

INTERNATIONAL COURT OF JUSTICE

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

(REQUEST FOR AN ADVISORY OPINION)

**WRITTEN STATEMENT
OF MALAYSIA**

25 FEBRUARY 2025

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WRITTEN STATEMENT OF MALAYSIA

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I. INTRODUCTION

1. Malaysia submits this Written Statement in accordance with the Order of the Court of 23 December 2024 in response to the United Nations General Assembly's request for an advisory opinion contained in Resolution 79/232 of 19 December 2024.¹
2. In Resolution 79/232, the General Assembly requested that the Court render an advisory opinion in the following terms:

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?²

3. This Written Statement construes the question in light of the right to self-determination and against the background of the Court's advisory opinion of 19 July 2024 on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied*

¹ United Nations General Assembly Resolution 79/232 of 19 December 2024, UN Doc A/RES/79/232.

² United Nations General Assembly Resolution 79/232 of 19 December 2024, UN Doc A/RES/79/232, para 10.

*Palestinian Territory, including East Jerusalem.*³ In particular, this Written Statement focuses on the obligations of Israel that are owed to the international community as a whole, including the United Nations, and that stem from its status both as the occupying Power in the Occupied Palestinian Territory, as well as a member of the United Nations. After setting out these obligations, Malaysia considers them in the light of the Palestinian people's right to self-determination and the Court's advisory opinion of 19 July 2024.

4. Malaysia submits that the plans and measures, including legislation adopted, by Israel to interfere with or obstruct the presence and operation of the United Nations in the Occupied Palestinian Territory, as noted by the General Assembly in its Resolution 79/232,⁴ are nothing but additional links in the chain of the policies and practices of Israel in the Occupied Palestinian Territory which the Court found to constitute, among others, a serious breach of the right of the Palestinian people to self-determination,⁵ a peremptory norm of general international law.⁶ This is because such measures are in breach of the obligations of Israel as an occupying Power, of its obligations as a member of the United Nations, and, taken together, of each of the four aspects of the right of self-determination of the Palestinian people identified by the Court in its advisory opinion of 19 July 2024.
5. Malaysia submits this Written Statement for the following reasons:
 - a. First, Malaysia has a demonstrated steadfast commitment to the right to self-determination and believes that the advisory opinion of the Court in response to the General Assembly's request will assist in further clarifying and implementing the right.
 - b. Second, Malaysia is acting in pursuit of its obligations as these were enunciated by the Court in its advisory opinion of 19 July 2024, in particular the obligation to cooperate to bring to an end the unlawful occupation of the Occupied Palestinian Territory and the serious breach of the right to self-determination of the Palestinian people.
 - c. Third, Malaysia is guided by its obligations to ensure respect for the four Geneva Conventions of 12 August 1949 in accordance with their Common Article 1.
 - d. Fourth, Malaysia is guided by its obligations under the Charter of the United Nations and related instruments as set out in this Written Statement, and in particular by its obligation to cooperate with the Organisation in good faith.

³ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, ICJ Reports 2024 (hereinafter: *Policies and Practices*).

⁴ United Nations General Assembly Resolution 79/232 of 19 December 2024, UN Doc A/RES/79/232, preamb para 15.

⁵ *Policies and Practices*, Advisory Opinion, paras 275, 278–279.

⁶ *Policies and Practices*, Advisory Opinion, para 233.

- e. Fifth, Malaysia has a strong foreign policy commitment to a just, comprehensive, and lasting peace in the Middle East and the end of the Israeli occupation of Palestine. In pursuit of this commitment, Malaysia has undertaken diplomatic efforts to ensure delivery of humanitarian and development aid to the Occupied Palestinian Territory, and has cooperated with the United Nations, and in particular the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter: UNRWA), including through making voluntary financial contributions.
6. It is in the light of these considerations that Malaysia co-sponsored and then voted in favour of Resolution 79/232 in the General Assembly.⁷ In this Written Statement, Malaysia reiterates its support for the General Assembly's request and respectfully presents its views to the Court on the legal question stated in the request.
7. This Written Statement is structured as follows:
- a. Section II addresses the jurisdiction of the Court. It is Malaysia's position that the Court has jurisdiction to render an advisory opinion on the matter before it, as the General Assembly has duly made a request in this regard, and the request concerns a legal question within the competence of the General Assembly.
 - b. Section III considers whether there are any 'compelling reasons' why the Court should exercise its discretion to decline to render the advisory opinion requested. Malaysia respectfully submits that no such reasons are present in the instance. In particular, the request does not concern any purely bilateral matter between States; the right to self-determination, obligations under international law relating to humanitarian relief and development, and obligations under international law relating to conduct of members towards the United Nations and in particular the General Assembly and its organs are central to the functions and work of the General Assembly; and the request is of urgent and contemporary relevance when considered against the conditions of humanitarian disaster currently prevailing in the Occupied Palestinian Territory, and recent conduct of Israel against the presence of the United Nations in that same territory, including through the adoption of relevant legislation.
 - c. Section IV outlines the obligations of Israel as an occupying Power in the Occupied Palestinian Territory, and argues that UNRWA, as a subsidiary organ of the United Nations General Assembly, functions as a quasi- or humanitarian substitute of the Protecting Power under international humanitarian law, therefore enjoying the additional protections under that law that are commensurate with its function.
 - d. Section V sets out the obligations of Israel as a member of the United Nations, particularly as these obligations refer to the status of the United Nations under Israeli law and its privileges and immunities. It argues that, apart from the obligations set out, and based on a systematic interpretation of the Charter of the United Nations and the 1946 Convention on the Privileges and Immunities of the United Nations, Israel bears a general obligation of good faith cooperation with the United Nations, and in particular UNRWA.

⁷ UN Doc A/79/PV.54, pp 45 and 49, respectively.

- e. Section VI brings the obligations of Israel under Sections IV and V together and views them in the light of the right of the Palestinian people to self-determination. It argues that the conduct of Israel, which is in breach of these obligations, is also ultimately in breach of the right of the Palestinian people to self-determination. This is because the obligations set out in the previous sections are ultimately meant to support and entrench that right, either by according protection to a people under foreign occupation, or by according protection to the United Nations in the latter's pursuit of its purpose of developing friendly relations among nations based on respect for the principle of equal rights and self-determination in accordance with Article 1(2) of the United Nations Charter.
- f. Section VII summarises Malaysia's submissions.

II. THE JURISDICTION OF THE COURT

- 8. Malaysia respectfully submits that the Court has jurisdiction to render the advisory opinion requested: the General Assembly is competent to make the request, and the request concerns a legal question.

A. The General Assembly is Competent to Make the Request

- 9. Article 65(1) of the Statute of the Court provides:

The Court may give an advisory opinion on any legal question at the request of whatever body may be authorised by or in accordance with the Charter of the United Nations to make such a request.

- 10. Article 96(1) of the Charter of the United Nations provides:

The General Assembly [...] may request the International Court of Justice to give an advisory opinion on any legal question.

- 11. In accordance with these provisions, the General Assembly is authorised by Article 96(1) of the Charter to request the Court to give an advisory opinion under Article 65(1) of its Statute on any legal question.

- 12. The General Assembly has duly submitted such a request by Resolution 79/232 of 19 December 2024.⁸ The Resolution was adopted by 137 votes to 12, with 22 abstentions.⁹ It was accordingly adopted by a majority of Member States present and voting in accordance with the General Assembly's Rules of Procedure.¹⁰ The request was subsequently transmitted to the Court in accordance with Article 65(2) of its Statute.¹¹

- 13. Malaysia respectfully submits that the question on which the General Assembly has requested an advisory opinion clearly falls within the scope of the activities of the

⁸ United Nations General Assembly Resolution 79/232 of 19 December 2024, UN Doc A/RES/79/232.

⁹ UN Doc A/79/PV.54, p 49.

¹⁰ Rules of Procedure of the General Assembly, UN Doc A/520/Rev.20, Rule 85.

¹¹ Order of 23 December 2024.

General Assembly, concerned as it is with the obligations of a member of the United Nations in relation to the presence and activities of the United Nations, including a subsidiary organ of the General Assembly (UNRWA), in and in relation to the Occupied Palestinian Territory. Furthermore, the General Assembly has long been engaged with the situation in the Occupied Palestinian Territory more generally, in the exercise of its functions and powers as these are provided for in the relevant provisions of the United Nations Charter. As the Court highlighted in its advisory opinion of 19 July 2024, ‘[s]ince 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’.¹²

14. For these reasons, the General Assembly is competent to request an advisory opinion on this matter.

B. The Request Concerns a Legal Question

15. Under Article 96(1) of the Charter and Article 65(1) of the Statute of the Court, the question on which the Court is requested to render an advisory opinion must be a ‘legal’ question. The Court has held that questions ‘framed in terms of law and rais[ing] problems of international law’ are ‘by their very nature susceptible to a reply based on law’.¹³ Resolution 79/232 requests the Court to consider the rules and principles of international law in order to set out 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, other international organisations and third States, in and in relation to the Occupied Palestinian Territory.¹⁴ The question is framed in terms of law and raises issues of international law, requesting the Court to set out the legal obligations of a State with reference to particular bodies of international law. It is by definition susceptible only to a reply based on law.

16. This conclusion is not negated by the fact that the question may be seen as also having political aspects. The Court has clearly stated that ‘the fact that a question has political aspects does not suffice to deprive it of its character as a legal question’.¹⁵ Israel has already accused the General Assembly of engaging in ‘political theatre’, now adding ‘a new act to the circus – the International Court of Justice’.¹⁶ Leaving both the merits and the contemptible style of this attack to one side, the Court has further noted that ‘in determining the jurisdictional issue of whether it is confronted with a legal question’, it ‘is not concerned with the political nature of the motives which may have inspired the request or the political implications which its opinion might have’.¹⁷

¹² *Policies and Practices*, Advisory Opinion, para 35.

¹³ *Western Sahara*, Advisory Opinion, *ICJ Reports* 1975, para 15; *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, *ICJ Reports* 1996, para 13.

¹⁴ United Nations General Assembly Resolution 79/232 of 19 December 2024, UN Doc A/RES/79/232, para 10.

¹⁵ *Accordance with international Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, *ICJ Reports* 2010, para 27 (hereinafter: *Kosovo*).

¹⁶ UN Doc A/79/PV.54, p 48 (Danon).

¹⁷ *Kosovo*, Advisory Opinion, para 27; see also *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, *ICJ Reports* 1996, para 13 (hereinafter: *Nuclear Weapons*).

17. For these reasons, the question asked by the General Assembly is a legal question, requesting the Court to set out the law applicable to Israel with respect to the presence and operation of the United Nations, other international organisations and third States in and in relation to the Occupied Palestinian Territory, and therefore inviting it to ‘discharge an essentially judicial task’.¹⁸

III. NO COMPELLING REASONS TO DECLINE GIVING AN ADVISORY OPINION

18. The Court has ‘repeatedly emphasised’ that Article 65(1) of the Statute ‘should be interpreted to mean that the Court has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met’.¹⁹ However, the present Court has also never declined to give an advisory opinion, further repeatedly emphasising that, as the principal judicial organ of the United Nations, it ‘considers that its answer to a request for an advisory opinion represents its participation in the activities of the Organisation, and, in principle, should not be refused’.²⁰ Accordingly, the Court has consistently held that it will not decline to give an advisory opinion in response to a request falling within its jurisdiction save for ‘compelling reasons’.²¹
19. Malaysia respectfully submits that there are no compelling reasons that would demand the Court to exercise its discretion to decline to give an advisory opinion in the present instance.

A. Not a Purely Bilateral Matter between States

20. The Court has been consistent in stating that ‘there would be a compelling reason for to decline to give advisory opinion when such an opinion 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’.²² However, in the present proceedings, the advisory opinion requested refers to the extant obligations of Israel, as an occupying Power and as a member of the United Nations, with respect to the presence and activities of the United Nations, other international organisations and third States in and in relation to the Occupied Palestinian Territory. The request seeks to ‘clarify’ Israel’s obligations ‘to ensure and facilitate humanitarian and development assistance in the Occupied Palestinian Territory’,²³ presenting to the Court ‘certain additional questions to supplement the Court’s advisory opinion of 19 July 2024’.²⁴

¹⁸ *Kosovo*, Advisory Opinion, para 27.

¹⁹ *Policies and Practices*, Advisory Opinion, para 30; *Kosovo*, Advisory Opinion, para 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, para 44 (hereinafter: *Wall*).

²⁰ *Policies and Practices*, Advisory Opinion, para 30; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Reports 2019, para 65 (hereinafter: *Chagos*).

²¹ *Policies and Practices*, Advisory Opinion, para 31; *Chagos*, Advisory Opinion, para 65; *Kosovo*, Advisory Opinion, para 30; *Wall*, Advisory Opinion, para 44.

²² *Policies and Practices*, Advisory Opinion, para 31; *Chagos*, Advisory Opinion, para 85; *Western Sahara*, Advisory Opinion, ICJ Reports 1975, para 33.

²³ UN Doc A/79/PV.54, p 46 (Kravik).

²⁴ United Nations General Assembly Resolution 79/232 of 19 December 2024, UN Doc A/RES/79/232, preamb para 23.

21. In that latter advisory opinion, the Court noted the longstanding involvement of United Nations organs in questions relating to Palestine.²⁵ It further noted the United Nations' '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',²⁶ as described in General Assembly Resolution 57/107.²⁷ Much like in that advisory opinion, the issues raised in this related request for an advisory opinion are 'part of the Palestinian question, including the General Assembly's role relating thereto'.²⁸ The matter is thus of direct concern to the United Nations as it relates both to the issue of the presence and operation of its own organs in and in relation to the Occupied Palestinian Territory, and to issues of international peace and security.

B. A Question Central to the Functions and Work of the General Assembly

22. The question on which the Court is requested to render an advisory opinion is central to the functions and work of the General Assembly. First, it has already been noted, by the Court as well as in this Written Statement, that the question of Palestine has been central to work of the General Assembly from its inception.²⁹ Second, the question relates directly to the operation of one of the General Assembly's subsidiary organs, UNRWA, in accordance with that organ's mandate, as this has been set out in General Assembly Resolution 302 (IV)³⁰ and further defined in subsequent resolutions.
23. The General Assembly requires the Court's assistance in the clarification of the legal question it has posed to it, in order to properly exercise its functions over the question of Palestine, and in order to organise its work in relation to, and through, UNRWA as its subsidiary organ. Malaysia thus respectfully submits that this is a compelling reason for the Court to render the advisory opinion requested.

C. Urgency and Contemporary Relevance of the Request

24. Finally, the question brought to the Court by means of the request for an advisory opinion has a special urgency and relevance in light of recent escalatory actions on the part of Israel in the Occupied Palestinian Territory. Mentioning some of these actions, including the adoption of legislation directly seeking to prevent the presence and operation of the United Nations in the Occupied Palestinian Territory, the General Assembly highlighted the urgency of its request in Resolution 79/232: it requested the Court to render an advisory opinion 'on a priority basis and with the *utmost* urgency',³¹ in accordance with Article 103 of its Rules of Procedure. The same urgency is evident in the Secretary-General's letter to the President of the General Assembly of 28 October 2024,

²⁵ *Policies and Practices*, Advisory Opinion, para 35.

²⁶ *Policies and Practices*, Advisory Opinion, para 35.

²⁷ United Nations General Assembly Resolution 57/107 of 3 December 2002, UN Doc A/RES/57/107, preamb para 4.

²⁸ *Policies and Practices*, Advisory Opinion, para 35.

²⁹ See para 21 of this Written Statement.

³⁰ United Nations General Assembly Resolution 302(IV) of 8 December 1949, UN Doc A/RES/302(IV), para 7.

³¹ United Nations General Assembly Resolution 79/232 of 19 December 2024, UN Doc A/RES/79/232, para 10 (emphasis added).

bringing ‘to the attention of the General Assembly *on an urgent basis* two laws which the Knesset of Israel adopted on 28 October 2024 and which, if implemented could prevent the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) from continuing its essential work in the Occupied Palestinian Territory, including East Jerusalem, as mandated by the Assembly’.³²

25. Malaysia respectfully submits that, far from there being any compelling reasons for the Court to decline to give the advisory opinion requested, in the instance there are compelling reasons for the Court to render the advisory opinion, and indeed on an urgent basis.

IV. INTERNATIONAL OBLIGATIONS OF ISRAEL AS AN OCCUPYING POWER

A. Applicable Law: Territorial and Material Scope

26. The international law of occupation must be seen as applying to the Occupied Palestinian Territory as a whole. As the Court noted in its advisory opinion of 19 July 2024, ‘from a legal standpoint, the Occupied Palestinian Territory constitutes a single territorial unit’.³³ The Court further held that, in particular with respect to the Gaza Strip, Israel’s obligations under the law of occupation remain ‘commensurate with the degree of its effective control’ over it.³⁴ This effective control is, at the moment, significant, and includes at least ‘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’,³⁵ as well as military control of other areas within the Gaza Strip.

27. The international law of occupation that is applicable in the instance is enshrined in the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (hereinafter: Fourth Geneva Convention) and in customary international law.³⁶ The obligations stemming from the international law of occupation are ‘essentially of an *erga omnes* character’,³⁷ meaning they are owed by the occupying Power to the international community as a whole. The international community as a whole must be seen, today, as encompassing the United Nations, an international organisation with objective international legal personality.³⁸

B. General Administration and Protection Obligations

28. The starting point for any discussion of the obligations of Israel as an occupying Power in the Occupied Palestinian Territory must be Article 43 of the Hague Regulations 1907. According to this provision, which is understood to reflect customary international

³² UN Doc A/79/558 (emphasis added).

³³ *Policies and Practices*, Advisory Opinion, para 78.

³⁴ *Policies and Practices*, Advisory Opinion, para 94.

³⁵ *Policies and Practices*, Advisory Opinion, para 93.

³⁶ *Policies and Practices*, Advisory Opinion, para 96.

³⁷ *Policies and Practices*, Advisory Opinion, para 96; *Wall*, Advisory Opinion, para 157.

³⁸ *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, *ICJ Reports 1949*, pp 179 and 185 (hereinafter: *Reparation for Injuries*).

law,³⁹ the occupying Power ‘shall take *all* the measures in [its] 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’.⁴⁰

29. This provision establishes a positive obligation on Israel to administer the Occupied Palestinian Territory and to protect the population in that territory as the *de facto* administrator.⁴¹ The obligation requires Israel to administer the Occupied Palestinian Territory ‘for the benefit of the local population’.⁴² This general positive obligation is further ‘amplified’ by the relevant provisions of the Fourth Geneva Convention with respect to the protection of the civilian population in the occupied territory.⁴³ But it is also coupled with a negative obligation on Israel as the occupying Power to refrain from changing the laws in force in the occupied territory ‘unless absolutely prevented’ from doing so.
30. The Fourth Geneva Convention further strictly limits Israel’s power to conclude agreements with the authorities in the occupied territory precisely in order to protect such authorities from being forced to, for example, ban the activities of humanitarian organisations in the occupied territory.⁴⁴ What the occupying Power cannot do by means of ‘agreement’ with the authorities of the occupied territory it certainly cannot do unilaterally. As such, Israel is under an obligation not to ban the activities of humanitarian organisations in the Occupied Palestinian Territory.
31. Article 50(1) of the Fourth Geneva Convention further imposes a general obligation on Israel to ‘facilitate the proper working of *all* institutions devoted to the care and education of children’ in the Occupied Palestinian Territory.⁴⁵ This general obligation covers a wide variety of institutions, referring as it does to both the care and the education of children as the only criterion for protection,⁴⁶ and would clearly cover UNRWA primary health clinics and schools throughout the Occupied Palestinian Territory. The obligation incumbent upon Israel in this respect again has both a positive and a negative aspect. Beyond the negative aspect of non-interference with the activities and ‘proper working’ of these institutions, including UNRWA, such as the requisitioning of staff, premises, and equipment, the provision establishes a positive obligation on Israel to ensure their provision with food, medical supplies, and anything else that is necessary to enable them to carry out their task.⁴⁷

³⁹ *Policies and Practices*, Advisory Opinion, para 96; *Wall*, Advisory Opinion, para 89.

⁴⁰ Article 43 Regulations concerning the Laws and Customs of War on Land, annexed to Convention (IV) respecting the Laws and Customary of War on Land of 18 October 1907 (emphasis added).

⁴¹ ICRC, Commentary to Fourth Geneva Convention (1958) at p 273.

⁴² *Policies and Practices*, Advisory Opinion, para 105.

⁴³ ICRC, Commentary to Fourth Geneva Convention (1958) at p 274; *Policies and Practices*, Advisory Opinion, para 106.

⁴⁴ Articles 7(1) and 47 Fourth Geneva Convention; ICRC, Commentary to Fourth Geneva Convention (1958) at pp 274–275; see also *Policies and Practices*, Advisory Opinion, para 102.

⁴⁵ Article 50(1) Fourth Geneva Convention (emphasis added).

⁴⁶ See further ICRC, Commentary to Fourth Geneva Convention (1958) at p 286.

⁴⁷ ICRC, Commentary to Fourth Geneva Convention (1958) at p 286

32. Israel is further prohibited, more generally, from destroying property belonging, among others, to 'social or co-operative organisations', except 'where such destruction is rendered *absolutely necessary* by military necessity' in accordance with Article 53 of the Fourth Geneva Convention.⁴⁸ This prohibition covers the property of humanitarian organisations, including UNRWA,⁴⁹ as these are institutions 'dedicated to charity and education'.⁵⁰
33. Most importantly, Israel as the occupying Power is under a positive obligation to ensure the food and medical supplies of the population of the Occupied Palestinian Territory 'to the *fullest extent* of the means available to it'.⁵¹ This includes an obligation to 'bring in' necessary foodstuffs, medical stores, and other articles if the resources of the occupied territory are inadequate.⁵² This provision of Article 55(1) Fourth Geneva Convention 'extends very considerably' the general obligation of Israel under Article 43 Hague Regulations 1907,⁵³ and is in turn further extended considerably the provision of Article 69(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) of 8 June 1977 (hereinafter: Additional Protocol I).
34. The latter provision also requires Israel to further ensure 'to the fullest extent of the means available to it and without *any* adverse distinction' the provision of clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the Occupied Palestinian Territory, and objects of religious worship.⁵⁴ This positive obligation extends notably to '*all* other supplies' that are essential for the survival of the civilian population, which, depending on the circumstances on the ground also cover fuel or other supplies not mentioned in the provision.⁵⁵ While Israel is not a party to Additional Protocol I, Malaysia respectfully submits that the provision of Article 69 API reflects customary international law, as one of the 'great many rules of humanitarian law applicable in armed conflict' that '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'.⁵⁶

⁴⁸ Article 53 Fourth Geneva Convention (emphasis added).

⁴⁹ The United Nations, and UNRWA in particular, are further protected with respect to the inviolability of its property in accordance with UN law, on which see section V.

⁵⁰ See also Article 56 Hague Regulations 1907; ICRC, Commentary to Fourth Geneva Convention (1958) at p 301.

⁵¹ Article 55(1) Fourth Geneva Convention (emphasis added).

⁵² Article 55(1) Fourth Geneva Convention.

⁵³ ICRC, Commentary to Fourth Geneva Convention (1958) at p 309.

⁵⁴ Article 69(1) Additional Protocol I (emphasis added).

⁵⁵ ICRC, Commentary to Additional Protocol I (1987) at p 812, para 2780 (emphasis added). Arguably this is the position also under a proper interpretation of Article 55(1) GCIV: see ICRC, Commentary to Fourth Geneva Convention (1958) at p 310, referring to 'any article necessary to support life'.

⁵⁶ *Nuclear Weapons*, Advisory Opinion, para 79 (emphasis added). With respect to the customary character of Articles 69–71 Additional Protocol I see also the ICRC Study on Customary International Humanitarian Law, Rule 55: Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (2005).

35. Finally, Article 56(1) of the Fourth Geneva Convention imposes on Israel a positive obligation to ensure and maintain ‘the medical and hospital establishments and services, public health and hygiene’ in the Occupied Palestinian Territory, again ‘to the fullest extent of the means available to it’.⁵⁷ This is coupled with a negative obligation of Israel to ‘avoid hampering’ the work of organisations, including UNRWA, who are responsible for the task of looking after the health and hygiene of the population in the Occupied Palestinian Territory.⁵⁸
36. International human rights law imposes further obligations on Israel as an occupying Power. As the Court has found, ‘the protection offered by human rights conventions does not cease in case of armed conflict’.⁵⁹ Several obligations under human rights conventions to which Israel is a party are relevant not just to the civilian population of the Occupied Palestinian Territory, who remains under Israeli jurisdiction, but also to the United Nations, other international organisations, and third States, whose personnel may also be operating in the Occupied Palestinian Territory subject to Israeli jurisdiction.
37. Emphasis is to be given in this context to obligations under the International Covenant on Economic, Social and Cultural Rights, and in particular the obligations relating to the right to an adequate standard of living, including adequate food, clothing, and housing (Article 11), the right to health (Article 12), and the right to education (Articles 13 and 14). It has been the consistent position of the Court that the Covenant,⁶⁰ along with the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Racial Discrimination, is applicable to the Occupied Palestinian Territory.
38. The general positive and negative obligations briefly canvassed in this sub-section establish a framework within which the occupying Power is obliged to govern the occupied territory and protect the civilian population within it. Malaysia respectfully submits that Israel has long been in breach of all these obligations, as the Court has also found, in part, in its advisory opinions of 9 July 2004 and 19 July 2024.⁶¹ In particular it certainly has long not been ‘ensuring’ food, medicines, clothing, bedding, shelter, fuel and other vital supplies of the population ‘to the fullest extent of the means available to it’, or indeed ‘bringing in’ any such supplies. Quite to the contrary, Israel has been draining the Occupied Palestinian Territory of its resources,⁶² or wantonly destroying them,⁶³ along with structures dedicated to provision of humanitarian aid, health, and education,⁶⁴ all the while relying on UNRWA and other humanitarian organisations and

⁵⁷ Article 56(1) Fourth Geneva Convention.

⁵⁸ See ICRC, Commentary to Fourth Geneva Convention (1958) at p 313.

⁵⁹ *Wall*, Advisory Opinion, para 106. See also *Policies and Practices*, Advisory Opinion, paras 99–101.

⁶⁰ *Policies and Practices*, Advisory Opinion, para 100; *Wall*, Advisory Opinion, para 112.

⁶¹ *Wall*, Advisory Opinion; *Policies and Practices*, Advisory Opinion.

⁶² *Policies and Practices*, Advisory Opinion, paras 124–133.

⁶³ *Wall*, Advisory Opinion, para 133.

⁶⁴ See the Report of the United Nations High Commissioner for Human Rights, ‘Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan’, UN Doc A/HRC/52/76 (15 March 2023), paras 25–26.

third States to provide for the population. Far from facilitating the operation and protecting establishments dedicated to health of the population and the care and education of children, it has been either destroying them or rendering them incapable of operating or restricting access to them.⁶⁵ And the latest move, the two laws on the cessation of UNRWA operations in Israel and the Occupied Palestinian Territory, merely seek to entrench these violations by ultimately banning the operation of a humanitarian organisation in the occupied territory.

39. The obligations set out in this sub-section throw into sharp relief the concrete obligations of Israel with respect to humanitarian relief, which are triggered because the population of the Occupied Palestinian Territory is chronically inadequately supplied – very much despite Israel’s obligations as described. These concrete obligations are taken up in the following sub-section.

C. Concrete Obligations regarding Humanitarian Relief

40. Articles 59, 60, and 61 of the Fourth Geneva Convention set out the obligations of Israel with respect to the provision of humanitarian relief in the Occupied Palestinian Territory. These are supplemented by the provisions of Articles 69 and 71 of Additional Protocol I, which Malaysia submits, as above, reflect customary rules of international humanitarian law and indeed intransgressible principles of international customary law.⁶⁶
41. Article 59(1) of the Fourth Geneva Convention, in conjunction with Article 69(2) of Additional Protocol I, establish an obligation on Israel to ‘agree’ to relief schemes on behalf of the population of the Occupied Palestinian Territory, and to ‘facilitate’ them ‘by all the means at its disposal’,⁶⁷ in order for these relief schemes to be implemented ‘without delay’.⁶⁸ There is no right of Israel to refuse humanitarian relief schemes, even if imperative reasons of security are claimed to so demand.⁶⁹ The obligation of Israel as an occupying Power to agree to humanitarian relief operations and to facilitate them is beyond any doubt on the face of the relevant applicable provisions.⁷⁰
42. Paragraph 2 of Article 59 of the Fourth Geneva Convention establishes that relief schemes to which the strict obligation of Israel as the occupying Power to ‘agree’ and ‘facilitate’ applies ‘may be undertaken either by States or by impartial humanitarian

⁶⁵ *Wall*, Advisory Opinion, para 133.

⁶⁶ See para 34 of this Written Statement.

⁶⁷ Article 59(1) Fourth Geneva Convention.

⁶⁸ Article 69(2) Additional Protocol I. See also ICRC, Commentary to Additional Protocol I (1987) at p 814, para 2789, noting that ‘the instruction is also addressed, *and in a more pressing form*, to the Occupying Power which is not able to ensure the provision of supplies for the population’ (emphasis added).

⁶⁹ ICRC, Commentary to Fourth Geneva Convention (1958) at p 329, commenting on the right to the occupying Power to refuse individual relief consignments for this reason under Article 62 Fourth Geneva Convention.

⁷⁰ See also Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict (Commissioned by the United Nations Office for the Coordination of Humanitarian Affairs) (2016) at p 18, para 32, and p 20, Conclusion *D(iii)* (hereinafter: Oxford Guidance).

organisations',⁷¹ such as UNRWA.⁷² The obligation on Israel is one of 'wholehearted' cooperation 'in the rapid and scrupulous execution' of humanitarian relief schemes,⁷³ including with UNRWA or other actors, such as other international organisations or third States undertaking relief operations.

43. Article 59(3) of the Fourth Geneva Convention also imposes an obligation on Israel to 'permit' relief consignments and to 'guarantee' their protection.⁷⁴ This means, in particular, that relief consignments must be allowed to pass through any blockade,⁷⁵ such as that imposed on the Gaza Strip. Again, this obligation has both a negative (permit passage) and a positive aspect (guarantee protection), and it constitutes the 'keystone' of the whole system of humanitarian relief operations.⁷⁶
44. Under Article 60 of the Fourth Geneva Convention, Israel is obliged not to divert relief consignments from the purpose for which they are intended in any 'way whatsoever'.⁷⁷ Diversion is exceptionally allowed only in cases of 'urgent necessity', and then only 'in the interests of the population of the occupied territory and with the consent of the Protecting Power'.⁷⁸ These conditions are cumulative,⁷⁹ meaning that absence of even one of them is enough to prevent any possibility of diversion.
45. Article 61(2) of the Fourth Geneva Convention imposes an obligation on Israel to facilitate the rapid distribution of humanitarian consignments.⁸⁰ This obligation involves taking 'all necessary steps' to facilitate distribution, including making available transport and facilities for the staff of distributing organisations, granting permits allowing freedom of movement, and limiting administrative restrictions.⁸¹
46. Article 61(1) provides for the distribution of relief consignments, which shall be carried out 'with the co-operation and under the supervision of the Protecting Power'.⁸² However, the same provision allows the delegation of this duty 'to a neutral Power, the International Committee of the Red Cross or to any other impartial humanitarian body'.⁸³ Such delegation is subject to agreement between the occupying Power and the

⁷¹ Article 59(2) Fourth Geneva Convention (emphasis added).

⁷² According to the ICRC, Commentary to Fourth Geneva Convention (1958) at p 321, '[t]he International Committee of the Red Cross or any other "impartial humanitarian organisation" has the same right as a State to undertake relief schemes' (emphasis added).

⁷³ ICRC, Commentary to Fourth Geneva Convention (1958) at p 320.

⁷⁴ Article 59(3) Fourth Geneva Convention.

⁷⁵ ICRC, Commentary to Fourth Geneva Convention (1958) at p 322.

⁷⁶ ICRC, Commentary to Fourth Geneva Convention (1958) at p 321.

⁷⁷ Article 60 Fourth Geneva Convention.

⁷⁸ On which see further section IV.D. of this Written Statement.

⁷⁹ ICRC, Commentary to Fourth Geneva Convention (1958) at p 324.

⁸⁰ Article 61(2) Fourth Geneva Convention.

⁸¹ See ICRC, Commentary to Fourth Geneva Convention (1958) at p 328.

⁸² Article 61(1) Fourth Geneva Convention.

⁸³ Article 61(1) Fourth Geneva Convention (emphasis added).

Protecting Power, and may not be made by unilateral action.⁸⁴ The distribution of relief consignments requires the engagement of ‘numerous and well-instructed staff’, including for humanitarian organisations called upon to replace the Protecting Power.⁸⁵ While the issue of the Protecting Power is further taken up in sub-section IV.D. below, the reference to humanitarian relief personnel calls into application the provision of Article 71 of Additional Protocol I, which reflects customary international law.⁸⁶

47. Article 71 of Additional Protocol I extends protection to humanitarian relief personnel engaged in the transportation and distribution of relief consignments, and obliges Israel to respect and protect relief personnel,⁸⁷ as well to assist it to ‘the fullest extent practicable’: ‘[o]nly in case of imperative military necessity may the activities of the relief personnel be limited or their movements *temporarily* restricted’.⁸⁸ This obligation of Israel also covers the presence and activities of UNRWA personnel. The participation of relief personnel is admittedly subject to approval of the occupying Power.⁸⁹ However, given that the occupying Power ‘has no latitude to withhold consent to humanitarian relief operations [...] in situations of occupation’⁹⁰ under Article 59 of the Fourth Geneva Convention,⁹¹ and given that the participation of such relief personnel is often crucial especially in view of the limitations of the Protecting Power or of its substitute in its supervision capacity,⁹² or in case of its absence,⁹³ the approval of the occupying Power should at the very least not be arbitrarily withheld,⁹⁴ if it can be withheld at all.
48. These obligations of Israel must also be seen against the prohibition of starvation as a method of warfare established by Article 54(1) of Additional Protocol I,⁹⁵ which Malaysia submits, as above, constitutes an ‘intransgressible principle of international customary law’.⁹⁶ The violation of any of the concrete obligations of the occupying Power set out in this sub-section may ultimately intentionally cause or contribute to starvation of the civilian population of the Occupied Palestinian Territory.

⁸⁴ Article 61(1) Fourth Geneva Convention; ICRC, Commentary to Fourth Geneva Convention (1958) at p 326.

⁸⁵ ICRC, Commentary to Fourth Geneva Convention (1958) at p 326.

⁸⁶ See para 34 of this Written Statement.

⁸⁷ Article 71(2) Additional Protocol I.

⁸⁸ Article 71(3) Additional Protocol I (emphasis added).

⁸⁹ ICRC, Commentary to Additional Protocol I (1987) at p 833, para 2881.

⁹⁰ Oxford Guidance at p 18, para 32.

⁹¹ See paras 41–43 of this Written Statement.

⁹² cf ICRC, Commentary to Additional Protocol I (1987) at p 832, para 2877.

⁹³ On which see further sub-section IV.D.

⁹⁴ According to the Oxford Guidance at p 22, para 49, ‘consent is withheld arbitrarily if (i) it is withheld in circumstances that result in the violation by a state of its obligations under international law with respect to the civilian population in question; or (ii) the withholding of consent violates the principles of necessity and proportionality; or (iii) consent is withheld in a manner that is unreasonable, unjust, lacking in predictability or that is otherwise inappropriate’.

⁹⁵ Article 54(1) Additional Protocol I.

⁹⁶ See para 34 of this Written Statement.

49. It is beyond doubt that by its adoption of the two laws on the cessation of UNRWA operations in Israel and the Occupied Palestinian Territory, as these are described in the Secretary-General's letter to the General Assembly, Israel is in direct violation of its obligations. By its provision in section 2 that prohibits any government authority from having any contact with UNRWA,⁹⁷ the 'Law to Cease UNRWA Operations' is in clear breach of Israel's facilitation obligations as described in this (and the previous) sub-section.
50. More importantly, by effectively banning UNRWA from operating in Israel and the Occupied Palestinian Territory through the adoption of the two laws, Israel is in direct breach of its obligations to provide for the civilian population described in the previous sub-section. This is because the banning of UNRWA, the humanitarian organisation that has been carrying most of the burden of providing for the civilian population in the Occupied Palestinian Territory for decades, would cause the burden of such provision to revert to Israel. As discussed, Israel has never shown itself to be willing to take on that burden. It would thus be automatically in violation of its obligations as an occupying Power.
51. And yet there is one more basis on which the two laws on the cessation of UNRWA operations in Israel and the Occupied Palestinian Territory constitute a direct breach of Israel's obligations as an occupying Power. Malaysia respectfully submits that UNRWA functions as a quasi- or humanitarian substitute of the Protecting Power, and that thus Israel cannot validly withdraw its consent regarding UNRWA's operations. This argument is taken up in the next sub-section.

D. UNRWA as a Quasi- or Humanitarian Substitute of the Protecting Power

52. The provisions regarding humanitarian relief highlight the crucial function of Protecting Powers in the legal framework established by the Fourth Geneva Convention and Additional Protocol I. Indeed, the ICRC has underlined the role of such Protecting Powers, without which the whole system cannot operate as designed.⁹⁸ The most important of the obligations of the occupying Power set out in the sub-sections above, and in particular those established by Articles 55, 59, 60, and 61 of the Fourth Geneva Convention, as well as 69 of Additional Protocol I, envisage a role for the Protecting Power. However, the ICRC has also noted the relative dearth in the designation of Protecting Powers since the entry into force of the Fourth Geneva Convention.⁹⁹ Additional Protocol I clarifies, in Article 5, that the system of Protecting Powers has a 'compulsory character'.¹⁰⁰

⁹⁷ UN Doc A/79/684-S/2024/892.

⁹⁸ See Article 9(1) Fourth Geneva Convention, which reads in part: 'The present Convention *shall* be applied with the co-operation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict' (emphasis added). ICRC, Commentary to Fourth Geneva Convention (1958) at p 86: 'This is a *command* [...] The whole Convention shows that it was intended to exclude any possibility of the protected persons not having the benefit of the services of a Protecting Power or a substitute for such a Power' (emphasis added).

⁹⁹ ICRC, Commentary to Additional Protocol I (1987) at pp 76–77, paras 177–178.

¹⁰⁰ ICRC, Commentary to Additional Protocol I (1987) at p 78, para 179.

53. Already at the time of the Fourth Geneva Convention provision had been made for the ICRC or another humanitarian organisation to function as a quasi- or humanitarian substitute¹⁰¹ for the Protecting Power – given that most of the duties falling on such a Power under the Geneva Conventions are of a humanitarian nature.¹⁰² In the cases where there is no Protecting Power and no official substitute, the occupying Power is *required* to accept the offer of a humanitarian organisation to function as a humanitarian substitute:

If protection cannot be arranged accordingly, the Detaining Power shall request *or shall accept*, subject to the provisions of this Article [11], the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.¹⁰³

The obligation on Israel to either request the services of a humanitarian organisation or accept an offer of such services when this is made, is ‘unconditional’.¹⁰⁴ Even if the occupying Power were to decline an offer of services by a humanitarian organisation, it would not be relieved of its obligation to request the services of another, and to accept them, within a period that should not ‘exceed [...] two months’.¹⁰⁵

54. The function of the quasi- or humanitarian substitute is to constitute the ‘ultimate remedy’.¹⁰⁶ It is, ‘as a last resource’, ‘to undertake at least those activities which bring directly and immediately to the persons protected by the Conventions the care which their condition demands’.¹⁰⁷ The humanitarian organisation assuming these functions must offer all guarantees of impartiality and efficacy.¹⁰⁸ While it is the International Committee of the Red Cross that is referred to by name in Article 11(3) of the Fourth Geneva Convention, this is merely an example: ‘[t]he organisation may be one which is specially created for the sole purposes of Article 11, or it may be already in existence. If it does already exist, it may be specialized or general, official or private, international or national’.¹⁰⁹ In fact, during the preparatory work for the Additional Protocols, it was ‘soon agreed’ that there were other organisations with the required characteristics, which included, also by way of example, the United Nations, and in particular the High Commissioner for Refugees.¹¹⁰

¹⁰¹ For the term see ICRC, Commentary to Additional Protocol I (1987) at p 84, para 210.

¹⁰² ICRC, Commentary to Fourth Geneva Convention (1958) at p 102.

¹⁰³ Article 11(3) Fourth Geneva Convention.

¹⁰⁴ ICRC, Commentary to Fourth Geneva Convention (1958) at p 109. See also ICRC, Commentary to Additional Protocol I (1987) at p 825, paras 2836–2838.

¹⁰⁵ ICRC, Commentary to Fourth Geneva Convention (1958) at p 109–110.

¹⁰⁶ ICRC, Commentary to Additional Protocol I (1987) at p 84, para 210.

¹⁰⁷ ICRC, Commentary to Fourth Geneva Convention (1958) at p 109. However, according to the ICRC, ‘all tasks that fall upon Protecting Powers under the Conventions are in fact humanitarian tasks’: ICRC, Commentary to Additional Protocol I (1987) at p 84, para 211.

¹⁰⁸ Article 11(1) Fourth Geneva Convention.

¹⁰⁹ ICRC, Commentary to Fourth Geneva Convention (1958) at p 106.

¹¹⁰ ICRC, Commentary to Additional Protocol I (1987) at p 85, para 214.

55. Malaysia respectfully submits that it is indeed the United Nations, acting through UNRWA, that has been functioning as at least a quasi- or humanitarian substitute of a Protecting Power in the Occupied Palestinian Territory since its inception, and certainly since the so-called Comay-Micheltmore Exchange of Letters of 14 June 1967 (hereinafter: the Exchange of Letters of 1967) with respect to Israel.¹¹¹ In view of the law as set out in the previous paragraphs, Israel had ‘no latitude’ to refuse the offer of UNRWA to undertake the humanitarian functions provided for in the Fourth Geneva Convention with respect to the Occupied Palestinian Territory. And Israel cannot validly withdraw its consent with respect to UNRWA’s humanitarian operations, as it purports to do through its ‘Law to Cease UNRWA Operations’, and in particular its section 1 (‘Expiration of the exchange of letters between Israel and UNRWA’),¹¹² unless it requests or accepts the offer of another humanitarian organisation within the short time limits understood to be prescribed by the Fourth Geneva Convention (and the Geneva Conventions in general¹¹³) for that purpose.
56. While UNRWA does not have separate international legal personality, being a subsidiary organ of the UN General Assembly, it does on occasion contract or enter into agreements in its own name, including with States. An apparent example in this respect is the aforementioned Exchange of Letters of 1967. Indeed, the Geneva Conventions do not require a ‘humanitarian organisation’ to have any international legal personality.¹¹⁴ The mandate of UNRWA, further, makes clear that it has a purely humanitarian character, in the sense of being ‘concerned with the condition of man, considered solely as a human being, regardless of his value as a military, political, professional or other unit’.¹¹⁵ It qualifies thus as a ‘humanitarian organisation’ in the sense of the Geneva Conventions.
57. Impartiality under Article 11(4) of the Fourth Geneva Convention is understood as independence from any government and from any political party,¹¹⁶ but not as meaning ‘mathematical equality’.¹¹⁷ It is evident that UNRWA is established as both a neutral and impartial organ of the United Nations in accordance with its mandate, as this has been set out in General Assembly Resolution 302 (IV)¹¹⁸ and further defined in subsequent resolutions. Notably, the United Nations, and UNRWA in particular, offer all *guarantees* of impartiality and neutrality as required by the law, even if it is impossible to avoid any and all occasional lapses. It is further evident that the United Nations takes

¹¹¹ Agreement between UNRWA and the Government of Israel Embodied in an Exchange of Letters Dated 14 June 1967 for the Purpose of Enabling UNRWA to Continue to Provide Services to Refugees in Areas under the Control of the Government of Israel: Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 1 July 1966–30 June 1967, UN Doc A/6713 at p 99, Annex III (hereinafter: Exchange of Letters of 1967).

¹¹² See UN Doc A/79/684-S/2024/892. See also Letter from the Permanent Representative of Israel to the United Nations to the Secretary-General of the United Nations of 24 January 2025, reproduced in Documents Received by the Secretariat of the United Nations, Part II (F) at pp 89–91.

¹¹³ See Common Article 10/10/10/11 Geneva Conventions 1949.

¹¹⁴ See para 54 of this Written Statement, text at n 109.

¹¹⁵ ICRC, Commentary to Fourth Geneva Convention (1958) at p 96.

¹¹⁶ ICRC, Commentary to Fourth Geneva Convention (1958) at p 96.

¹¹⁷ ICRC, Commentary to Fourth Geneva Convention (1958) at p 97.

¹¹⁸ United Nations General Assembly Resolution 302(IV) of 8 December 1949, UN Doc A/RES/302(IV), para 7.

this commitment to neutrality and impartiality seriously. In response to allegations of breaches of UNRWA neutrality, the UN Secretary-General, in consultation with the Commissioner-General of UNRWA, appointed an Independent Review Group of the UN Relief and Works Agency for Palestine Refugees in the Near East on 5 February 2024. The Independent Review Group rendered its Final Report on 20 April 2024.¹¹⁹ This, together with the activation by the Secretary-General of a separate investigation by the United Nations Office of Internal Oversight Services constitute both a prompt and a rigorous response to allegations of potential violations of neutrality on the part of UNRWA. Notably, the Secretary-General immediately ‘accept[ed] the recommendations contained in Ms. Colonna’s report’ and ‘has agreed with Commissioner-General Philippe Lazzarini that UNRWA, with the Secretary-General’s support, will establish an action plan to implement the recommendations contained in the Final Report’.¹²⁰ UNRWA has already fully implemented a number of the Final Report’s recommendations and is regularly reporting on further implementation.¹²¹

58. With respect to efficacy under Article 11(4) of the Fourth Geneva Convention, it is evident that UNRWA has the mandate, resources, budget, and personnel, as well as the experience and expertise, to discharge its humanitarian functions¹²² – it has been doing so for more than half a century now. It has created a large network of schools and primary health clinics, it employs significant personnel, it organises aid convoys, and it oversees a large distribution network throughout the Occupied Palestinian Territory, among others. It must be said, to quote both the UN Secretary-General¹²³ and the General Assembly,¹²⁴ as well as the UNRWA Commissioner-General,¹²⁵ the Norwegian Refugee Council,¹²⁶ and numerous States¹²⁷ making statements at the meeting of the Security Council of 28 January 2025, that there is ‘no viable alternative’ to UNRWA, which is ‘indispensable’ and the ‘backbone’ of all humanitarian assistance in the Occupied Palestinian Territory – a function which no organisation can ‘replace or substitute’.

59. Malaysia respectfully submits that the banning of the operations of UNRWA in Israel and the Occupied Palestinian Territory, and its expulsion, constitute a direct breach of Israel’s obligation to consent to the presence and operation of at least a quasi- or humanitarian substitute to the Protecting Power under international humanitarian law.

¹¹⁹ Final Report for the United Nations Secretary-General, Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality (20 April 2024) reproduced in Documents Received by the Secretariat of the United Nations, Part II (F) at pp 8–61.

¹²⁰ Statement by Stéphane Dujarric, Spokesperson for the Secretary-General, 22 April 2024.

¹²¹ See UNRWA Implementation of Colonna Report: Quarterly Report, January 2025.

¹²² ICRC, Commentary to Fourth Geneva Convention (1958) at p 105.

¹²³ See Letter of 19 November 2024 from the UN Secretary-General to the Minister for Foreign Affairs of the State of Israel reproduced in Documents Received by the Secretariat of the United Nations, Part II (F) at p 78.

¹²⁴ See United Nations General Assembly Resolution ES-10/25 of 11 December 2024, A/RES/ES-10/25, paras 4–8.

¹²⁵ See UN Doc S/PV.9852 of 28 January 2025 at pp 3–4.

¹²⁶ See UN Doc S/PV.9852 of 28 January 2025 at p 5.

¹²⁷ See for example UN Doc S/PV.9852 of 28 January 2025 at pp 8 (Algeria); 12 (Greece); 13 (Russian Federation); 15 (France); 16 (Sierra Leone); 20 (Pakistan); 21 (People’s Republic of China); 22–23 (Slovenia); 31 (Egypt on behalf of the Group of Arab States); 33 (Jordan).

E. Interim Conclusion

60. The obligations of the occupying Power under international humanitarian law, along with the obligations applicable to any State exercising jurisdiction, in the sense of effective control, over territory under international human rights law, are to be seen, ultimately, as a matrix of obligations supporting and entrenching the right of peoples to self-determination.
61. Israel is in breach of all the obligations set out in this section. It is thus also in breach of its obligation to respect the right to self-determination of the Palestinian people, as Malaysia will set out in more detail in Section VI of this Written Statement.

V. INTERNATIONAL OBLIGATIONS OF ISRAEL AS A MEMBER OF THE UNITED NATIONS

62. Israel, as a member of the United Nations,¹²⁸ bears a set of obligations under the Charter of the United Nations, as well as under the Convention on the Privileges and Immunities of the United Nations of 1946 (hereinafter: the 1946 Convention), to which it is a party.¹²⁹ A number of these obligations relate to the presence and activities of the United Nations, including UNRWA as a subsidiary organ of the General Assembly, in and in relation to the Occupied Palestinian Territory.

A. The Obligation to Accord the Organisation Legal Capacity

63. Under Article 104 UN Charter, '[t]he Organisation shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes'. Notably, these purposes include, in accordance with Article 1(2) and (3), the development of friendly relations among nations 'based on respect for the principle of equal rights and self-determination of peoples', and the achievement of international cooperation 'in solving problems of an economic, social, cultural, or humanitarian character'. The obligation of Israel to accord the United Nations juridical personality in its domestic legal order is further 'specified' in Article I/1 of the 1946 Convention.¹³⁰
64. This obligation of Israel requires little comment: any attempt by Israel to deprive or diminish the domestic legal capacity of the United Nations in Israel or in the Occupied Palestinian Territory constitutes a breach of its obligation under Articles 104 of the UN Charter and I/1 of the 1946 Convention. This obviously covers UNRWA as a subsidiary organ of the General Assembly: it is the UN that is acting through UNRWA in Israel and in the Occupied Palestinian Territory, and thus UNRWA enjoys the same status, privileges, and immunities as are accorded to the United Nations under the UN Charter and the 1946 Convention.¹³¹

¹²⁸ United Nations General Assembly Resolution 273 (III) of 11 May 1949, UN Doc A/RES/273(III).

¹²⁹ Israel acceded to the 1946 Convention on 21 September 1949.

¹³⁰ See Niels Blokker, 'Juridical Personality (Article I Section 1 General Convention)' in August Reinisch (ed), *The Conventions on the Privileges and Immunities of the United Nations and its Specialised Agencies: A Commentary* (2016) (hereinafter: *1946 Convention Commentary*) at p 49, para 1.

¹³¹ See also Andreas Ziegler, 'Article 104' in Bruno Simma et al (eds), *The Charter of the United Nations: A Commentary* (4th edn, 2024) (hereinafter: *United Nations Charter Commentary*) at p 2795, para 31.

65. According to the Secretary-General, Israel has passed two laws that are relevant to its obligation under Article 104 of the UN Charter and Article I/1 of the 1946 Convention. In the ‘Law to Cease UNRWA Operations’, Israel purports, in section 2, to prohibit any government authority or any entity performing public duties from having any contact with UNRWA or anyone acting on its behalf.¹³² This prohibition of contact aims to diminish, if not to effectively deprive, UNRWA, and through it the United Nations, of its legal capacity under Israeli law not only in the territory of Israel, but also in the Occupied Palestinian Territory. It is a clear breach of the obligation to accord the United Nations domestic legal capacity.
66. This is exacerbated by the ‘Law to Cease UNRWA Operations in the Territory of the State of Israel’. Section 1 of this Law provides that ‘[t]he purpose of this law is *to prevent any UNRWA operations* within the territory of the State of Israel’.¹³³ Section 2 fulfils this purpose by providing that ‘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’.¹³⁴ This is a full deprivation of the legal capacity of the United Nations in the territory of Israel and in the Occupied Palestinian Territory, and it is in clear breach of the obligation to accord the Organisation legal capacity in the territory of Israel.

B. The Obligation to Accord the Organisation Privileges and Immunities

67. Under Article 105(1) of the UN Charter, ‘[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes’. Article 105(2) extends this protection also to the ‘officials of the Organisation’. In fulfilment of the provision of Article 105(3) of the Charter, the 1946 Convention was adopted to provide fully for the privileges and immunities of the Organisation and its officials.¹³⁵ The term ‘Organisation’ is understood to encompass all principal and subsidiary organs of the United Nations,¹³⁶ including UNRWA. Israeli courts have thus far consistently recognised that UNRWA enjoys the privileges and immunities accorded to the United Nations under Article 105 of the Charter and the provisions of the 1946 Convention,¹³⁷ as has explicitly the Exchange of Letters of 1967.¹³⁸
68. Under Article II/2 and 3 of the 1946 Convention, the premises of the United Nations are immune from every form of legal process and inviolable; while all property and assets of the United Nations are also immune from every form of legal process and from

¹³² See UN Doc A/79/684-S/2024/892: ‘Law to Cease UNRWA Operations (unofficial translation by Israel from Hebrew) [...]: [...] 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’.

¹³³ See UN Doc A/79/684-S/2024/892 (unofficial translation by Israel from Hebrew) (emphasis added).

¹³⁴ See UN Doc A/79/684-S/2024/892 (unofficial translation by Israel from Hebrew) (emphasis added).

¹³⁵ United Nations General Assembly Resolution 22(I) of 13 February 1946, UN Doc A/RES/22(I), section A.

¹³⁶ See Andreas Ziegler, ‘Article 105’ in *United Nations Charter Commentary* at p 2813, para 17; August Reinisch, ‘Immunity of Property, Funds, and Assets (Article II Section 2 General Convention)’ in *1946 Convention Commentary* at p 79, para 50.

¹³⁷ For the relevant case law see August Reinisch, ‘Immunity of Property, Funds, and Assets (Article II Section 2 General Convention)’ in *1946 Convention Commentary* at pp 81–82, para 55, fn 129.

¹³⁸ See Comay Letter in the Exchange of Letters of 1967 under point (g).

‘search, requisition, confiscation, expropriation and *any other form of interference*, whether by executive, administrative, judicial or legislative action’.¹³⁹ Inviolability is also accorded to the archives of the United Nations under Article II/4. These protections apply to premises, funds, assets, and archives ‘wherever located and by whomsoever held’.¹⁴⁰ The inviolability of premises is further generally accepted to cover property rented or leased by the United Nations for use as premises.¹⁴¹

69. The effect of these provisions is to grant the United Nations, including its principal and subsidiary organs or ‘agencies’, unqualified, absolute immunity from legal process and interference in general, and unqualified, absolute inviolability.¹⁴² This protection being unconditional means that any failure of the United Nations to observe its responsibilities under the 1946 Convention does not lead to the loss of the privileges and immunities enjoyed thereunder and under Article 105 of the UN Charter, but rather engages the international responsibility of the United Nations, allowing its invocation by injured States.¹⁴³
70. Israel is obliged to respect the absolute immunity and inviolability of the United Nations and its premises, funds, and assets, whether these are located within the territory of Israel, or in the Occupied Palestinian Territory, including East Jerusalem. Any interference with the United Nations, including UNRWA, and its premises and property in this context would constitute a breach of Israel’s obligations under Article 105 of the UN Charter and the provisions of Article II of the 1946 Convention.
71. The ‘Law to Cease UNRWA Operations in the Territory of the State of Israel’ is in breach of these obligations to the extent that it prohibits, in section 2, the operation of any ‘representative office’ within ‘the sovereign territory of Israel’. Israel having purported to annex East Jerusalem, which however, and in accordance with the Court’s advisory opinions of 2004,¹⁴⁴ and 2024,¹⁴⁵ remains part of the Occupied Palestinian Territory, it is now purporting to apply the aforementioned provision to UNRWA premises in East Jerusalem.
72. In fact, Israel has ordered UNRWA to vacate its premises in East Jerusalem by 30 January 2025.¹⁴⁶ Further, the Israel Land Authority has claimed, in letters to UNRWA, that

¹³⁹ Article II/3 1946 Convention (emphasis added).

¹⁴⁰ Article II/2 1946 Convention.

¹⁴¹ See Andreas Ziegler, ‘Article 105’ in *United Nations Charter Commentary* at p 2816, para 21; Lance Bartholomeusz, ‘Inviolability of Premises (Article II Section 3 General Convention)’ in *1946 Convention Commentary* at pp 127–128, para 8.

¹⁴² See Andreas Ziegler, ‘Article 105’ in *United Nations Charter Commentary* at p 2813, para 18; August Reinisch, ‘Immunity of Property, Funds, and Assets (Article II Section 2 General Convention)’ in *1946 Convention Commentary* at p 69, para 22.

¹⁴³ See Lance Bartholomeusz, ‘Inviolability of Premises (Article II Section 3 General Convention)’ in *1946 Convention Commentary* at p 137, para 40.

¹⁴⁴ *Wall*, Advisory Opinion, para 78.

¹⁴⁵ *Policies and Practices*, Advisory Opinion, para 78.

¹⁴⁶ Letter from the Permanent Representative of Israel to the United Nations to the Secretary-General of the United Nations of 24 January 2025, reproduced in Documents Received by the Secretariat of the United Nations, Part II (F) at p 90.

‘UNRWA’s use of the properties is done without proper authorization’, and has accordingly demanded ‘the evacuation of the properties, the demolition of all immovables constructed without acquiring the proper authorizations, and payment for past use’.¹⁴⁷ Israel has furthered claimed that it is entitled to address these orders and demands to UNRWA because the latter has abused its immunities ‘contrary to its obligations under Article 21 of the 1946 Convention on the Privileges and Immunities of the United Nations’.¹⁴⁸

73. Malaysia respectfully submits that this conduct is in clear breach of the obligations of Israel under Article 105 of the UN Charter and the relevant provisions of the 1946 Convention as described in this sub-section. Any claims of abuse of UNRWA immunities may be taken up through the normal dispute resolution channels after invocation of the international responsibility of the United Nations, but, as established, may not lead to any loss or diminution of the privileges and immunities enjoyed by the United Nations under the Charter and the 1946 Convention.
74. Malaysia further submits that all Israeli conduct directed against UNRWA facilities in the course of security or military operations in the Occupied Palestinian Territory constitutes a direct violation of these provisions and the concomitant obligations of Israel under the UN Charter and the 1946 Convention. Significant damage has been caused to UNRWA property in the Occupied Palestinian Territory, especially since the commencement of Israel’s operations in the Gaza Strip in October 2023, as has been widely reported in the press and reflected in the documents received by the UN Secretariat, for example in Part II (F). This includes real property such as UNRWA schools and primary health clinics, which are considered UN premises and enjoy the protection of these provisions, as well as moveable property including vehicles and relief consignments. Attacks against UNRWA and its premises and property cannot be justified by any reference to any applicable rules of international humanitarian law provided for in relevant treaties or conventions in force, because of the operation of Article 103 of the UN Charter.
75. Malaysia finally submits, in this connection, that the obligations of Israel under the UN Charter and the 1946 Convention are covered by Article 103 of the Charter, according to which ‘[i]n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, *their obligations under the present Charter shall prevail*’.¹⁴⁹ As has been noted specifically with respect to attacks against UN premises and property, such attacks would constitute breaches of the obligations regarding the privileges and immunities of the UN, even if such attacks were not prohibited *per se* under international humanitarian law.¹⁵⁰

¹⁴⁷ Letter from the Permanent Representative of Israel to the United Nations to the Secretary-General of the United Nations of 24 January 2025, reproduced in Documents Received by the Secretariat of the United Nations, Part II (F) at p 90.

¹⁴⁸ Letter from the Permanent Representative of Israel to the United Nations to the Secretary-General of the United Nations of 24 January 2025, reproduced in Documents Received by the Secretariat of the United Nations, Part II (F) at p 91.

¹⁴⁹ Article 103 UN Charter (emphasis added).

¹⁵⁰ See Lance Bartholomeusz, ‘Inviolability of Premises (Article II Section 3 General Convention)’ in *1946 Convention Commentary* at p 131, para 17.

76. Further to the obligations discussed above, Article 105(2) of the UN Charter and Article V/18 of the 1946 Convention impose obligations on Israel to respect the privileges and immunities accorded to ‘officials’ of the United Nations, which, according to Article V/17 and the specifications of the Secretary-General as approved by the General Assembly, include all United Nations staff, with the sole exception of staff locally recruited *and* assigned to hourly rates.¹⁵¹ Like the obligations with respect to premises, funds, and assets discussed above, these obligations with respect to officials are seen as stemming directly from Article 105 of the UN Charter, and thus as being covered by the provision of Article 103 of the UN Charter.
77. There is no doubt that UNRWA staff, including locally recruited staff that is not assigned to hourly rates, constitute ‘officials’ of the United Nations within the meaning of the aforementioned provisions, and thus benefit from the full gamut of privileges and immunities accorded to these officials.¹⁵² Among these privileges and immunities should be counted the freedom from immigration restrictions in accordance with Article V/18(d). This is understood to encompass the ‘freedom of officials of the UN to enter and reside in any country for the exercise of their functions in connexion with the Organisation’,¹⁵³ as well as the obligation of States to renew any visas granted without imposing any restrictions.¹⁵⁴
78. According to UNRWA, Israeli authorities refused to renew work visas for UNRWA international staff, which were accordingly forced to leave East Jerusalem on 29 January 2025.¹⁵⁵ Based on the discussion above, such conduct is in clear breach of Israel’s obligations under Article 105(2) of the UN Charter and Article V/18(d) of the 1946 Convention, which prevail over any other international obligations of Israel under treaties or conventions in force in accordance with Article 103 of the UN Charter.
79. United Nations officials, including locally recruited UNRWA staff that is not assigned to hourly rates, further enjoy immunity ‘from legal process in respect of words spoken or written and all acts performed in by them in their official capacity’ in accordance with Article V/18(a) of the 1946 Convention. Whether a UN official is acting in an official capacity and thus enjoys the immunity accorded by this provision is, according to the Court, for the UN Secretary-General to determine.¹⁵⁶

¹⁵¹ United Nations General Assembly Resolution 76(I) of 7 December 1946, UN Doc A/RES/76(I).

¹⁵² See Ronja Bandyopadhyay and Tomoko Iwata, ‘Officials (Article V Sections 17–21 General Convention) in 1946 Convention Commentary at pp 319–320, para 16, fn 31.

¹⁵³ According to the Office of Legal Affairs, as mentioned in UN Secretariat, The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities, UN Doc A/CN.4/L.118 and Add.1 and 2, *Yearbook of the International Law Commission* (vol II, 1967) (hereinafter: 1967 Secretariat Study) at p 275, para 306.

¹⁵⁴ According to the Secretary-General as mentioned in 1967 Secretariat Study at p 276, para 308.

¹⁵⁵ See UNRWA, Situation Report #158 of 7 February 2025, available at <<https://www.unrwa.org/resources/reports/unrwa-situation-report-158-situation-gaza-strip-and-west-bank-including-east-jerusalem>>.

¹⁵⁶ *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, ICJ Reports 1999, para 60.

80. To the extent that the Israeli ‘Law to Cease UNRWA Operations’ purports, in its section 3,¹⁵⁷ to allow for criminal proceedings against UNRWA staff without a waiver of immunity or a determination by the Secretary-General that the staff concerned were not acting in their official capacity and thus do not enjoy immunity under the relevant provisions of the UN Charter and the 1946 Convention, it constitutes a breach of Israel’s obligations under these provisions as they have been set out in this sub-section.

C. The Obligation to Cooperate with the Organisation in Good Faith

81. Article 1(3) of the UN Charter establishes as one of the purposes of the Organisation the achievement of ‘international *co-operation* in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion’.¹⁵⁸
82. Article 2(2) of the UN Charter obliges UN members, in pursuit of the purposes stated in Article 1 of the Charter, including thus the purpose mentioned in the immediately preceding paragraph of this Written Statement, to act in accordance, *inter alia*, with the principle that requires them to fulfil ‘in *good faith* the obligations assumed by them in accordance with the [...] Charter’.¹⁵⁹ The obligation under this provision is to be read as an obligation to demonstrate ‘willingness to *cooperate* as promised’, which is of ‘existential’ importance.¹⁶⁰
83. Under Article 56 of the UN Charter, ‘[a]ll Members *pledge themselves* to take joint and separate *action in co-operation with the Organization* for the achievement of the purposes set forth in Article 55’.¹⁶¹ The purposes set forth in Article 55 of the Charter are ‘the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples’, and thus the promotion of:
- a. higher standards of living, full employment, and conditions of economic and social progress and development;
 - b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
 - c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

¹⁵⁷ See UN Doc A/79/684-S/2024/892 (unofficial translation by Israel from Hebrew): ‘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’.

¹⁵⁸ Article 1(3) UN Charter (emphasis added).

¹⁵⁹ Article 2(2) UN Charter (emphasis added).

¹⁶⁰ Robert Kolb, ‘Article 2(2)’ in *United Nations Charter Commentary* at pp 251–252, para 16 (emphasis added).

¹⁶¹ Article 56 UN Charter (emphasis added).

84. It is thus one of the purposes of the United Nations to strive for development in its economic, social, health, cultural, educational, and more generally humanitarian, sense in order to ultimately achieve respect for human rights, as well as equal rights and the self-determination of peoples (which is also mentioned as a purpose in Article 1(2) of the UN Charter). The creation of UNRWA as a subsidiary organ of the General Assembly must be seen against this light as one of the means for achieving this purpose of the United Nations. Notably, and in accordance with Article 56, Member States of the Organisation *pledge* to cooperate with the Organisation in the achievement of this purpose. This obligation of cooperation covers the action of UNRWA, an organ of the United Nations.
85. With respect to ‘action’ taken under Article 56, it is worth noting that Article 2(5) of the UN Charter provides, in part, that ‘[a]ll Members shall give the United Nations every assistance *in any action it takes* in accordance with the present Charter’.¹⁶² The text is open to an interpretation that allows for an obligation of Member States to assist the Organisation in action such as that referred to in Article 56 of the Charter. There is some concern¹⁶³ that such an interpretation would render *any* action taken by the Organisation binding, thereby circumventing the limitation of binding action to the Security Council acting under Chapter VII of the Charter, or, according to the Court,¹⁶⁴ acting even outside the confines of Chapter VII.
86. It is worth mentioning here that the authoritative statement of the law by the Court in its advisory opinion of 19 July 2024 should allay any fears of such overreach at least with respect to United Nations action in and in relation to the Occupied Palestinian Territory. In that advisory opinion, the Court stressed that ‘the obligation not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory and the obligation to distinguish in their dealings with Israel between the territory of Israel and the Occupied Palestinian Territory apply *also* to the United Nations [as well as all States]’, while leaving the precise modalities of further action towards bringing to an end Israel’s unlawful presence in the Occupied Palestinian Territory to the General Assembly.¹⁶⁵ The General Assembly acts, in this respect, also through UNRWA as its subsidiary organ.
87. Be that as it may, the provision of Article 2(5) can be read, systematically, as at the very least further entrenching an obligation of good faith cooperation with the Organisation in any action it takes,¹⁶⁶ when seen against the provisions of Articles 1(3), 2(2), and 56.

¹⁶² Article 2(5) UN Charter (emphasis added). See also *Reparation for Injuries*, Advisory Opinion, p 183: ‘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’; and further, p 186: ‘The Court sees no reason why the parties concerned should not find solutions inspired by goodwill and common sense, and as between the Organization and its Members it draws attention to their duty to render “every assistance” provided by Article 2, paragraph 5, of the Charter’.

¹⁶³ See the discussion in Helmut Philipp Aust, ‘Article 2(5)’ in *United Nations Charter Commentary* at pp 369–371, paras 4–6.

¹⁶⁴ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, paras 113–114.

¹⁶⁵ *Policies and Practices*, Advisory Opinion, paras 280–281 (emphasis added).

¹⁶⁶ See also Helmut Philipp Aust, ‘Article 2(5)’ in *United Nations Charter Commentary* at pp 384–385, paras 31–32.

Taken together, these provisions clearly establish such an obligation of good faith co-operation with the Organisation that is incumbent upon all Member States of the United Nations.

88. This is also in line with the Court's finding, in its advisory opinion of 20 December 1980, that an 'obligation to *co-operate in good faith*' is considered 'to be the very basis of the legal relations between the Organisation and [its Member States] *under general international law*', and not just under the relevant constitutive instrument and any other treaties or agreements in force.¹⁶⁷
89. Through its conduct towards the United Nations, and in particular (but not exclusively)¹⁶⁸ UNRWA, Israel is in clear breach of this obligation of good faith cooperation. Israel has been found to systematically refuse to pay due regard to the Organisation's findings, recommendations, and decisions, including the decisions of this Court.¹⁶⁹ This constitutes a breach of Israel's obligation to cooperate with the United Nations in good faith.¹⁷⁰ Israel's attempt, through the adoption of the two laws already discussed, to deprive the Organisation of legal capacity in the territory that Israel controls, its attempt to take over UNRWA premises and property, and the attacks on such premises and property in the context of security or military operations are nothing but the latest iterations of a consistent pattern of conduct in defiance of the obligation of good faith cooperation with the United Nations.

D. The Obligations under the 1967 Exchange of Letters

90. Israel's attempt, through the legislation previously described and contained in the Secretary-General's letter,¹⁷¹ to prohibit any contact with UNRWA; to prohibit UNRWA from operating in any territory currently under Israeli jurisdiction; and to unilaterally withdraw its 'invitation' to UNRWA of 14 June 1967, are also in breach of the more specific obligations that Israel assumed by the Exchange of Letters of 1967.¹⁷²
91. In the Exchange of Letters of 1967, which 'confirms' an agreement between Israel and the UN, Israel undertakes to give its 'full cooperation' to UNRWA, which is to 'continue its assistance' to Palestine refugees in the West Bank and Gaza Strip areas (which must be understood to include East Jerusalem).¹⁷³ Israel further agrees 'in principle' to ensure the protection and security of UNRWA personnel, installations, and property; to permit free movement of international and local staff and vehicles of UNRWA; to provide radio, telecommunication, and landing facilities; to maintain existing financial

¹⁶⁷ *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, *ICJ Reports 1980*, para 48 (hereinafter: *WHO and Egypt*).

¹⁶⁸ See for example Matthew Mpoke Bigg, 'Israel Declares UN Chief António Guterres Persona Non Grata', *New York Times*, 2 October 2024, available at <<https://www.nytimes.com/2024/10/02/world/middleeast/israel-guterres-un-ban-persona-non-grata.html>>.

¹⁶⁹ See for example *Policies and Practices*, Advisory Opinion, paras 67, 176.

¹⁷⁰ Robert Kolb, 'Article 2(2)' in *United Nations Charter Commentary* at pp 257–258, para 30.

¹⁷¹ UN Doc A/79/684-S/2024/892.

¹⁷² Exchange of Letters of 1967.

¹⁷³ See Comay Letter in the Exchange of Letters of 1967.

arrangements regarding exemptions from duties, charges, taxes on imports, and other aspects of UNRWA operations; and to recognise the application of the 1946 Convention as governing the relations between Israel and UNRWA in all that concerns UNRWA's functions.¹⁷⁴

92. To be sure, these undertakings of Israel in the 1967 Exchange of Letters do nothing more than recognise obligations that Israel already bears under the law of occupation and under United Nations law, as these have been described in this and the previous Section of Malaysia's Written Statement. Israel's attempt to withdraw from the Exchange of Letters of 1967 by declaring its invitation to UNRWA as having 'expired' in its 'Law to Cease UNRWA Operations'¹⁷⁵ is nothing but a repudiation of already existing obligations. These, Israel has no legal basis for repudiating.
93. More importantly, as the Comay letter indicates, '[t]he present letter and your [UNRWA's] 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*'.¹⁷⁶ Laurence Michelmore's letter, in turn, states that 'I [the Commissioner-General of UNRWA] 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*'.¹⁷⁷
94. Despite the agreement being called 'provisional' in these two latter quotes, it is explicitly provided that it is to 'remain in force until replaced or cancelled'. Notably, it is *the agreement* that remains in force until 'replaced or cancelled', and not the 'invitation'. This must mean, Malaysia respectfully submits, that the agreement cannot be *unilaterally* replaced or cancelled. Rather, any modification to, or termination of, the agreement needs to be negotiated in good faith between the parties.¹⁷⁸ This would involve, if the agreement were to be 'cancelled', the agreement of the parties on a period of time commensurate with the fact that termination of the agreement would affect UNRWA's 'substantial' operation, 'employing a large staff and discharging health [and other] functions important' to the UN and the Occupied Palestinian Territory.¹⁷⁹ It is further 'evident that during this period the Organisation itself would need to make full use of the privileges, immunities and facilities [...] in order to ensure a smooth and orderly transfer' of its operations.¹⁸⁰
95. Malaysia respectfully submits that, as much as Israel cannot validly unilaterally terminate the Exchange of Letters of 1967 under the law of occupation, as argued in sub-section IV.D. of this Written Statement, it cannot do so under the terms of the Exchange of Letters itself as discussed in this sub-section. Further, the obligation of Israel not to

¹⁷⁴ See Comay Letter in the Exchange of Letters of 1967.

¹⁷⁵ Section 1(a) of the 'Law to Cease UNRWA Operations' (unofficial translation by Israel from Hebrew) in UN Doc A/79/684-S/2024/892.

¹⁷⁶ Comay Letter in the Exchange of Letters of 1967 (emphasis added).

¹⁷⁷ Michelmore Letter in the Exchange of Letters of 1967 (emphasis added).

¹⁷⁸ *WHO and Egypt*, Advisory Opinion, paras 43–44.

¹⁷⁹ *WHO and Egypt*, Advisory Opinion, para 43.

¹⁸⁰ *WHO and Egypt*, Advisory Opinion, para 44.

unilaterally terminate the Exchange of Letters of 1967 but at the very least to enter into good faith negotiations regarding its ‘replacement or cancellation’ stems not only from the terms of the agreement but is also a concretisation of its general obligation to cooperate in good faith with the United Nations as discussed in sub-section V.C. of this Written Statement. Even then it is at best questionable, if not impossible, that any ‘viable’ alternative can be found to the ‘indispensable’ ‘backbone’ of all humanitarian assistance in the Occupied Palestinian Territory that is UNRWA.¹⁸¹

E. Interim Conclusion

96. Israel is subject to a number of obligations under the United Nations Charter and the 1946 Convention, which it owes directly to the United Nations and to all other Member States of the Organisation. These obligations include the obligation to accord the Organisation legal capacity in the territory that it controls and to respect that legal capacity; the obligation to accord the Organisation and its officials the privileges and immunities provided for in Article 105 of the UN Charter and the 1946 Convention on the Privileges and Immunities of the United Nations; and the general obligation to cooperate with the United Nations in good faith, confirmed with respect to UNRWA in particular in the Exchange of Letters of 1967, which it cannot unilaterally terminate.
97. Malaysia respectfully submits that Israel is in breach of all these obligations, most recently through the adoption and implementation of the two laws on the cessation of UNRWA operations described in the Secretary-General’s letter to the General Assembly and the Security Council.¹⁸²

VI. THE EFFECT ON THE RIGHT TO SELF-DETERMINATION

98. The obligations set out in the previous two Sections are ultimately meant to support and entrench the right to self-determination. The rules of international humanitarian law do so by according protection to a people under foreign occupation. The rules of the United Nations Charter, as complemented by the rules of the 1946 Convention, do so by according protection to the United Nations in its pursuit of its purpose of developing friendly relations among nations based on respect for the principle of equal rights and self-determination in accordance with Article 1(2) of the United Nations Charter.
99. Malaysia has already explained why, in its view, recent Israeli conduct is in breach of all these obligations as they relate to the presence and activities of the United Nations (and, incidentally, other international organisations and third States) in and in relation to the Occupied Palestinian Territory. However, Malaysia respectfully submits that this conduct is not to be viewed in isolation, and neither are the obligations set out in this Written Statement. They are both to be seen against the light of the principle of self-determination and of the Court’s advisory opinion of 19 July 2024.
100. More specifically, it is Malaysia’s submission that the recent policies and practices of Israel towards the United Nations, and in particular UNRWA, taken together, constitute violations of each of the four aspects of the right to self-determination that the Court identified in its advisory opinion of 19 July 2024.

¹⁸¹ See paragraph 58 of this Written Statement.

¹⁸² UN Doc A/79/684-S/2024/892.

101. First, with respect to the right of territorial integrity as a corollary of the right to self-determination,¹⁸³ the laws purporting to cease the operations of UNRWA, along with the administrative measures being pursued by the Israel Land Authority and other Israeli organs against UNRWA premises, including in East Jerusalem, are a further step in the entrenchment of the ongoing annexation of the Occupied Palestinian Territory. The attempt by the Israel Land Authority to seize UNRWA premises, reportedly in order to construct 1,440 housing units,¹⁸⁴ is typical of Israeli conduct found to constitute annexation by the Court in its advisory opinion of 19 July 2024.¹⁸⁵
102. Second, with respect to the right of a people to its integrity,¹⁸⁶ the cessation of operation of UNRWA, which provides education through a large network of schools, primary health care through a large network of health clinics, and vital supplies through an extensive distribution network, is calculated to force the departure of Palestinian populations from the affected areas, which essentially include all of the Occupied Palestinian Territory, including East Jerusalem.
103. Third, with respect to the right of permanent sovereignty over natural resources,¹⁸⁷ the departure of UNRWA is calculated to cause a humanitarian catastrophe, given that Israel has been exploiting the natural resources of the Occupied Palestinian Territory for its own benefit and the benefit of illegal settlements for decades. The natural resources of the West Bank have been depleted, and the Gaza Strip has been reduced to rubble. Removing the ‘lifeline’¹⁸⁸ of UNRWA will signal the ultimate collapse of the Occupied Palestinian Territory’s ability to sustain itself. It has already been noted in this Written Statement how UNRWA is ‘indispensable’.¹⁸⁹ According to UNRWA Commissioner-General, the Palestinian Authority has made it clear that it does not have the financial resources or capacity to compensate for the loss of UNRWA services.¹⁹⁰
104. Fourth, with respect to the right of a people freely to determine its political status and to pursue its economic, social, and cultural development,¹⁹¹ the expulsion of UNRWA, with the concomitant cessation of operation of its schools, as well as its clinics, humanitarian relief, development assistance, micro-finance and micro-enterprise schemes, and other programmes, will lead to further deterioration of the Palestinian people’s ability

¹⁸³ *Policies and Practices*, Advisory Opinion, para 237.

¹⁸⁴ Shirir Avitan Cohen, ‘UNRWA headquarters in Jerusalem to be seized: The entire UNRWA area in Ma’alot Dafna, Jerusalem, is set to be expropriated and turned into 1,440 housing units’, *Israel Hayom*, 11 October 2024, available at <<https://www.israelhayom.com/2024/10/11/unrwa-headquarters-in-jerusalem-to-be-seized/>>. These would essentially constitute illegal settlements: see the statement by UNRWA Commissioner-General Philippe Lazzarini in UN Doc S/PV.9852 of 28 January 2025 at p 3.

¹⁸⁵ *Policies and Practices*, Advisory Opinion, para 163.

¹⁸⁶ *Policies and Practices*, Advisory Opinion, para 239.

¹⁸⁷ *Policies and Practices*, Advisory Opinion, para 240.

¹⁸⁸ For the term see for example UN Doc S/PV.9852 of 28 January 2025 at pp 8 (Algeria); 13 (Russian Federation); 18 (Denmark); 22 (Slovenia); 24–25 (Somalia); 33 (Jordan).

¹⁸⁹ See paragraph 58 of this Written Statement.

¹⁹⁰ See UN Doc S/PV.9852 of 28 January 2025 at p 3.

¹⁹¹ *Policies and Practices*, Advisory Opinion, para 241.

to enjoy even basic human rights, to educate themselves, and to hope to build a future in their own sovereign State.

105. Ultimately, the conduct of Israel towards the United Nations and UNRWA in and in relation to the Occupied Palestinian Territory is not simply in breach of Israel's obligations as an occupying Power and a member of the United Nations. It is also in breach of each one of the four core elements of the right to self-determination. This is because it is calculated to be a further link in the chain of Israel's attacks on that peremptory norm of international law as it relates to the Palestinian people.

106. The legal consequences of the breaches on the part of Israel of a number of its international obligations, resulting ultimately in a further serious breach of the peremptory of norm of international law guaranteeing the right to self-determination, are the ones set out in the Court's advisory opinion of 19 July 2024,¹⁹² and need not be repeated here. Suffice it only to mention specifically that Israel would be under obligations of cessation and reparation also with respect to the United Nations, in particular with respect to damage caused to UNRWA personnel, property, and premises.

VII. SUMMARY OF SUBMISSIONS

107. On the basis of the information and arguments set out in this Written Statement, Malaysia respectfully requests that the Court:

- a. Render the advisory opinion requested;
- b. Decide that Israel, as an occupying Power, is under the obligations set out in Section IV of this Written Statement;
- c. Decide that Israel, as a member of the United Nations, is under the obligations set out in Section V of this Written Statement;
- d. Decide that Israel may not unilaterally terminate or cancel the Exchange of Letters of 1967 or otherwise expel or interfere with the operations of UNRWA in areas under its jurisdiction for the reasons set out in sub-sections IV.D. and V.D. of this Written Statement;
- e. Decide that Israel is in breach of the obligations set out in the Written Statement in particular by purporting to expel UNRWA or interfere with its operations in areas under its jurisdiction through its adoption of the 'Law to Cease UNRWA Operations' and the 'Law to Cease UNRWA Operations in the Territory of the State of Israel' as these are conveyed in the Secretary-General's Letters of 9 December 2024 to the General Assembly and the Security Council;
- f. Decide that, by purporting to expel UNRWA or interfere with its operations in areas under its jurisdiction, Israel is committing a further serious breach

¹⁹² *Policies and Practices*, Advisory Opinion, paras 265–281.

of its obligation to respect the right of the Palestinian people to self-determination, a peremptory norm of international law;

- g. Decide that, consequently, Israel is under an obligation to immediately cease its wrongful conduct, and to make full reparation to the United Nations and to the Palestinian people.

I have the honour to submit this written statement to the Court on behalf of Malaysia.



DATO' ROSELI BIN ABDUL

Ambassador of Malaysia to the Kingdom of The Netherlands

25 February 2025

The Hague,

The Netherlands

