Palestine refugees in the Occupied Palestinian Territory. There is currently no realistic alternative to UNRWA which could adequately provide the services and assistance required, whether it be other United Nations entities, other international organizations, or any other entity. The cessation of or restrictions on its activities would leave Palestine refugees without the essential assistance that they require.”<sup>220</sup>

150. Therefore, the African Union considers that Israel remains bound by all its obligations under the Comay-Micheltmore Agreement until such time as the above-mentioned consultations take place. To recall, Israel's obligations under the exchange of letters are set out in the following terms:

“For its part, the Israel Government will facilitate the task of UNRWA to the best of its ability, subject only to regulations or arrangements which may be necessitated by considerations of military security. On this understanding, we are prepared to agree in principle:

- (a) To ensure the protection and security of the personnel, installations and property of UNRWA;
- (b) To permit the free movement of UNRWA vehicles into, within and out of Israel and the areas in question;
- (c) To permit the international staff of the Agency to move in, out and within Israel and the areas in question; they will be provided with identity documents and any other passes which might be required;
- (d) To permit the local staff of the Agency to move within the areas in question under arrangements made or to be made with the military authorities;
- (e) To provide radio, telecommunications and landing facilities;
- (f) Pending a further supplementary agreement, to maintain the previously existing financial arrangements with the governmental authorities then responsible for the areas in question, concerning:
  - (i) Exemptions from customs duties, taxes and charges on importation of supplies, goods and equipment;
  - (ii) provision free of charge of warehousing, labour for offloading and handling, and transport by rail or road in the areas under our control;
  - (iii) such other costs to the Agency as were previously met by the governmental authorities concerned.

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<sup>220</sup> Dossier No. N30[1], Letter dated [28 October 2024] from the Secretary-General addressed to the [Prime Minister] of Israel.



- (g) To recognize that the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, to which Israel is a party, shall govern the relations between the Government and UNRWA in all that concerns UNRWA's functions."<sup>221</sup>

### **E. Israel must comply with its obligations relating to the privileges and immunities of the United Nations**

151. The African Union contends that Israel is under an obligation to respect the privileges and immunities of the United Nations and in particular those enjoyed by UNRWA. These obligations derive from Article 105 of the Charter (1) and from the Convention on the Privileges and Immunities of the United Nations (2). The African Union further contends that Israel's invocation of Article V, Section 21, of that Convention and its allegations of abuse of privileges and immunities cannot justify its failure to respect the privileges and immunities of UNRWA (3).

#### **1. Israel's obligations under Article 105 of the Charter**

152. The African Union considers that Israel has an obligation as a Member State of the United Nations to respect the privileges and immunities provided for in Article 105 of the Charter. That Article stipulates that:

- "1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.
2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization.
3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose."<sup>222</sup>

153. States are required to respect the immunity of the United Nations under Article 105 of the Charter. In this regard, they must accord such privileges and immunities as are necessary for the fulfilment of the objectives of the Organization, extend those privileges to its officials, respect the legal capacity of the United Nations, and implement the relevant resolutions of the General Assembly regarding the application of privileges and immunities.

154. UNRWA enjoys the privileges and immunities accorded by Member States of the United Nations under Article 105 of the Charter. As mentioned above, UNRWA is a subsidiary organ established by the General Assembly under Article 22 of the Charter, and is an integral part of the United Nations. Its responsibilities include carrying out the economic, social and humanitarian actions of the United Nations in aid of Palestine refugees.

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<sup>221</sup> Dossier No. 283, Exchange of letters constituting a provisional agreement between the United Nations Relief and Works Agency for Palestine Refugees in the Near East and Israel concerning assistance to Palestine refugees, Jerusalem, 14 June 1967, *UNTS*, Vol. 620, 1968, pp. 185-188.

<sup>222</sup> Art. 105 of the United Nations Charter.

## **2. Israel's obligations under the Convention on the Privileges and Immunities of the United Nations**

155. The African Union notes that the General Assembly adopted the Convention on the Privileges and Immunities of the United Nations on 13 February 1946, in accordance with Article 105, paragraph 3, [of the Charter], and invited Member States to accede to it. The Convention entered into force on 14 December 1946 and Israel acceded to it without reservation on 21 September 1949<sup>223</sup>.

156. The African Union thus contends that by virtue of the *pacta sunt servanda* principle, Israel is bound by all its obligations under the Convention on the Privileges and Immunities of the United Nations. The provisions of that Convention are therefore applicable to UNRWA, as a subsidiary organ of the United Nations, and to its property and personnel. The African Union observes that in the Comay-Micheltmore Agreement, Israel recognized that “the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, to which Israel is a party, shall govern the relations between the Government and UNRWA in all that concerns UNRWA’s functions”<sup>224</sup>.

157. In the paragraphs below, the African Union will list the provisions containing the most relevant obligations of Israel. The African Union notes that under the Convention on the Privileges and Immunities of the United Nations, Israel has an obligation to respect the privileges and immunities enjoyed by UNRWA and, more specifically, its premises, archives, staff and experts on mission for the Agency. Israel is also required to ensure, by means of its own choosing, that its domestic laws allow it to comply with its obligations.

158. *First*, the African Union asserts that Israel is under an obligation to respect the inviolability of UNRWA’s premises and the absolute immunity enjoyed by its property and assets. Article II, Section 3, of the Convention on the Privileges and Immunities of the United Nations provides:

“The premises of the United Nations shall be inviolable. 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 by executive, administrative, judicial or legislative action.”

159. Under the terms of Article II, Section 3, the inviolability of UNRWA premises is absolute. This inviolability applies to UNRWA’s premises, including its schools, training centres and hospitals. Israel therefore has an obligation to ensure that this property is immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

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<sup>223</sup> See Convention on the Privileges and Immunities of the United Nations, 13 Feb. 1946 (available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=III-1&chapter=3&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-1&chapter=3&clang=_en)).

<sup>224</sup> Dossier No. N283, Exchange of letters constituting a provisional agreement between the United Nations Relief and Works Agency for Palestine Refugees in the Near East and Israel concerning assistance to Palestine refugees, Jerusalem, 14 June 1967, *UNTS*, Vol. 620, 1968, pp. 185-188.

160. *Second*, Article II, Section 4, of the Convention on the Privileges and Immunities of the United Nations stipulates that “[t]he archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located”<sup>225</sup>.

161. *Third*, in accordance with Article II, Section 7 (b), of the Convention on the Privileges and Immunities of the United Nations,

“[t]he United Nations, its assets, income and other property shall be . . . exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the government of that country.”<sup>226</sup>

162. *Fourth*, Article V, Section 18, of that Convention provides that:

“Officials of the United Nations shall:

- (a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- (b) be exempt from taxation on the salaries and emoluments paid to them by the United Nations;
- (c) be immune from national service obligations;
- (d) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
- (e) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the government concerned;
- (f) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;
- (g) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.”<sup>227</sup>

163. *Fifth*, Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations stipulates that:

“Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their

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<sup>225</sup> Art. II, Sect. 4, of the Convention on the Privileges and Immunities of the United Nations (available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=III-1&chapter=3&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-1&chapter=3&clang=_en)).

<sup>226</sup> *Ibid.*, Art. II, Sect. 7 (b).

<sup>227</sup> *Ibid.*, Art. V, Sect. 18.

missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

- (a) immunity from personal arrest or detention and from seizure of their personal baggage;
- (b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;
- (c) inviolability for all papers and documents;
- (d) for the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.”<sup>228</sup>

164. *Sixth*, the African Union maintains that Israel must take all measures within its legal system to comply with its general obligations arising from Article 105 of the Charter and from the Convention on the Privileges and Immunities of the United Nations. Section 34 of the Final Article of the Convention on the Privileges and Immunities of the United Nations states in this respect that “[i]t is understood that, when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this convention”.

165. The African Union would recall that it is a basic principle of international law that a State cannot invoke the provisions of its internal law as justification for failure to comply with its international obligations.

### **3. Israel’s violations of its obligations under Article 105 of the Charter and under the Convention on the Privileges and Immunities of the United Nations cannot be justified by allegations of abuse**

166. The African Union contends that allegations of abuse concerning the United Nations or its personnel cannot justify Israel’s violation of its obligations under Article 105 of the Charter and under the Convention on the Privileges and Immunities of the United Nations. Article V, Section 21, of that Convention provides:

“The United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.”<sup>229</sup>

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<sup>228</sup> *Ibid.*, Art. VI, Sect. 22.

<sup>229</sup> *Ibid.*, Art. V, Sect. 21.

167. The African Union notes, first, that this provision applies only to Article V and thus to the privileges and immunities of United Nations officials. It cannot therefore have any bearing on the privileges and immunities relating to United Nations premises or those of its experts on mission.

168. Furthermore, as the African Union has stated above, the obligation of co-operation and good faith requires that Israel in fact co-operate with the United Nations in order to bring an end to possible abuses. The United Nations has always taken seriously allegations against its staff of abuse or breach of the duty of neutrality in the provision of humanitarian assistance. The final report of the Independent Review Group on UNRWA confirms in this instance that UNRWA has established more sophisticated mechanisms than the norm to prevent and respond as appropriate to such abuse<sup>230</sup>.

169. The African Union further notes that the Convention on the Privileges and Immunities of the United Nations provides for specific remedies in the event of abuse or a dispute relating to its interpretation or application. In this regard, Article VIII, Section 29, thereof provides in particular that:

“The United Nations shall make provisions for appropriate modes of settlement of:

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(b) disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.”<sup>231</sup>

170. Furthermore, Article VIII, Section 30, stipulates that:

“All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.”<sup>232</sup>

171. The African Union concludes from this that if Israel considers that the United Nations or a member of its staff has abused its privileges and immunities, it must either engage in consultations with the United Nations or avail itself of the remedies referred to in Article VIII. Under no circumstances may Israel invoke possible abuses as justification for not applying the immunities and privileges provided for in Article 105 of the Charter and in the Convention on the Privileges and Immunities of the United Nations. To paraphrase the Court’s Judgment in the *United States Diplomatic and Consular Staff in Tehran* case, the African Union is of the view that the system of immunities established by the Convention on the Privileges and Immunities of the United Nations

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<sup>230</sup> Dossier No. N297, Final report for the United Nations Secretary-General: Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality, 20 Apr. 2024, pp. 4-5 (“The Review revealed that UNRWA has established a significant number of mechanisms and procedures to ensure compliance with the humanitarian principles, with emphasis on the principle of neutrality, and that it possesses a more developed approach to neutrality than other similar UN or NGO entities.”).

<sup>231</sup> Art. VIII, Sect. 29, of the Convention on the Privileges and Immunities of the United Nations (available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=III-1&chapter=3&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-1&chapter=3&clang=_en)).

<sup>232</sup> *Ibid.*, Art. VIII, Sect. 30.

constitutes a “self-contained régime” which, on the one hand, lays down the receiving State’s obligations regarding the facilities, privileges and immunities to be accorded to international organizations and, on the other hand, foresees their possible abuse by members of the mission and specifies the means at the disposal of the receiving State to counter any such abuse<sup>233</sup>.

**F. Israel is under an obligation to immediately repeal the 2024 laws by means of its own choosing and, pending their repeal, to immediately render them ineffective**

172. The African Union recalls that on 28 October 2024, the Knesset enacted two laws entitled the Law to Cease UNRWA Operations and the Law to Cease UNRWA Operations in the Territory of the State of Israel. The former, translated from Hebrew by the United Nations Secretariat, reads as follows:

*“Expiration of the exchange of letters between Israel and UNRWA*

1. (a) The invitation to UNRWA, based on an exchange of letters between Israel and UNRWA from 6 Sivan 5727 (14 June A.D. 1967), will expire on 5 Tishrei 5785 (7 October A.D. 2024).
- (b) The Minister for Foreign Affairs shall notify the United Nations of the expiration under subsection (a) within seven days of the passage of this law by the Knesset.

*No contact with UNRWA*

2. A government authority, including other bodies and individuals performing public duties according to law, shall not have any contact with UNRWA or anyone acting on its behalf.

*Retention of laws*

3. Nothing in the provisions of this law shall preclude any criminal proceeding against UNRWA employees, including such proceedings related to the events of 7 October 2023 or the Swords of Iron War, or any other criminal proceeding under Counter-Terrorism Law 5776-2016, or the exercise of powers against them within the framework of such proceedings.

*Entry into force*

4. This law shall come into force three months from the date of its publication. However, section 1 shall come into force on 5 Tishrei 5785 (7 October A.D. 2024) or on the date of the publication of this law, whichever is later.

*Reporting to the Knesset*

5. The National Security Council Director or their representative shall report to the Knesset Foreign Affairs and Defence Committee every six months and in the first

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<sup>233</sup> *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Judgment, I.C.J. Reports 1980, p. 40, para. 86.*

year from the commencement of this law, every two months, on the implementation of the provisions of this law.”<sup>234</sup>

173. For its part, the Law to Cease UNRWA Operations in the Territory of the State of Israel, translated from Hebrew into English by the United Nations Secretariat, reads as follows:

*“Purpose*

1. The purpose of this law is to prevent any UNRWA operations within the territory of the State of Israel.

*Prohibition of operations within the territory of the State of Israel*

2. UNRWA (United Nations Relief and Works Agency) shall not operate any representative office, provide any services or carry out any activities, directly or indirectly, within the sovereign territory of the State of Israel.

*Entry into force*

3. This law shall come into force three months from the date of its publication.

*Reporting to the Knesset*

4. The National Security Council Director or their representative shall report to the Knesset Foreign Affairs and Defence Committee every six months and in the first year from the commencement of this law, every two months, on the implementation of the provisions of this law.”<sup>235</sup>

174. The African Union recalls that both laws were adopted on 28 October 2024 and are considered by Israel to have entered into force on 30 January 2025<sup>236</sup>.

175. The African Union maintains that Israel has an obligation to immediately repeal the laws of October 2024 by means of its own choosing and, pending their repeal, to immediately render them ineffective. Indeed, the African Union notes that the Law to Cease UNRWA Operations in the Territory of the State of Israel is null and void in that it considers East Jerusalem to be the sovereign territory of Israel (1). The African Union also observes that the Law to Cease UNRWA Operations in the Territory of the State of Israel and the Law to Cease UNRWA Operations contain provisions that run counter to Israel’s obligations under international law (2). The African Union is of the view that when a State adopts laws that are manifestly contrary to its obligations under international law, good faith requires that it repeal those laws forthwith and, pending their repeal, consider them to be without effect<sup>237</sup>.

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<sup>234</sup> See dossier No. N65, Letter dated 28 October 2024 from the Secretary-General addressed to the President of the General Assembly, UN doc. A/79/558; dossier No. N66, Identical letters dated 9 December 2024 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, UN doc. A/79/684-S/2024/892.

<sup>235</sup> *Ibid.*

<sup>236</sup> See dossier No. N302, Letter dated 3 November 2024 from the Director General of the Ministry of Foreign Affairs of Israel addressed to the President of the General Assembly; dossier No. N307, Letter dated 24 January 2025 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General.

<sup>237</sup> See, in this respect, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 197-198, para. 151.

**1. The Law to Cease UNRWA Operations in the Territory of the State of Israel is null and void in so far as it purports to apply to the Occupied Palestinian Territory, including East Jerusalem**

176. The African Union notes that the purpose of the Law to Cease UNRWA Operations in the Territory of the State of Israel is, as stipulated therein, “to prevent any UNRWA operations within the territory of the State of Israel” and that, by virtue of that law, UNRWA “shall not operate any representative office, provide any services or carry out any activities, directly or indirectly, within the sovereign territory of the State of Israel”.

177. The African Union observes that the references to “the State of Israel” and “the sovereign territory of the State of Israel” are understood by the Israeli authorities to include East Jerusalem. In fact, the letter from Ambassador HE Mr Danny Danon, Permanent Representative of Israel to the United Nations, addressed to HE Mr António Guterres, Secretary-General of the United Nations, dated 24 January 2025, clarifies that

“[i]n accordance with applicable Israeli law, including the said legislation, and following the termination of the aforementioned Provisional Agreement, UNRWA is required to cease its operations in Jerusalem, and evacuate all premises in which it operates in the city, no later than 30 January 2025.

Without prejudice to the legislation, and as previously communicated to UNRWA by the Israeli competent authorities, I would like to refer to two properties in particular, in which UNRWA is currently operating in Jerusalem – the property located in the Maalot Dafna neighborhood, where UNRWA has been operating its Jerusalem headquarters; and the property in the neighborhood of Kfar Aqueb.”<sup>238</sup>

178. The African Union contends that the Law to Cease UNRWA Operations in the Territory of the State of Israel is null and void in that it invokes Israel’s sovereignty over the Occupied Palestinian Territory, including East Jerusalem, as the basis for jurisdiction. Indeed, the Law to Cease UNRWA Operations in the Territory of the State of Israel implements the “basic law” adopted by Israel on 30 July 1980 and which purports to extend Israel’s sovereignty to East Jerusalem. The African Union shares the position of the United Nations in this regard that the “basic law” is null and void and must be repealed immediately. In its resolution 48/59 of 31 January 1994, for example, the General Assembly recalled its previous resolutions in which it

“determined that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purported to alter the character and status of the Holy City of Jerusalem, *in particular the so-called ‘Basic Law’ on Jerusalem and the proclamation of Jerusalem as the capital of Israel, were null and void and must be rescinded forthwith*”<sup>239</sup>.

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<sup>238</sup> Dossier No. N307, Letter dated 24 January 2025 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General.

<sup>239</sup> General Assembly resolution 48/59, The Situation in the Middle East, adopted on 31 Jan. 1994 (A/RES/48/59 A), preambular para 1; emphasis added. See also General Assembly resolution 50/22, The Situation in the Middle East. A (Jerusalem) (A/RES/50/22 A), preambular paras. 2 and 3; General Assembly resolution 69/24, Jerusalem, adopted on 25 Nov. 2014 (A/RES/69/24), in which the General Assembly “[r]eiterates its determination that any actions taken by Israel, the occupying Power, to impose its laws, jurisdiction and administration on the Holy City of Jerusalem are illegal and therefore null and void and have no validity whatsoever, and calls upon Israel to immediately cease all such illegal and unilateral measures”; see also General Assembly resolution 2253.



179. It further noted that “the decision of Israel to impose its laws, jurisdiction and administration on the Holy City of Jerusalem is illegal and therefore null and void and has no validity whatsoever”<sup>240</sup>. For its part, the Security Council has described the “basic law” and other related measures as “null and void”<sup>241</sup> and stated that third States should not recognize them<sup>242</sup>.

180. The African Union considers that if a constitutional law is declared null and void because it conflicts with peremptory norms of international law, all laws implementing it or founded upon it are equally null and void. The African Union recalls that, in its Advisory Opinion of 19 July 2024, the Court concluded that “the State of Israel’s continued presence in the Occupied Palestinian Territory is unlawful” and 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”<sup>243</sup>. The African Union further recalls that, in its resolution ES-10/24 of 18 September 2024, the General Assembly welcomed the Court’s Advisory Opinion, demanded that Israel bring an end, within 12 months, to its unlawful presence in the Occupied Palestinian Territory — which the General Assembly considered to be a wrongful act of a continuing character entailing Israel’s international responsibility — and demanded that Israel comply without delay with all its legal obligations under international law<sup>244</sup>.

181. Consequently, the African Union concludes that the Law to Cease UNRWA Operations in the Territory of the State of Israel is null and void because it contradicts *jus cogens* rules, namely the right to self-determination in cases of foreign occupation and the prohibition of the acquisition of territory by force<sup>245</sup>.

## 2. The two laws are contrary to Israel’s international obligations

182. The African Union asserts that Israel must immediately repeal the laws of 28 October 2024 and, pending their repeal, render them ineffective, since they are clearly contrary to Israel’s obligations under international law. In particular, they are contrary to Israel’s obligation, under Article 2, paragraph 5, of the Charter, to give “every assistance” in any action taken by the United Nations, including UNRWA. The obligation to provide every assistance implies that Israel must take positive measures to facilitate UNRWA’s activities in the Occupied Palestinian Territory. Yet the Law to Cease UNRWA Operations provides that “[a] government authority, including other

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<sup>240</sup> General Assembly resolution 48/59, The Situation in the Middle East, adopted on 31 Jan. 1994 (A/RES/48/59 A), para. 1.

<sup>241</sup> See Security Council resolution 476, 30 June 1980 (stating that “all such measures which have altered the geographic, demographic and historical character and status of the Holy City of Jerusalem are null and void.”). See also Security Council resolution 252 (1968), adopted on 21 May 1968; resolution 267 (1969), adopted on 1 Apr. 1969; resolution 298 (1971), adopted on 25 Sept. 1971.

<sup>242</sup> See Security Council resolution 478, 20 Aug. 1980 (in which the Security Council “[d]ecides not to recognize the ‘basic law’ and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem and calls upon . . . [t]hose States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City.”).

<sup>243</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, paras. 254 and 285.

<sup>244</sup> General Assembly resolution ES-10/24, Advisory opinion of the International Court of Justice on the legal consequences arising from Israel’s policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and from the illegality of Israel’s continued presence in the Occupied Palestinian Territory, 18 Sept. 2024 (A/RES/ES-10/24).

<sup>245</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 233.

bodies and individuals performing public duties according to law, shall not have any contact with UNRWA or anyone acting on its behalf<sup>246</sup>.

183. The laws adopted by the Knesset are also contrary to Israel's obligations under the Comay-Michelmores Agreement. The provisions of that Agreement require the Israeli authorities to have contact with UNRWA and its personnel in order to facilitate the Agency's activities. In particular, the Israeli authorities must ensure the protection of UNRWA, its staff and property. They must also facilitate the movement of Agency staff in the Occupied Palestinian Territory and in Israel, in co-ordination with the civil and military authorities.

184. Moreover, in seeking to bring an end to UNRWA's operations, the two laws are also contrary to Israel's obligations under international humanitarian and human rights law in that they impede relief schemes for the benefit of the Palestinian population. As the Secretary-General of the United Nations pointed out in his identical letters of 9 December 2024 to the General Assembly and the Security Council, the application of these laws would have devastating consequences for the Palestinian civilian population, given that there is currently no realistic alternative to UNRWA that could adequately provide the services and assistance required in the Occupied Palestinian Territory<sup>247</sup>.

**G. Israel must respect, facilitate and protect the presence and activities of third States in support of the exercise by the Palestinian people of its right to self-determination**

185. The African Union contends that Israel must respect, facilitate and protect the presence and activities of third States in the Occupied Palestinian Territory in support of the right of the Palestinian people to self-determination. Specifically, Israel must not impede the right of third States to maintain diplomatic relations with the Palestinian people (1). Furthermore, it must not impede the right of third States to support the exercise by the Palestinian people of its right to self-determination (2).

**1. Israel must respect the right of third States to establish and maintain diplomatic relations with the Palestinian people**

186. The African Union observes that the Palestinian people, like all peoples, is entitled to international solidarity and to enjoy the benefits of international co-operation. Indeed, peoples are subjects of international law and possess all the rights of States under international law. The only difference between peoples and States concerns not the enjoyment of rights under international law, but the exercise of those rights, in particular because of the impediments that sometimes prevent peoples from exercising all their rights as subjects of international law. The African Union notes that diplomatic relations between peoples and third States enjoy all the protections and immunities

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<sup>246</sup> See dossier No. N65, Letter dated 28 October 2024 from the Secretary-General addressed to the President of the General Assembly, UN doc. A/79/558; dossier No. N66, Identical letters dated 9 December 2024 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, UN doc. A/79/684-S/2024/892.

<sup>247</sup> Dossier No. N66, Identical letters dated 9 December 2024 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, UN doc. A/79/684 and S/2024/892.

pertaining to such relations under international law, including those set out in the Vienna Convention on Diplomatic Relations, to which Palestine is a party<sup>248</sup>.

187. The African Union reiterates that the fact of occupation does not confer any rights upon Israel; in particular, it does not entitle it to interfere with the right of the Palestinian people and third States to maintain diplomatic relations. Indeed, the right of the Palestinian people to self-determination encompasses the right to make choices in foreign policy matters, including the establishment of diplomatic relations<sup>249</sup>. Consequently, Israel is obliged not to impede the presence and activities of third parties seeking to establish and maintain diplomatic relations with the Palestinian people. In fact, the United Nations, of which Israel is a Member, endeavours to achieve international co-operation in resolving not only humanitarian problems, but also difficulties of an economic and social character<sup>250</sup>.

## **2. Israel is under an obligation not to impede the support provided by third States to the Palestinian people in the exercise of its right to self-determination**

188. The African Union is of the view that the Palestinian people, as a people subjected to measures of coercion and forcibly deprived of its right to self-determination, is entitled to receive the support required to enable it to exercise its right to self-determination, and that such a right is enforceable against the colonial Power. As stated in General Assembly resolution 2625, which in many respects codifies the rules of customary international law and sets out the principles of international law embodied in the United Nations Charter,

“[e]very State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. *In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.*”<sup>251</sup>

189. Moreover, Article 7 of the Annex to General Assembly resolution 3314 reiterates this right of peoples forcibly deprived of the enjoyment of their right to self-determination to seek and receive support in accordance with the purposes and principles of the Charter. It goes on to clarify that this support cannot constitute an act of aggression within the meaning of Article 2 of that Annex:

“Nothing in this Definition, and in particular article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist régimes or other forms of alien domination; *nor the right of these peoples to*

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<sup>248</sup> Vienna Convention on Diplomatic Relations, adopted on 18 Apr. 1961 and entered into force on 24 Apr. 1964, *UNTS*, Vol. 500, p. 95.

<sup>249</sup> See *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 241 (“a key element of the right to self-determination is the right of a people freely to determine its political status”).

<sup>250</sup> See Art. 1, para. 3, of the United Nations Charter.

<sup>251</sup> General Assembly resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted on 24 Oct. 1970 (available at: <https://digitallibrary.un.org/record/202170?v=pdf>); emphasis added.

*struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.”*<sup>252</sup>

190. The African Union would recall in this regard that third States not only have the right to provide the Palestinian people with the support and assistance required for it to exercise its right to self-determination, but they are also under an obligation, “while respecting the Charter of the United Nations and international law, to ensure that any impediment resulting from the illegal presence of Israel in the Occupied Palestinian Territory to the exercise of the Palestinian people of its right to self-determination is brought to an end”, as the Court has stated on a number of occasions<sup>253</sup>. General Assembly resolution 2625 is clear on this point:

“Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

(a) To promote friendly relations and co-operation among States; and

(b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.”<sup>254</sup>

191. Common Article 1, paragraph 3, of the 1966 Covenants provides that:

“[t]he States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations”<sup>255</sup>.

192. The African Union contends that the right of third States to provide support to the Palestinian people and their obligation to ensure that any impediment to the exercise by that people of its right to self-determination is brought to an end impose certain obligations on Israel. Indeed, Israel must respect this right of third States and must not impede its exercise. Moreover, Israel has a dual obligation towards the Palestinian people. As the Court has already noted on several occasions, as a State which, through its unlawful occupation of the Palestinian Territory and its practices and policies, is impeding the right of the Palestinian people to self-determination, Israel must bring an end to its occupation and remove all such impediments. Further, as a member State of the

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<sup>252</sup> Art. 7 of the Annex “Definition of Aggression” to General Assembly resolution 3314 (XXIX), adopted on 14 Dec. 1974 (available at: <https://digitallibrary.un.org/record/190983?ln=en&v=pdf>); emphasis added.

<sup>253</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 279; see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 200, para. 159.

<sup>254</sup> General Assembly resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted on 24 Oct. 1970 (available at: <https://digitallibrary.un.org/record/202170?v=pdf>).

<sup>255</sup> Common Art. 1, para. [3], of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, *UNTS*, Vol. 999, p. 171 (available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-4&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=en)).

international community, Israel must co-operate with third States to ensure the effective enjoyment by the Palestinian people of its right to self-determination. It must therefore make available all facilities at its disposal for the provision by third States of the support required by the Palestinian people to exercise that right.

**H. Israel must give assurances that it will comply with its international obligations relating to the presence and activities of international organizations and States in the Occupied Palestinian Territory**

193. The African Union asserts that Israel must give assurances that it will comply with its international obligations relating to the presence and activities of third States and international organizations in the Occupied Palestinian Territory. Indeed, such assurances are necessary, first, for Israel to comply with some of its obligations under international humanitarian law and, second, to enable international organizations and third States to exercise their rights in support of the Palestinian people.

194. The African Union maintains that international humanitarian law requires Israel to offer assurances as to its conduct so that it refrains from committing acts of intimidation and acts intended to spread or that have the effect of spreading terror among the civilian population. Article 33 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War provides that “[c]ollective penalties and likewise all measures of intimidation or of terrorism are prohibited”<sup>256</sup>. Similarly, Article 51, paragraph 2, of Additional Protocol I, which reflects a rule of customary international law<sup>257</sup>, prohibits “[a]cts or threats of violence the primary purpose of which is to spread terror among the civilian population”. Furthermore, the prohibition of the use of starvation as a method of warfare is a customary rule of international law<sup>258</sup> and a war crime punishable under the Statute of the International Criminal Court<sup>259</sup>. The same is true of the forcible transfer of population and acts intended to produce that effect.

195. The African Union contends that Israel’s measures and practices which obstruct access to humanitarian and development assistance, as well as those intended to impede or that have the effect of impeding relief action by third States and international organizations, are creating a climate of terror and intimidation among the Palestinian population, which is driving the latter out of the Occupied Palestinian Territory by rendering the conditions of life there unbearable. As the Secretary-General has noted:

“Amid constant bombardment by the Israel Defense Forces, and without shelter or the essentials to survive, I expect public order to completely break down soon due to the desperate conditions, rendering even limited humanitarian assistance impossible. An

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<sup>256</sup> Art. 33 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, signed on 12 Aug. 1949 and entered into force on 21 Oct. 1950 (available at: [https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280158b1a&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280158b1a&clang=_en)).

<sup>257</sup> Rule 2. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited. See J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law*, Vol. I (Rules), ICRC, Cambridge, 2005, p. 8.

<sup>258</sup> Rule 53. The use of starvation of the civilian population as a method of warfare is prohibited. *Ibid.*, p. 186.

<sup>259</sup> Art. 8, para. 2 (b) (xxv), of the Rome Statute of the International Criminal Court, signed on 17 July 1998 and entered into force on 1 July 2002 (available at: [https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280025774&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280025774&clang=_en)). This is also one of the main arguments supporting the accusations of genocide made against the Israeli State. In addition to South Africa’s arguments on this point, see also, Human Rights Council, Anatomy of a genocide, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 1 July 2024 (A/HRC/55/73), paras. 34-45.

even worse situation could unfold, including epidemic diseases and increased pressure for mass displacement into neighbouring countries.

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We are facing a severe risk of collapse of the humanitarian system. The situation is fast deteriorating into a catastrophe with potentially irreversible implications for Palestinians as a whole and for peace and security in the region. Such an outcome must be avoided at all costs.”<sup>260</sup>

196. The Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, for his part, has drawn attention to the particularly atrocious situation in Gaza:

“Tens of thousands of people, mostly women and children, have been killed or injured. Families are sleeping in the open as temperatures plummet. Areas where civilians were told to relocate for their safety have come under bombardment. Medical facilities are under relentless attack. The few hospitals that are partially functional are overwhelmed with trauma cases, critically short of all supplies, and inundated by desperate people seeking safety.

A public health disaster is unfolding. Infectious diseases are spreading in overcrowded shelters as sewers spill over. Some 180 Palestinian women are giving birth daily amidst this chaos. People are facing the highest levels of food insecurity ever recorded. Famine is around the corner.

For children in particular, the past 12 weeks have been traumatic: No food. No water. No school. Nothing but the terrifying sounds of war, day in and day out.

Gaza has simply become uninhabitable.”<sup>261</sup>

197. The African Union observes that Israel’s adoption of the laws of 28 October 2024 will inevitably lead to a complete breakdown of the humanitarian system in Palestine, with “[d]isastrous consequences” that will jeopardize the lives of millions of Palestinians in the Occupied Palestinian Territory<sup>262</sup>. In fact, in its 2024 report on developments in the economy of the Occupied Palestinian Territory, the United Nations Conference on Trade and Development noted that:

“restrictions on the entry of humanitarian relief aggravate poverty across the Occupied Palestinian Territory and increase the threat of famine and starvation. The United Nations Development Programme stated that if the confrontation continued to mid-2024, the poverty rate could surge to 60.7 per cent and bring a large part of the middle class below the poverty line.”<sup>263</sup>

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<sup>260</sup> Letter dated 6 December 2023 from the Secretary-General addressed to the President of the Security Council, 6 Dec. 2023 (S/2023/962).

<sup>261</sup> M. Griffiths, “Statement: The war in Gaza must end”, 5 Jan. 2024 (available at: <https://www.unocha.org/news/un-relief-chief-war-gaza-must-end>).

<sup>262</sup> UN News, “Israel UNRWA ban will undermine Gaza ceasefire, Security Council hears”, 28 Jan. 2025 (available at: <https://news.un.org/en/story/2025/01/1159516>).

<sup>263</sup> United Nations Conference on Trade and Development, Developments in the economy of the Occupied Palestinian Territory, Note by the UNCTAD secretariat, 23 July 2024 (TD/B71/3), p. 11 (available at: <https://docs.un.org/en/td/B/71/3>).

198. The African Union considers that Israel's overall conduct in respect of its relevant international obligations must be taken into account in assessing the psychological state of the Palestinian population. It recalls that the General Assembly has repeatedly demanded that Israel remove the barriers to the exercise by the Palestinian people of its right to self-determination<sup>264</sup>. The African Union further recalls that, in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court called upon the State of Israel to scrupulously respect its obligations under humanitarian law and to take measures to remove the impediments to Palestinian rights resulting from the construction of the wall<sup>265</sup>. In its recent Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, the Court stated that Israel must put an end to a whole series of policies and practices contrary to international law, in particular its settlement practices, its discriminatory laws and practices, and its practices infringing the right of the Palestinian people to self-determination<sup>266</sup>. Similarly, the Court has indicated a number of provisional measures in the contentious proceedings between South Africa and Israel. Both the Security Council and the General Assembly have called on Israel to guarantee Palestinians access to humanitarian assistance<sup>267</sup> and to protect the rights of relief personnel<sup>268</sup>. On the basis of these facts, the Pre-Trial Chamber of the International Criminal Court issued two arrest warrants for senior Israeli officials, showing the seriousness of Israel's failings in this regard<sup>269</sup>. The African Union deplores Israel's failure thus far to comply with its obligations. It concludes that Israel must provide assurances in order to dissipate the terror that is being instilled in the Palestinian population as a result of these measures and practices and in light of its overall conduct.

199. Furthermore, the African Union contends that Israel must offer assurances that it will comply with its obligation to respect and facilitate the fulfilment by UNRWA of its mandate. Indeed, the African Union has already observed that the Israeli measures and practices discussed above are contrary to Israel's obligations under United Nations law and that Israel is required to respect, facilitate and co-operate in UNRWA's implementation of its mandate. Israel's current approach, which consists of further obstructing actions to provide humanitarian and development assistance to the Palestinian people and subjecting that people to endless draconian measures and harassment, is creating a poisonous atmosphere that is destroying the climate of trust necessary for the successful accomplishment of UNRWA's mission. Those measures are fostering a climate of uncertainty that is hampering UNRWA's ability to perform its functions. Consequently, providing assurances is a

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<sup>264</sup> See, in particular, dossier No. N218, UN doc. A/RES/ES-10/24, 18 Sept. 2024; dossier No. N219, UN doc. A/RES/ES-10/25, 11 Dec. 2024.

<sup>265</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 200-201, para. 162.

<sup>266</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, paras. 267-272.

<sup>267</sup> See e.g. dossier No. N223, UN doc. S/RES/2712 (2023), para. 4; dossier No. N226, UN doc. S/RES/2720 (2023), paras. 1-3; dossier No. N228, Security Council Press Statement on incident surrounding humanitarian assistance convoy in Gaza Strip, UN doc. SC/15608, 2 Mar. 2024; dossier No. N229, UN doc. S/RES/2728 (2024); dossier No. N231, Security Council Press Statement on humanitarian workers and threat of famine in Gaza, UN doc. SC/15658, 11 Apr. 2024; dossier No. N239, Security Council Press Statement on the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), UN doc. SC/15874, 30 Oct. 2024. See also dossier No. N215, UN doc. A/RES/ES-10/21, 27 Oct. 2023; dossier No. N219, UN doc. A/RES/ES-10/25, 11 Dec. 2024; dossier No. N220, UN doc. A/RES/ES-10/26, 11 Dec. 2024.

<sup>268</sup> See e.g. dossier No. N249, UN doc. S/RES/1502 (2003); dossier No. N250, UN doc. S/RES/2175 (2014); dossier No. N251, UN doc. S/RES/2286 (2016); dossier No. N252, UN doc. S/RES/2730 (2024). See also dossier No. N184, UN doc. A/RES/76/127, 10 Dec. 2021; dossier No. N185, UN doc. A/RES/77/31, 6 Dec. 2022; dossier No. N186, UN doc. A/RES/78/118, 8 Dec. 2023; dossier No. N187, UN doc. A/RES/79/138, 9 Dec. 2024.

<sup>269</sup> Press release of the International Criminal Court, 21 Nov. 2024, "Situation in the State of Palestine: ICC Pre-Trial Chamber I rejects the State of Israel's challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant" (available at: <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges>).

means for Israel to establish an environment of trust in which UNRWA could fulfil its mandate. As the International Law Commission has noted, in the context of international responsibility, “[a]ssurances and guarantees are concerned with the restoration of confidence in a continuing relationship”<sup>270</sup>.

### CONCLUSIONS OF THE AFRICAN UNION

200. In light of the analysis set out in this written statement, the African Union has the honour to conclude that, in response to the question posed by the General Assembly in its request for an advisory opinion contained in resolution 79/232 of 19 December 2024, the Court should determine that Israel’s obligations relating to the presence and activities of third States and international organizations in the Occupied Palestinian Territory, including those relating to the provision of humanitarian and development assistance and support for the Palestinian people’s right to self-determination, are as follows:

1. Israel is under an obligation to ensure the effective enjoyment by the Palestinian population and people in the Occupied Palestinian Territory of their right to existence, to life and to food, in particular by not depriving them of their own means of subsistence and by providing the Palestinian population with quantitatively and qualitatively sufficient food and medical supplies.
2. Israel is under an obligation to ensure the effective enjoyment by the Palestinian population and people in the Occupied Palestinian Territory of their right to health, in particular by ensuring the proper and unimpeded functioning of medical and hospital services.
3. Israel is under an obligation to ensure the effective enjoyment by children in the Occupied Palestinian Territory of their right to education.
4. Israel is under an obligation to take all necessary measures to ensure the effective enjoyment by the Palestinian people in the Occupied Palestinian Territory of its right to social, economic and cultural development, including by bringing an end to the occupation.
5. Israel is under an obligation to respect and facilitate the provision of humanitarian and development assistance to the Palestinian population and people by international organizations and third States.
6. Israel is under an obligation to protect personnel involved in relief schemes in aid of the Palestinian population.
7. Israel is under an obligation to respect the mandate of UNRWA.
8. Israel is under an obligation to respect the privileges and immunities of the United Nations, including those enjoyed by its subsidiary organs, including UNRWA, and to take all necessary measures in its domestic law to ensure that they are guaranteed.
9. Israel is under an obligation to respect the terms of the Comay-Micheltmore Agreement until it is replaced by another agreement between UNRWA and Israel setting out Israel’s intention to give UNRWA every assistance, in accordance with its obligations under Article 2, paragraphs 2 and 5, of the Charter.
10. Israel is under an obligation to immediately repeal, by means of its own choosing, the Law to Cease UNRWA Operations and the Law to Cease UNRWA Operations in the Territory of the

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<sup>270</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 89.



State of Israel of 28 October 2024 and, pending the implementation of those means, to immediately render those laws ineffective.

11. Israel must respect, facilitate and protect the presence and activities of third States in the Occupied Palestinian Territory in support of the exercise by the Palestinian people of its right to self-determination.
12. Israel must immediately give assurances that it will comply with its international obligations relating to the presence and activities of third States and international organizations, including in relation to the provision of humanitarian and development assistance and support for the exercise by the Palestinian people of its right to self-determination.

*(Signed)* Hajer GUELDICH,  
Legal Adviser of the African Union.

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