

BEFORE THE INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF ISRAEL IN RELATION TO THE PRESENCE AND

ACTIVITIES OF

THE UNITED NATIONS, OTHER INTERNATIONAL

ORGANIZATIONS

AND THIRD STATES IN AND IN RELATION TO THE

OCCUPIED PALESTINIAN TERRITORY

WRITTEN STATEMENT SUBMITTED BY THE GOVERNMENT OF

THE REPUBLIC OF SOUTH AFRICA

28 FEBRUARY 2025

TABLE OF CONTENTS

I. INTRODUCTION

II. JURISDICTION

III. STATEMENT OF LAW

A. Applicable Legal Framework

B. General Context

- (i) Israeli laws banning UNRWA operations
- (ii) Israel's policy of altering the legal status of Jerusalem
- (iii) UNRWA's operations in the West Bank, including East Jerusalem
- (iv) UNRWA's operations in Gaza
- (v) Israel's denial of aid policy
- (vi) The Court's provisional measures in *South Africa v Israel*
- (vii) Israel's actions in the context of the apartheid and unlawful occupation as a whole

C. Israel's obligations as a UN Member State

- (i) The application of the General Convention to UNRWA

D. Israel's obligations as an Occupying Power

- (i) Deliberate policy of collective punishment and starvation.

E. Israel's apartheid policies and practices

F. Israel's obligations under the Genocide Convention (1948)

G. Israel's obligations vis-à-vis other International organisations

H. Israel's violations of international human rights in the OPT

- (i) Human rights that Israel is under an obligation to respect in the OPT
- (ii) The Impact of UNRWA's ban on human rights in the OPT

I. Palestinian people's right to self-determination

- (i) Recognition of self-determination as a *jus cogens* norm
- (ii) The role of education and a healthy civilian population in self-determination and the building of a Palestinian state and Israeli actions in undermining this right

IV. LEGAL CONSEQUENCES

- (i) Summary of breaches
- (ii) Obligations on Israel
- (iii) Obligations on the United Nations
- (iv) Obligations on Third States

I. INTRODUCTION

1. At its Seventy-Ninth Session, the United Nations General Assembly (General Assembly) adopted Resolution 79/232, on 19 December 2024, by which it decided in accordance with Article 96 of the Charter of the United Nations (Charter), to request the International Court of Justice (Court), pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on an urgent basis.
2. Pursuant to paragraph 10 of the Resolution, the General Assembly asked the Court to render an advisory opinion on the following question:

“What are the obligations of Israel, as an Occupying Power and as a member of the United Nations, in relation to the presence and activities of the United Nations, including its agencies and bodies, other international organizations and third States, in and in relation to the Occupied Palestinian Territory, including to ensure and facilitate the unhindered provision of urgently needed supplies essential to the survival of the Palestinian civilian population as well as of basic services and humanitarian and development assistance, for the benefit of the Palestinian civilian population, and in support of the Palestinian people’s right to self-determination?”
3. The Secretary-General of the United Nations transmitted the Resolution and the General Assembly’s request to the Court by means of a letter dated 20 December 2024. By letters dated 23 December 2024, the Registrar gave notice of the request for an advisory opinion to all States entitled to appear before the Court, pursuant to Article 66, paragraph 1, of the Statute.
4. The Court, as contemplated by Article 103 of its Rules, decided that the United Nations and its Member States, as well as the observer State of Palestine, are considered likely to be able to furnish information on the question submitted to the Court for an advisory opinion and may do so. The Court fixed 28 February 2025 as the time-limit within which written statements on the question may be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute.
5. South Africa submits its written statement in accordance with the Court’s Order of 23 December 2024.

II. JURISDICTION OF THE COURT

6. The basic conditions for the Court to exercise its advisory jurisdiction in this instance are satisfied. The General Assembly's request for an advisory opinion on the subject before the Court was passed by an overwhelming majority of UN Member States – 137 in total.
7. Article 10 of the Charter confers on the General Assembly a competence relating to “any questions of any matters” within the scope of the Charter, while Article 11, paragraph 2, specifically invests it with competence on “questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations.”
8. The Court derives its advisory jurisdiction from Article 96 of the Charter which permits the General Assembly or the Security Council to request the Court to give an advisory opinion on “any legal question”.
9. Deriving its advisory jurisdiction as aforementioned, the Court *exercises* its jurisdiction on the basis of Article 65, paragraph 1 of its Statute, which provides that “[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request”. In accordance with Article 36, paragraph 1, of the Statute, the jurisdiction of the Court includes all matters specifically provided for in the Charter.
10. The Court has previously expressed that while it has jurisdiction to render an advisory opinion, it is not obliged to exercise it. In other words, the Court has “a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met”.¹ However, the Court has considered its answer to a request for an advisory opinion “represents its participation in the activities of the Organization, and, in principle, should not be refused”.²
11. South Africa recalls the Court's jurisprudence that only compelling reasons may lead the Court to refuse to give its opinion in response to a request falling within its jurisdiction.³ South Africa submits that there are no compelling reasons for the Court to refuse the current request.
12. The request concerns the obligations of a UN Member State, the State of Israel, towards the Organisation and its agencies. These questions are of direct and grave concern to the members of the General Assembly and in the Assembly's role in ensuring compliance with the Charter. The Court's advisory opinion would “have the purpose of furnishing to the [General Assembly] the elements of law necessary”⁴ that would assist it in the performance of its functions.
13. South Africa further recalls the permanent responsibility of the United Nations with regard to the question of Palestine until it is resolved in all its aspects in accordance with international law and the relevant United Nations Resolutions.

¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep (“*Construction of a Wall* advisory opinion”) paras. 30 and 41.

² *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion) [2019] ICJ Rep (“*Separation of Chagos* advisory opinion”) para. 64.

³ *Separation of Chagos* advisory opinion para. 65.

⁴ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Advisory Opinion) [2024] ICJ Rep (“*Legal Consequences (2024)* advisory opinion”) para. 37.

14. The dispute is not of a bilateral nature such as to preclude the Court from exercising its jurisdiction. The questions also relate to Israel's *jus cogens* obligations, including the right of Palestinians to self-determination and Israel's obligations with respect to international humanitarian and human rights law, which are of particular concern to the United Nations and "located in the broader frame of reference of decolonization, including the General Assembly's role therein, from which those issues are inseparable".⁵
15. The Court has observed in the past that "it is not for the Court itself to purport to decide whether or not an advisory opinion is needed by the Assembly for the performance of its functions. The General Assembly has the right to decide for itself on the usefulness of an opinion in the light of its own needs."⁶
16. The questions upon which the Court is called upon to opine have been framed in terms of law, are of a legal nature and susceptible to replies based on law. In the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Construction of a Wall advisory opinion)* proceedings, the Court acknowledged the fact that where a legal question also has political aspects, this does not preclude the Court from exercising its advisory jurisdiction.⁷
17. In the circumstances, South Africa submits that the present request by the General Assembly is in accordance with the provisions of the Charter and of the Court's Statute, that the Court has jurisdiction and that no compelling reasons exist which should lead the Court to decline to render the requested advisory opinion.

⁵ *Separation of Chagos* advisory opinion para. 88.

⁶ *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep para. 16.

⁷ *Construction of a Wall* advisory opinion para. 41.

III. STATEMENT OF LAW

A. Applicable Legal Framework

18. The Occupied Palestinian Territory which includes the West Bank, including East Jerusalem and Gaza are currently under an unlawful belligerent occupation,⁸ to which international humanitarian law (IHL) applies concurrently with international human rights law (IHRL). Israel further subjects the Palestinian people as a whole, to an institutionalised regime of discriminatory laws, policies and practices constituting an apartheid regime.⁹ Israel is further bound by the Charter and the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention).¹⁰

19. The General Assembly, in Operative paragraph 10 of Resolution 79/232 has asked the Court to render its advisory opinion 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”.*¹¹

20. In July 2024, the Court expressed the view that Gaza continues to be under Israeli occupation as Israel “remained capable of exercising, and continued to exercise, certain key elements of authority over the Gaza Strip, including control of the land, sea and air borders, restrictions on movement of people and goods, collection of import and export taxes, and military control over the buffer zone, despite the withdrawal of its military presence in 2005. This is even more so since 7 October 2023.”¹² The Court further considered that “Israel’s legislation and measures constitute a breach of Article 3 of the [Convention on the Elimination of Racial Discrimination]” prohibiting racial segregation and apartheid.¹³

⁸ *Legal Consequences* (2024) advisory opinion para. 285.

⁹ Committee on the Elimination of Racial Discrimination, ‘Concluding Observations on the Combined Seventeenth to Nineteenth Reports of Israel’ (27 January 2020) CERD/C/ISR/CO/17-19 para. 23; UNGA ‘Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk’ (12 August 2022) UN Doc A/HRC/49/87 para. 52; Amnesty International, ‘Israel’s Apartheid Against Palestinians A Look Into Decades of Oppression and Domination’ (2022) available at <https://www.amnesty.org/en/latest/campaigns/2022/02/israels-system-of-apartheid/>; B’Tselem ‘A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid’ (12 January 2021) available at https://www.btselem.org/publications/fulltext/202101_this_is_apartheid; and Addameer et al. ‘Israeli Apartheid: Tool of Zionist Settler Colonialism’ (29 November 2022) available at <https://www.alhaq.org/publications/20940.html>; See also: The 300-page report by the South African Human Sciences Research Council (‘HSRC’) which noted that the three pillars of apartheid in South Africa are all practised by Israel in the Occupied Palestinian Territory, the pillars being: first, the demarcation of the population of South Africa into racial groups, with superior rights, privileges and services being accorded to one group; second, the segregation of the population into different geographic areas, which were allocated by law to different racial groups, and the restriction of passage by members of any group into the area allocated to other groups; and third, the imposition of a matrix of draconian ‘security’ laws and policies, employed to suppress any opposition to the regime and to reinforce the system of racial domination, by providing for administrative detention, torture, censorship, banning, and assassination in HSRC, ‘Democracy and Governance Programme, Middle East Project, Occupation, Colonialism, Apartheid?: A re-assessment of Israel’s practices in the occupied Palestinian territories under international law’ (June 2009) available at http://sro.sussex.ac.uk/id/eprint/43295/1/Occupation_Colonialism_Apartheid-FullStudy_copy.pdf.

¹⁰ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945); Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277.

¹¹ UNGA Resolution 79/232 (19 December 2024) UN Doc A/Res/79/232 para. 10.

¹² *Legal Consequences* (2024) advisory opinion para. 93.

¹³ *Legal Consequences* (2024) advisory opinion, paras. 225 and 229.

21. Israel is bound by the obligations of an Occupying Power under the Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and provisions of customary international law, including the Regulations Respecting the Laws and Customs of War on Land of 1907;¹⁴ the provisions of International Human Rights Treaties, notably Article 3 of the Convention on the Elimination of Racial Discrimination (CERD) prohibiting racial discrimination and apartheid and the Genocide Convention.
22. In addition, the questions before the Court require consideration of the relevant provisions of the Charter, *jus cogens* and *erga omnes* obligations, and the Convention on the Privileges and Immunities of the United Nations (General Convention).¹⁵
23. In January, March, and May 2024, the Court expressed the view in its Provisional Measures Orders in the “*Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*” that “there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights [of Palestinians under the Genocide Convention] found by the Court to be plausible...”.¹⁶
24. In its written statement, South Africa will refer to the Court’s jurisprudence, in particular, the *Construction of a Wall, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (the Legal Consequences 2024)* and *Reparation for injuries suffered in the service of the United Nations (Reparations)* advisory opinions and the Court’s provisional measures Orders in the case *South Africa v Israel*.
25. The Court stated that “from a legal standpoint, the Occupied Palestinian Territory constitutes a single territorial unit, the unity, contiguity and integrity of which are to be preserved and respected”.¹⁷ Whilst South Africa subscribes to the view that the Occupied Palestinian Territory, including East Jerusalem is a single territorial unit, it may specifically refer to different parts of the Occupied Palestinian Territory (for example, Gaza or the West Bank, including Jerusalem) and these references must not be interpreted as a deviation from the aforementioned standpoint.

B. General Context

26. The origin of the Palestinian question and the establishment of UNRWA are inextricably linked. The Nakba occasioned by Israel’s violent dispossession of Palestinian land in 1948, forced expulsion and mass displacement of over 750 000 Palestinians accompanied the establishment of the State of Israel.

¹⁴ *Legal Consequences (2024)* advisory opinion para. 96.

¹⁵ Convention on the Privileges and Immunities of the United Nations (adopted 17 September 1946, entered into force 17 September 1946) 1 UNTS 15.

¹⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Provisional Measures, Order) [26 January 2024] ICJ Rep para. 74; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Provisional Measures, Order) [28 March 2024] para. 40; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Provisional Measures, Order) [24 May 2024] para. 47.

¹⁷ *Legal Consequences (2024)* advisory opinion para. 78.

27. Following the 1948 Arab-Israeli war, the United Nations and its Member States recognised the need to render relief and work programmes for Palestinian refugees on an interim basis, and pending a political solution to the Palestinian question.¹⁸
28. UNRWA was established as a subsidiary organ of the United Nations by General Assembly Resolution 302 (IV) on 8 December 1949. Its mandate includes the rendering of humanitarian aid and human development assistance to the Palestinian refugees in the Near East region. It provides direct relief along with local governments, and maintains consultations with them regarding continued international assistance and what alternatives are available in the absence of such relief and works programmes.
29. UNRWA's establishment sought to address the immediate plight of the Palestinian refugees. It was recognised that "continued assistance for the relief of the Palestinian refugees is necessary to prevent conditions of starvation and distress among them and to further conditions of peace and stability, and that constructive measures should be undertaken at an early date with a view to the termination of international assistance for relief."¹⁹
30. The UN membership always understood that UNRWA's mandate would be temporary until a political solution was arrived at which would enable Palestinian refugees to return to their land and to live in dignity and human security within their own state. General Assembly Resolution 194 (III) of 1948:

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

*[i]nstruct[ed] the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation."*²⁰

31. This Resolution affirmed the rights of Palestinian refugees to return to the land from which they were driven. General Assembly Resolutions 194 of 1948 and 302 of 1949 and Security Council Resolution 73 of 1949 contain the unfulfilled promise of the international community for the right of Palestinian refugees to return, a promise made over 75 years ago. These inalienable rights belong to the Palestinian people and have not been extinguished.²¹
32. It remains on this understanding that the General Assembly has continually renewed UNRWA's mandate over several decades; most recently in Resolution 77/123 which extended its mandate until 30 June 2026.²² UNRWA's work in the OPT has evolved to address the ever-

¹⁸ UNGA Res 302 (IV) (8 December 1949) UN Doc A/RES/302 (IV).

¹⁹ UNGA Res 302 (IV) (8 December 1949) UN Doc A/RES/302 (IV) para. 5.

²⁰ UNGA Res 194 (III) (11 December 1948) UN Doc A/RES/194(III) para. 8.

²¹ Committee on the Elimination of Racial Discrimination, 'Consideration of Reports Submitted by States Parties under Article 9 of the Convention, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Israel' (30 Mar. 1998 UN Doc CERD/C/304/Add.45) para. 18 available at <https://docs.un.org/CERD/C/304/Add.45>; UN GA, 'Report of the Committee on the Elimination of Racial Discrimination' (70th session (19 Feb.-9 Mar. 2007) 71st session (30 July-17 Aug. 2007) UN Doc A/62/18 para. 211 available at <https://docs.un.org/en/A/62/18>; UNSC Resolution 237 (1967) UN Doc S/RES/237 (1967) available at [https://docs.un.org/en/S/RES/237%20\(1967\)](https://docs.un.org/en/S/RES/237%20(1967)).

²² UN GA Res 77/123 (15 December 2022) UN Doc A/RES/77/123 available at <https://www.un.org/unispal/document/assistance-to-palestine-refugees-ga-Resolution-a-res-77-123/>.

increasing basic and essential needs of Palestinians; necessitated by their continued occupation and their increasing displacement, dispossession and Israeli brutality.

33. UNRWA not only renders humanitarian aid, but sees to the human development needs of Palestinian refugees, such as education, health, basic services, including access to water. UNRWA fulfils state-like functions not by design, but because Israel continues to deny Palestinian people their basic needs for survival which are calculated to impede their inalienable right to self-determination. Israel also continues to ignore its legal obligations emanating from its role as the Occupying Power.

34. UNRWA has become central to the basic survival of Palestinian refugees. It serves as a backbone of relief to over 2.1 million Palestinians across the OPT, and more broadly serves 5.9 million registered Palestinians in Lebanon, Jordan and Syria.²³ This figure is rising as Israeli settlements, evictions, land seizures, and house demolitions continue to deprive and uproot Palestinians.

35. “There is no alternative to UNRWA,” said the UN Secretary-General António Guterres on 29 October 2024.²⁴

36. South Africa submits that there is only one alternative to UNRWA: the fulfilment of Palestinians’ right of return, their right to self-determination, and the establishment of an independent Palestinian state, free from Israeli occupation and apartheid. This is the only way in which Palestinian refugees can live securely with their basic rights, humanitarian and human development needs being met.

37. UNRWA is under attack by Israel because it symbolises the rights of Palestinian refugees to return. The continued survival of 2.1 million Palestinian refugees in the OPT also hinges on the crucial services which UNRWA renders to them and provides dignity and relief while a political solution is arrived at. Until such time, UNRWA is a moral and legal just response to the plight of over 2 million Palestinians across the OPT.

i. Israeli laws banning UNRWA’s operations in the OPT

38. On 28 October 2024, the Israeli Knesset passed two anti-UNRWA laws: the *Law to Cease UNRWA Operations* and the *Law to Cease UNRWA Operations in the Territory of the State of Israel*. Together, these laws effectively ban UNRWA from operating in the West Bank, including East Jerusalem.

39. They amount to the forced eviction and expropriation of UN agency premises by a UN Member State, in violation of international law. With effect from 30 January 2025, the laws resulted in the closure of UNRWA’s offices in occupied East Jerusalem. The legislation “prohibit[s] UNRWA operations” within what is referred to as “the sovereign territory of the State of Israel.” The second law requires that “[a]uthorities of the state, including entities

²³ UNRWA, ‘Where we work’ available at <https://www.unrwa.org/where-we-work>.

²⁴ UN ‘UNRWA: Palestinian people should not feel abandoned by the international community’ (28 January 2025) <https://unric.org/en/unrwa-palestinian-people-should-not-feel-abandoned-by-the-international-community/>.

and individuals holding public positions by law, shall not maintain any contact with UNRWA or with its representatives.”²⁵

40. While the laws do not explicitly state so, it is clear that Israel intends for the laws to apply in East Jerusalem – which Israel has unlawfully annexed.²⁶ This was evinced in a letter by the Israeli Permanent Representative to the Secretary-General of the United Nations on 24 January 2025, in which he informed the Secretary-General that UNRWA must vacate its premises in Maalot Dafina neighbourhood and its property in the neighbourhood of Kfar Aqueb.²⁷ Both neighbourhoods are situated in East Jerusalem. This is clearly a duplicitous way in which Israel seeks to exercise sovereignty in East Jerusalem in violation of international law. A territory under occupation may not become subject to the legislation of the Occupying Power – this would exceed the limited *de facto* authority of the Occupying Power to ensure “public order and safety, while respecting, unless absolutely prevented, the laws in force in the country” under the 1907 Hague Regulations and the supplementary provisions of the Fourth Geneva Convention.²⁸

41. Furthermore, Israel’s prohibition on its state officials having contact with UNRWA will place considerable constraints on its operations. The entry of assistance into Gaza and the West Bank necessitates careful coordination between UNRWA, the Israeli government, and the Israeli military, due to Israel’s restrictions on transit into the OPT. If the laws are enacted in full, Israel will stop providing work, entry or transit permits to the Agency’s personnel, which is crucial for the delivery of aid into and throughout the territory of Palestine.²⁹ Israel, both in its capacity as an Occupying Power and government on its own territory, is obligated not to impede the delivery of aid to a protected population.³⁰

42. UNRWA was not established by Israel but by the United Nations in 1949. Only the General Assembly is empowered to amend or terminate UNRWA’s mandate. Israel’s impunity has emboldened it to strip a subsidiary organ of the UN of its privileges and immunities through forced expulsion – a right which no single Member State possesses under the Charter. Moreover, UNRWA premises are not on Israeli sovereign territory and its consent is not legally required for UNRWA to continue to conduct its operations.

43. The effect of the Israeli laws extends to East Jerusalem, over which Israel has no sovereignty in international law, with the territory falling under its unlawful occupation as confirmed by this Court.³¹ The legislation must be viewed in the context of Israel’s tightening grip on the OPT, through which it continues to collectively punish and subject to atrocious, a vulnerable population which it holds under illegal occupation and an institutionalised regime of racial discrimination and apartheid.

44. Israel’s legislative actions also form part of its sustained attacks on UNRWA personnel, facilities, shelters and operations, destroying nearly 70 per cent of UNRWA’s schools-turned-

²⁵ Knesset News, ‘Approved in final readings: Bill banning state authorities from maintaining any contact with UNRWA or a representative of the agency’ (*The Knesset*, 29 October 2024)

<https://main.knesset.gov.il/en/news/pressreleases/pages/press291024w.aspx>

²⁶ *Legal Consequences* (2024) advisory opinion paras. 162-165 and 173.

²⁷ <https://x.com/PamelaFalk/status/1882901211462172930>.

²⁸ Article 43 of the 1907 Hague Regulations; Article 154 of the Fourth Geneva Convention.

²⁹ UN, ‘Global perspective Human stories: Israeli laws blocking UNRWA – devastating humanitarian impact for Palestinians?’ (*UN News*, 31 October 2024) <https://news.un.org/en/story/2024/10/1156326>.

³⁰ Article 55 of the Fourth Geneva Convention.

³¹ *Construction of a Wall*, para. 78; *Legal Consequence* (2024) para. 285.

shelters for displaced Palestinians in Gaza since 7 October 2023.³² More than 270 UNRWA employees have been killed during the Israeli offensive in the past 15 months — “the highest number of [United Nations] personnel killed in a single conflict or natural disaster since the creation of the United Nations”.³³ This is an unconscionable assault on the United Nations for its protection of the inalienable rights of the Palestinian people. The most recent phase of Israel’s long-standing campaign to dismantle UNRWA is to legislate its demise.

45. In so doing, Israel will further imperil the Palestinian people and inflict a catastrophic humanitarian blow on the civilian population in the West Bank, including East Jerusalem and the Gaza Strip. The Court has previously determined that “dependence of the West Bank, East Jerusalem, and especially of the Gaza Strip, on Israel for the provision of basic goods and services impairs the enjoyment of fundamental human rights, in particular the right to self-determination.”³⁴ Such dependence also renders the population more vulnerable to the destructive effects of Israeli genocidal or other violence visited upon them. Israel’s laws now serve to entrench this dependence.

46. Along with providing life-saving humanitarian aid, which is but one aspect of UNRWA’s many functions as a “quasi-State body”, UNRWA provides crucial infrastructure and services “akin to a State”, including “basic education, primary health care and mental health care, relief and social services, microcredit, and emergency assistance”, and job creation programmes.³⁵ Given the type and extent of the basic services that UNRWA provides to the civilian population in the Occupied Palestinian Territory, the dismantling of UNRWA brings Israel in direct violation of its IHL obligations as an Occupying Power, to *inter alia* “facilitate the proper working of all institutions devoted to the care and education of children”,³⁶ which requires that “[t]hese various establishments, organizations and institutions must be respected whatever their status under the law of the country and whether they are privately run or under State control”.³⁷

47. The attempt by Israel to dismantle institutions in the occupied territory and replace them with institutions that are “subservient to the will of the Occupying Power” is “incompatible” with Article 43 of the 1907 Hague Regulations.³⁸ Any changes made “in the internal organization of the State must not lead to protected persons being deprived of the rights and safeguards provided for them”.³⁹ Further, the restrictions placed on the Palestinian population’s human rights by the Occupying Power, are neither necessary nor proportional and thus violate IHRL. Moreover, they are not temporary restrictions at all, but of a permanent nature.

³² UNRWA, ‘Education under attack’ (9 September 2024) <https://www.unrwa.org/newsroom/photos/education-under-attack>.

³³ UN, ‘Global Perspective Human Stories: Guterres ‘personally devastated’ over inability of UN to safeguard staff in Gaza despite best efforts’ (*UN News*, 6 June 2024) <https://news.un.org/en/story/2024/06/1150736>.

³⁴ *Legal consequences* (2024) advisory opinion para. 241.

³⁵ UNRWA, ‘Frequently asked questions <https://www.unrwa.org/who-we-are/frequently-asked-questions#>’. See sections on: ‘Would the Palestine Refugee Question be Solved if Palestine Refugees Came Within UNHCR’s Mandate?’, ‘What is the Mandate of UNRWA’, and ‘What has been the positive impact of UNRWA services on the lives of Palestine refugees’.

³⁶ Article 50 of the Fourth Geneva Convention.

³⁷ ICRC, ‘Commentary of 1958 on Article 50 of Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

³⁸ Article 43 and 47 of the 1907 Hague Regulations; ICRC, ‘Commentary of 1958 on Article 47 of Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, Commentary of 1958’ available at <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-47/commentary/1958?activeTab=>.

³⁹ ICRC, ‘Commentary of 1958 on Article 47 of Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, Commentary of 1958’ available at <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-47/commentary/1958?activeTab=>.

48. The restrictions have also been issued in the context and in furtherance of an overarching régime of comprehensive restrictions imposed by Israel on the Palestinian people, including in the Occupied Palestinian Territory constituting systemic discrimination based on, *inter alia*, race, religion or ethnic origin, in violation of Articles 2, paragraph 1, and 26 of the International Covenant on Civil and Political Rights, Article 2, paragraph 2, of the International Covenant on Economic, Social, and Cultural Rights, and Article 2 and Article 3 of CERD.

49. Israel's continued attacks, including its ban, on UNRWA also constitute part and parcel of its measures employed to deliberately inflict on Palestinians in Gaza and the West Bank, including East Jerusalem, conditions of life calculated to bring about their physical destruction in whole or in part.

50. Under the legislation, all imports labelled as UNRWA will be prohibited, as import controls fall under the authority of the Coordinator of [Israeli] Government Activities in the Territories ('COGAT'), which will prevent UNRWA materials from entering the OPT. Consequently, none of the 600 trucks permitted to enter Gaza daily under the ceasefire agreement would be allowed to transport UNRWA goods. This places the current ceasefire at risk as it will erode trust amongst the parties, in the context of an already fragile truce.

51. Despite the incontrovertible evidence "[that] Gaza is facing the worst humanitarian crisis seen in the world for more than 50 years"⁴⁰ involving a "catastrophic humanitarian situation in the Gaza Strip which, as stated in its Order of 26 January 2024, was at serious risk of deteriorating, has deteriorated, and has done so even further since the Court adopted its Order of 28 March 2024",⁴¹ Israel has legislated the further destruction of Palestinian life by closing Gaza and West Bank access points to UNRWA. This will have an injurious impact on the Palestinian population, and on the Palestinian question as a whole. It would also violate core peremptory norms binding on Israel.

ii. Israel's policy of altering the legal status of Jerusalem

52. In Resolution 2334 of 2016, the Security Council:

"Underline[d] that it will not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations".⁴²

53. Following Israel's forcible acquisition of Palestinian territory in East Jerusalem in 1967 and the expansion of the boundaries of the Jerusalem municipality, General Assembly Resolution 2254, "called upon Israel to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem".⁴³ In response to Israel's adoption of the Basic Law: 1980, the Security Council, in its Resolution 478 of 1980, "[r]eaffirm[ed] again that the acquisition of territory by force is inadmissible" and held that certain legislative and administrative measures and actions taken by Israel as regards

⁴⁰ Adam Arnold, 'Gaza is worst humanitarian crisis I have seen in 50 years', top UN official says' (*Sky News*, 14 February 2024) <https://news.sky.com/story/gaza-is-worst-humanitarian-crisis-i-have-seen-in-50-years-top-un-official-tells-sky-news-13071666>.

⁴¹ *South Africa v. Israel* (Provisional Measures, Order) [24 May 2024] paras. 28 and 52.

⁴² UNSC Res 2334 (2016) UN Doc S/RES/2334(2016) available at <https://www.un.org/webcast/pdfs/SRES2334-2016.pdf>.

⁴³ UNGA Res 2253 (4 July 1967) UN Doc A/L.527/Rev.1 para. 2.

Jerusalem are “null and void”.⁴⁴ In that Resolution, the Security Council stressed the obligation of all States not to recognise this breach of Israel’s obligations arising under peremptory norms of general international law.

54. Israel has continued to encourage States to relocate embassies to West Jerusalem — territory which Israel occupied and annexed in 1949.⁴⁵ Following the relocation of the United States Embassy to Jerusalem in 2017,⁴⁶ the General Assembly issued Resolution A/ES-10/L.22, “[s]tressing that Jerusalem is a final status issue to be resolved through negotiations in line with relevant United Nations Resolutions” and calling upon “all States to refrain from the establishment of diplomatic missions in the Holy City of Jerusalem, pursuant to Security Council Resolution 478 of 1980”.⁴⁷

55. East Jerusalem forms part of the territory occupied by Israel in 1967 as part of the West Bank, and remains under occupation under international law. As a *de facto* military authority, Israel is not entitled to enact laws as if East Jerusalem were its sovereign territory. The enforcement of these laws in East Jerusalem must be understood against the backdrop of Israel’s long-standing illegal annexation and occupation of the city since 1967, including building settlements, the Israelization of Palestinian schoolbooks and policies of forced displacement and marginalisation.⁴⁸

56. The Court has already determined that Israeli policies and practices have brought about changes in the physical character, legal status, demographic composition and territorial integrity of the OPT, particularly the West Bank including East Jerusalem. These changes manifest an intention by Israel to create a permanent and irreversible Israeli presence in the Occupied Palestinian Territory.⁴⁹ Israel’s Jerusalem Municipality, for example, has followed a number of outline plans to radically alter the demography of Jerusalem with the objective of creating a 70:30 Israeli Jewish to Palestinian demographic ratio in East Jerusalem, forcibly displacing the indigenous Palestinian population and creating facts on the ground to ensure Israeli Jewish majority control of the City, for annexation.⁵⁰

57. The Court has also observed that Israel is not entitled to sovereignty over, nor to exercise sovereign powers in, any part of the OPT on account of its occupation.⁵¹ The Peace Research Institute Oslo (PRIO) concluded in its recent brief that:

“The takeover of the UNRWA Field Office and the closing of the UNRWA schools will mean the expulsion of the main UN footprint from Jerusalem (leaving only the UNTSO

⁴⁴ UNSC Res 478 (1980) (20 August 1980) UN Doc S/RES/478 para. 3.

⁴⁵ UNGA and UNSC, ‘Annex to the letter dated 20 September 2023 from the Chair of the Committee on the Exercise of the Inalienable Rights of the Palestinian People addressed to the Secretary-General The legality of the Israeli occupation of the Occupied Palestinian Territory, including East Jerusalem’ (20 September 2023) UN Doc A/78/378-S/2023/694 p. 48 available at <https://docs.un.org/en/A/78/378>.

⁴⁶ Walid Khalidi, ‘The Ownership of the U.S. Embassy Site in Jerusalem’ (2000) 29(4) *Journal of Palestine Studies* available at <https://www.palestine-studies.org/en/node/40840>; Human Rights Watch, ‘A Threshold Crossed Israeli Authorities and the Crimes of Apartheid and Persecution’ (2021) available at https://www.hrw.org/sites/default/files/media_2021/04/israel_palestine0421_web_0.pdf; *Legal consequences* (2024) advisory opinion para 276.

⁴⁷ UNGA, ‘Status of Jerusalem’ (19 December 2017) UN Doc A/ES-10/L.22.

⁴⁸ Jorgen Jensehaugen, Kjersti Berg and Lex Takkenberg ‘Consequences of the Israeli UNRWA ban’ Mideast Policy Brief 01/2025 available at <https://cdn.cloud.prio.org/files/a31527c0-2f07-4e9f-aca6-63b2f4518c23/MidEast%201-2025.pdf?inline=true>.

⁴⁹ *Legal consequences* (2024) advisory opinion para. 252.

⁵⁰ UN OCHA, ‘East Jerusalem Key Humanitarian Concerns’ (2011) available at https://www.ochaopt.org/sites/default/files/ocha_opt_jerusalem_report_2011_03_23_web_english.pdf.

⁵¹ *Legal consequences* (2024) advisory opinion paras.108 and 252.

headquarters and a handful of other UN premises). This will be a strong symbolic act in underscoring the Israeli position that both West- and East Jerusalem are Israeli sovereign territory, in contravention of international law.”⁵²

58. As mentioned above, intrinsic to UNRWA’s establishment by the General Assembly is the right of Palestinian refugees to return to their homes “in **today’s Israel**”.⁵³ It is this possibility, that fuels the Israeli approach and policies which consider that there are no refugees in the OPT, both to maintain a demographic Jewish majority in the State of Israel, and in the settler colonies in the West Bank, including East Jerusalem. Without UNRWA, Palestinians in the OPT, who are subjected to dire conditions and coercive environments to force their transfer by Israel’s acts to alter the demography, are likely to further flee, as Israel forcibly expands its settler colonial apartheid regime in the OPT.

59. A manifest consequence of Israel’s ban on UNRWA’s education provision is that Palestinian children attending UNRWA schools in East Jerusalem will suffer from the loss of Palestinian identity in the curriculum, denying Palestinians fundamental rights. This amounts to the erasure of Palestinian history, context and identity. It is not coincidental that Israel seeks to prohibit UNRWA schools in East Jerusalem, and the rest of the OPT, which teach democratic school cultures and foster citizenship and leadership skills, enabling Palestinian refugee children to look towards a future in the hope that they could one day live free from Israel’s violent military occupation and settler colonisation of Palestinian territory.

60. Without UNRWA, Palestinian refugees would face a significant protection gap as existing international refugee law does not apply to Palestine refugees by virtue of Article 1 paragraph D of the Convention Relating to the Status of Refugees:

“This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugee protection or assistance.”⁵⁴

iii. UNRWA’s operations in the West Bank including East Jerusalem

61. UNRWA provides support to 1.1 million vulnerable individuals in the West Bank, including 890 000 Palestinian refugees.⁵⁵ While the genocide in Gaza continues, Israel has also been intensifying its violence, forced displacement and policies of erasure of Palestinians in the West Bank. Since 7 October 2023, almost 900 Palestinians have been killed in the West Bank and more than 9 700 individuals arrested.⁵⁶ United Nations Office for the Co-ordination of Humanitarian Affairs (OCHA) reports that the year 2024, has “recorded the highest numbers in nearly two decades since OCHA began documents (*sic.*) such incidents, with approximately 4 250 Palestinians displaced 1 760 structures destroyed, and about 1 400

⁵² Jorgen Jensehaugen, Kjersti Berg and Lex Takkenberg ‘Consequences of the Israeli UNRWA ban’ Mideast Policy Brief 01/2025 available at <https://cdn.cloud.prio.org/files/a31527c0-2f07-4e9f-aca6-63b2f4518c23/MidEast%201-2025.pdf?inline=true>.

⁵³ UNRWA, ‘Where we work, Gaza Strip’ available at <https://www.unrwa.org/where-we-work/gaza-strip>; HRC, ‘Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory’ (25 February 2019) UN Doc A/HRC/40/74 para. 18 available at https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoIOPT/A_HRC_40_74.pdf.

⁵⁴ Convention relating to the Status of Refugees (entered into force 22 April 1954) 189 UNTS 137.

⁵⁵ UNRWA, ‘Where we work, West Bank’ available at <https://www.unrwa.org/where-we-work/west-bank>.

⁵⁶ UNRWA, ‘UNRWA Situation Report #160 on the humanitarian crisis in the Gaza Strip and the West Bank, including East Jerusalem’ (21 February 2025) <https://www.unrwa.org/resources/reports/unrwa-situation-report-160-situation-gaza-strip-and-west-bank-including-east-jerusalem>.

incidents involving Israeli settlers across the West Bank, including East Jerusalem”.⁵⁷ The situation has deteriorated even further since the beginning of January 2025, with all Palestinians being forcibly displaced from Jenin refugee camp,⁵⁸ and more from Al-Far’a refugee camp, in southern Tubas, as Israel expands military operations across the northern West Bank.⁵⁹

62. More than 912 879 registered refugees live in the West Bank, around a quarter of whom lived in 19 refugee camps.⁶⁰ UNRWA provides basic education in the West Bank which covers grades 1- 9, and Grade 10 in two schools in East Jerusalem. In the 2019/2020 school year, UNRWA reached over 45 883 students in its 96 schools. Two vocational training centres provide training for over 1 073 students in skilled trades and manufacturing.⁶¹

63. In addition to education, basic healthcare services are rendered with over 895 000 patient visits per year being recorded across 43 primary health care facilities in the West Bank, overseen by 659 health staff. Additionally, its programmes ensure the quality of drinking water, provide sanitation, and conduct rodent control in refugee camps, thereby reducing the risk of epidemics.

64. The World Food Programme (WFP) reports that over 160 000 Palestinians in the West Bank have had their work permits for Israel revoked, leaving many families without a source of income. The WFP warns that the rising violence and the ripple effects of the war in Gaza could drive at least 600 000 people in the West Bank into food insecurity, a sharp increase from 352 000 at the beginning of 2023.⁶²

65. Israeli military operations and security incidents, including settler violence, have intensified following Israel’s military campaign on Gaza since 7 October 2023. Palestinian refugees in the West Bank are frequently dispossessed and displaced by Israeli forces, increasing humanitarian concerns due to further settlement construction, military violence and harassment, and obstructed access to land, markets and essential services, including health services.⁶³ They are predicted to face increasing violence following the ceasefire in Gaza, in turn increasing the severity of conditions faced by Palestinian refugees in the West Bank. High rates of unemployment, poverty and food insecurity are also likely to persist.⁶⁴

66. Israel’s Minister of Defence stated in January 2025 that Israel’s military “will not accept a Gazan reality in [the West Bank], and anyone who follows the path of Hamas in Gaza . . . will pay a heavy price”.⁶⁵ Shortly after a ceasefire was reached in Gaza on 19 January 2025, Israeli Defence Minister, Israel Katz told military commanders, “[t]he battle against Palestinian terrorism in the West Bank is now at the top of the military and Israel’s

⁵⁷ UN OCHA, Humanitarian Situation Update #252 | West Bank (2 January 2025),

<https://www.unocha.org/publications/report/occupied-palestinian-territory/humanitarian-situation-update-252-west-bank#>

⁵⁸ Tom Bennett, ‘Israel expels residents of three West Bank Refugee camps’ (BBC, 23 February 2025)

<https://www.bbc.com/news/articles/cg70r9enm7po>; UN OCHA, ‘Humanitarian Situation Update #260 | West Bank’ (30 January 2025) available at <https://www.unocha.org/publications/report/occupied-palestinian-territory/humanitarian-situation-update-260-west-bank-enar>.

⁵⁹ Al-Haq, @alhaq_org, Tweet (5:27 pm, 8 February 2025) https://x.com/alhaq_org/status/1888278477163360560.

⁶⁰ UNRWA, ‘Where we work, West Bank’ available at <https://www.unrwa.org/where-we-work/west-bank>.

⁶¹ UNRWA, ‘Where we work, West Bank’ available at <https://www.unrwa.org/where-we-work/west-bank>.

⁶² WFP, ‘Gaza updates: Hunger deepens as aid plummets’ (9 October 2024) available at <https://www.wfp.org/stories/gaza-updates-hunger-deepens-aid-plummets#:~:text=More%20than%20160%2C000%20people%20have.at%20the%20start%20of%202023.>

⁶³ UNRWA, ‘Health in the West Bank’ available at <https://www.unrwa.org/activity/health-west-bank>.

⁶⁴ UN, ‘Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East: Programme budget 2024–2025’ UN Doc A/78/13/Add.1, para. 14.

⁶⁵ Israel Katz @Israel_katz, Tweet (8:42 am, 6 January 2025), https://x.com/Israel_katz/status/1876187564794876225

priorities”.⁶⁶ On 21 January 2025, Prime Minister Netanyahu launched “a large-scale and significant military operation to eradicate terrorism in Jenin”, the so-called “Iron Wall”.⁶⁷ Israel’s Minister of Defence, Katz explained that the assault on Jenin is “the first lesson from the method of repeated raids in Gaza,”⁶⁸ that Israel would “act vigorously” to “destroy terrorist infrastructure in the Jenin refugee camp”.⁶⁹ Since the start of the ceasefire in Gaza, Israel has killed over 50 Palestinians and injured over 150 Palestinians in the West Bank.⁷⁰

67. Also on 21 January 2025, the Israeli military deployed jeeps, drones, Apache helicopters, air force planes,⁷¹ and military bulldozers⁷² in attacks on Jenin. By 20 February 2025, at least 51 Palestinians had been killed in Jenin since the ceasefire,⁷³ most were “reportedly unarmed”.⁷⁴ Palestinians from Jenin refugee camp have been displaced, with many seeking shelter in in Jenin Governorate Hospital, homes have been damaged,⁷⁵ schools and health services suspended,⁷⁶ and ambulances prevented from accessing the camp, as Israeli D9 and D10 bulldozers destroyed roads and infrastructure as Israel carried out widespread detentions.⁷⁷ The “intensified military assault” on Jenin is the latest in a continuing and worsening series of lethal military attacks on Jenin over the last three years.⁷⁸

68. Basic services like water and electricity are severely disrupted in Jenin camp and humanitarians have struggled to access the area safely, limiting aid distribution such as mattresses and blankets, where “air strikes, heavy bulldozing and the operation of undercover forces have resulted in several fatalities and dozens of injuries – including among medical personnel.”⁷⁹ The West Bank director of UNRWA said that Jenin camp is now “nearly uninhabitable,” with Israel having bulldozed all the roads leading to the Jenin refugee camp

⁶⁶ <https://www.nytimes.com/2025/01/22/world/middleeast/israel-west-bank-jenin-raids.html>

⁶⁷ Benjamin Netanyahu, @netanyahu, Tweet (11:46 am, 21 January 2025) <https://x.com/netanyahu/status/1881669696736379144>.

⁶⁸ Emanuel Fabien, “In Jenin, IDF kills 2 gunmen who shot 3 Israelis dead in terror attack this month”, The Times of Israel (23 January 2025), <https://www.timesofisrael.com/in-jenin-idf-kills-2-gunmen-who-shot-3-israelis-dead-in-terror-attack-this-month/>; Limor Son Har-Melech MK, @limor_sonhrmelh, Tweet (9:37 pm, 30 January 2025), https://x.com/limor_sonhrmelh/status/1885079983518843263, MK Son Har-Melech stated that “[t]he Arabs of Judea and Samaria are the same as Arabs of Gaza. Their hatred is the same hatred...”.

⁶⁹ Israel Katz, @Israel_katz, Tweet (7:20 am, 23 January 2025) https://x.com/Israel_katz/status/1882327600238063644.

⁷⁰ UNOCHA, ‘Humanitarian Situation Update #266 / West Bank’ (20 February 2025) <https://www.unocha.org/publications/report/occupied-palestinian-territory/humanitarian-situation-update-266-west-bank-enhe>; <https://www.ochaopt.org/content/humanitarian-situation-update-262-west-bank> (23 Palestinians killed, over 150 injured); <https://www.ochaopt.org/content/humanitarian-situation-update-260-west-bank> (20 Palestinians killed, 81 injured).

⁷¹ Avichay Adraee, @AvichayAdraee, Tweet (5:41 pm, 24 January 2025), <https://x.com/AvichayAdraee/status/1882846290167398520>.

⁷² Al-Haq, @alhaq_org, Tweet (1:22 pm, 21 January 2025), https://x.com/alhaq_org/status/1881693943278284862; TIMES OF GAZA, @Timesofgaza, Tweet (12:05 pm, 25 January 2025), <https://x.com/Timesofgaza/status/1883124090799804671>.

⁷³ Ibid.

⁷⁴ UNOCHA, ‘Humanitarian Situation Update #266 / West Bank’ (20 February 2025) <https://www.unocha.org/publications/report/occupied-palestinian-territory/humanitarian-situation-update-266-west-bank-enhe>; UN OCHA, Humanitarian Situation Update #260 | West Bank (30 January 2025), <https://www.ochaopt.org/content/humanitarian-situation-update-260-west-bank?>; UN News, UN rights office raises alarm over escalating violence in occupied West Bank (24 January 2025), <https://news.un.org/en/story/2025/01/1159411>.

⁷⁵ Ibid.

⁷⁶ UNRWA, @UNRWA, Tweet (10:48 am, 26 January 2025), <https://x.com/UNRWA/status/1883466926279594021>

⁷⁷ UN OCHA, Security Council briefing by Tom Fletcher, Under-Secretary-General for Humanitarian Affairs, on the plight of children in the Gaza Strip (23 January 2025), <https://www.ochaopt.org/content/security-council-briefing-tom-fletcher-under-secretary-general-humanitarian-affairs-plight-children-gaza-strip>.

⁷⁸ Al-Haq, Action Alert: Urgent Need for Protection of Palestinians as Israel Intensifies Its Genocidal, Colonial Violence in the West Bank, including in Jenin and Tulkarem (29 January 2025), <https://www.alhaq.org/advocacy/25868.html>.

⁷⁹ UN, ‘Global perspective Human stories: Ceasefire in Gaza brings hope, but West Bank faces escalating violence’ (UN News, 12 January 2025) <https://news.un.org/en/story/2025/01/1159251>.

and Jenin Government Hospital. The UN Special Rapporteur for the Occupied Palestinian Territories referred to Israel's "death machinery" in relation to its recent attacks on Jenin.⁸⁰

69. The recent activities of Israel in the West Bank are reaching levels akin to that in Gaza, which raise the alarm that breaches of the Genocide Convention are also occurring there. South Africa is gravely concerned about the indiscriminate bombing of civilians, destruction of vital infrastructure and its impact on water and electricity supply, the razing of homes, detention *en masse* of the West Bank population and intensified acts of aggression against it. South Africa views this heightened assault on the occupied West Bank as part of the Israeli policy and overall process to destroy in whole or in part the Palestinian population in that area, and to forcibly displace them.

70. UNRWA's critical role in the West Bank is therefore beyond dispute.

iv. UNRWA's operations in the Gaza Strip

71. Approximately 1.6 million out of 2.4 million Palestinians in Gaza are registered Palestinian refugees relying on UNRWA, which also extends its support to the wider Palestinian community during emergencies.⁸¹

72. Central to Israel's targeting of UNRWA is its prevention of the 1.6 million registered Palestinian refugees in Gaza of their right to return to their homes, many of which are "in today's Israel".⁸² The majority of Palestinians in Gaza have been subjected to over 75 years of refugeehood in UNRWA's refugee camps, and actions they have taken, including weekly gatherings to call for their right of return to their homes during the peaceful Great March of Return in 2018, have been met with lethal force by Israel.⁸³

73. Israel's Minister of Defence, Israel Katz, asserts that UNRWA is "[p]art of the Palestinian lie that there are 'refugees' who need to return to the State of Israel. We are working to remove UNRWA from Gaza. They are the problem – not the solution."⁸⁴ Likewise, Israel's Prime Minister Netanyahu has stated, "UNRWA is self-perpetuating. It is self-perpetuating also in its desire to keep alive the Palestinian refugee issue. And we need to get other U.N. agencies and other aid agencies replacing UNRWA if we're going to solve the problem of Gaza as we intend to do."⁸⁵

74. Israel has since 7 October 2023 been waging a brutal military campaign on the Palestinian population in Gaza, held under a 16-year military closure and siege and Israel's entrenched unlawful military occupation and apartheid — "described regularly as an 'open-

⁸⁰ MEHR, 'UN expert warns Israel's genocide could spread to West Bank' (*MEHR News Agency*, 22 January 2025) <https://en.mehrnews.com/news/227276/UN-expert-warns-Israel-s-genocide-could-spread-to-West-Bank>.

⁸¹ UN, 'Where we work – Gaza' <https://www.unrwa.org/where-we-work/gaza-strip>.

⁸² UNRWA, 'Where we work, Gaza Strip' available at <https://www.unrwa.org/where-we-work/gaza-strip>; HRC, 'Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory' (25 February 2019) UN Doc A/HRC/40/74 para. 18 available at https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoIOPT/A_HRC_40_74.pdf.

⁸³ UN The Question of Palestine, 'UNRWA Releases Report on Great March of Return – UNRWA Press Release' (29 March 2019) <https://www.un.org/unispal/document/unrwa-releases-report-on-great-march-of-return-unrwa-press-release/>.

⁸⁴ Israel Katz @Israel_katz, Tweet (4:05 pm, 4 February 2024), https://x.com/Israel_katz/status/1754174311768695267.

⁸⁵ Ariel Kahana, 'No quick alternative to UNRWA, Israeli defense official tells US', (*Jewish National Syndicate*, 2 February 2024) <https://www.jns.org/no-quick-alternative-to-unrwa-israeli-defense-official-tells-us/>.

air prison”⁸⁶. Leaving no safe place to flee,⁸⁷ Israel’s genocidal onslaught has thus far resulted in the deaths of over 61 709 Palestinians, including 17 492 children in Gaza.⁸⁸ The majority of these victims are women and children.⁸⁹

75. UNRWA operated 22 healthcare centres which also offered general health care services, maternal health care and certain clinics attending to special education needs;⁹⁰ and has also been responsible for vaccination campaigns, specifically against polio.⁹¹ Of the 22 centres, UNRWA reported that 8 have remained operational and UNRWA conducted 6.2 million primary healthcare consultations over the period of October 2023 to October 2024.⁹²

76. A recent study by the medical journal *The Lancet* estimated that mortality in Gaza due to traumatic injury exceeds 70 000 deaths, compared to the Palestinian Ministry of Health’s (MoH) reported 41 909 deaths at the time, “implying that the MoH underestimated deaths by 41 per cent”.⁹³

77. Non-trauma-related deaths brought on by food insecurity, inadequate water and sanitation, and disruptions in health services were not included in the aforementioned study. However, during July 2024, a separate *The Lancet* study concluded that “applying a conservative estimate of four indirect deaths per one direct death to the 37 396 deaths reported [at the time], it is not implausible to estimate that up to 186 000 or even more deaths could be attributable to the current conflict in Gaza”.⁹⁴

78. Additionally, *The Lancet* estimates that life expectancy in the Gaza Strip has been reduced by half since the Israeli onslaught and the study has found that life expectancy dropped from a pre-war average of 75.5 years to 40.5 years for the period between October 2023 and September 2024.⁹⁵

79. These are exceptionally high mortality rates for a conflict which also has the highest death toll on record for UN personnel. Approximately 10 000 bodies are believed to be buried

⁸⁶ UN OHCHR, ‘Israel’s 55-year occupation of Palestinian Territory is apartheid – UN human rights expert’ (25 March 2022) <https://www.ohchr.org/en/press-releases/2022/03/israels-55-year-occupation-palestinian-territory-apartheid-un-human-rights>.

⁸⁷ UN Meetings Coverage and Press Releases, ‘As Israel’s Aerial Bombardments Intensify, ‘There Is No Safe Place in Gaza’, Humanitarian Affairs Chief Warns Security Council’ (12 January 2024) <https://press.un.org/en/2024/sc15564.doc.htm>.

⁸⁸ UN OCHA, ‘Reported impact snapshot – Gaza Strip’ (4 February 2024) <https://www.ochaopt.org/content/reported-impact-snapshot-gaza-strip-4-february-2025>. AJ Labs, ‘Israel-Gaza war in maps and charts: Live tracker’ (updated on 3 February 2025) <https://www.aljazeera.com/news/longform/2023/10/9/israel-hamas-war-in-maps-and-charts-live-tracker>

⁸⁹ AJ Labs, ‘Israel-Gaza war in maps and charts: Live tracker’ (updated on 3 February 2025) <https://www.aljazeera.com/news/longform/2023/10/9/israel-hamas-war-in-maps-and-charts-live-tracker> ; AJ Labs, ‘The human toll of Israel’s war on Gaza – by the numbers’ (*Aljazeera*, 15 January 2025) <https://www.aljazeera.com/news/2025/1/15/the-human-toll-of-israels-war-on-gaza-by-the-numbers>.

⁹⁰ UN, ‘How has the war in Gaza affected UNRWA’s ability to support Palestinians?’ (8 November 2024)

<https://palestine.un.org/en/283078-how-has-war-gaza-affected-unrwa%E2%80%99s-ability-support-palestinians>.

⁹¹ UN, ‘How has the war in Gaza affected UNRWA’s ability to support Palestinians?’ (8 November 2024)

<https://palestine.un.org/en/283078-how-has-war-gaza-affected-unrwa%E2%80%99s-ability-support-palestinians>.

⁹² UN, ‘How has the war in Gaza affected UNRWA’s ability to support Palestinians?’ (8 November 2024)

<https://palestine.un.org/en/283078-how-has-war-gaza-affected-unrwa%E2%80%99s-ability-support-palestinians>.

⁹³ Zeina Jamaluddine et al, ‘Traumatic injury mortality in the Gaza Strip from Oct 7, 2023, to June 30, 2024: a capture–recapture analysis’ (9 January 2025) p. 1 available at <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2824%2902678-3>.

⁹⁴ Rasha Khatib, Martin McKee, and Salim Yusuf, ‘Counting the dead in Gaza: difficult but essential’ (20 July 2024) p. 237-238 available at [https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(24\)01169-3.pdf](https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(24)01169-3.pdf).

⁹⁵ OCHA, ‘Humanitarian Situation Update #259 | Gaza Strip’ (28 January 2025) available at <https://www.ochaopt.org/content/humanitarian-situation-update-259-gaza-strip>.

under the rubble in the Gaza strip.⁹⁶ The UN reports that over 50 million tonnes of debris in Gaza can take up to 20 years to remove.⁹⁷

80. The destruction of Gaza is beyond description. The very fabric of life in Gaza has been destroyed as a result of Israel's scorched earth policy. Israel's indiscriminate bombing has flattened civilian neighbourhoods and destroyed almost all civilian infrastructure — such as schools, hospitals, ambulances, shelters, mosques and churches.

81. On 22 October 2024, the UN Development Programme and the UN Economic and Social Commission for Western Asia, assessed that poverty in the State of Palestine will rise to 74.3 per cent in 2024, affecting 4.1 million people, including 2.61 million people who are newly impoverished. According to the report, impacts of the war have set development in Gaza back to the 1950s.⁹⁸

82. Israel enforces these laws with full awareness of the devastating humanitarian and developmental consequences that banning UNRWA would have on Gaza's already starving, diseased and extremely vulnerable population. Indeed, Israel has even been warned of the devastating consequences of its attacks on UNRWA through South Africa's submissions to this Court in the context of the *South Africa v. Israel* proceedings.⁹⁹

83. By November 2024, over 1.9 million Palestinian men, women and children had been displaced with nowhere safe to go, as Israel intensified its attacks on "humanitarian zones", resulting in 90 per cent of the population being displaced, "at least once, if not ten times" since October 2023.¹⁰⁰ At the same time, 69 per cent of all structures in the Gaza strip have been damaged or destroyed¹⁰¹, whilst Israel, even under the ceasefire, continues to block goods and is limiting overall entry to a maximum of 600 trucks per day¹⁰² The humanitarian aid being brought into Gaza is wholly insufficient to meet the needs in Gaza.¹⁰³ Israel continues to place restrictions on critical humanitarian supplies into Gaza, denying the entry of "kits, organic fertilizers and nylon sheets for greenhouses", in addition to preventing telecommunications equipment and spare parts and pipelines to carry out needed repairs to "re-connect damaged buildings to sewage networks and establish appropriate latrine spaces",

⁹⁶ UNEP, 'Debris Management in Gaza - Human Remains in Debris | Standard Operating Procedure Version 1.4, January 2025' (6 February 2025) <https://reliefweb.int/report/occupied-palestinian-territory/debris-management-gaza-human-remains-debris-standard-operating-procedure-version-14-january-2025>.

⁹⁷ OCHA, 'Humanitarian Situation Update #259 | Gaza Strip' (28 January 2025) available at <https://www.ochaopt.org/content/humanitarian-situation-update-259-gaza-strip>.

⁹⁸ UNDP, 'New UN report: Impacts of war have set back development in Gaza by as much as 69 years' (22 October 2024) <https://www.undp.org/press-releases/new-un-report-impacts-war-have-set-back-development-gaza-much-69-years>.

⁹⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* (Request by South Africa for the indication of provisional measures and modification of the Court's prior provisional measures decisions) [6 March 2024] para.12; UNRWA, 'Letter from the Commissioner-General to the President of the UN General Assembly' (22 February 2024) <https://www.unrwa.org/newsroom/official-statements/letter-commissioner-general-president-general-assembly>.

¹⁰⁰ UN, 'Press Conference by Andrea De Domenico, Head of OCHA's OPT office' (3 July 2024) available at <https://www.un.org/unispal/document/watch-palestine-humanitarian-situation-ocha-03jul24/#:~:text=UN%20top%20humanitarian%20official%20in,%2C%20unfortunately%2C%20since%20October.%E2%80%9D>.

¹⁰¹ UNOSAT, 'Gaza Strip Comprehensive Damage Assessment' (13 December 2024) <https://unosat.org/products/4047>.

¹⁰² UN OCHA, 'Humanitarian Situation Update #261 Gaza Strip' (5 February 2025) <https://www.ochaopt.org/content/humanitarian-situation-update-261-gaza-strip>.

¹⁰³ Lyndal Rowlands et al, 'Aid entering Gaza 'nowhere near' enough to address needs: NRC' (*Al Jazeera*, 11 February 2024) <https://aje.io/ynbx4u?update=3502401>.

while the Education Cluster reports that restrictions remain on the entry of educational supplies and learning materials.¹⁰⁴

v. Israel's denial of aid policy

84. Israel's denial of aid through its campaign to end UNRWA's operations is part of its pattern of practices and policies which are calculated to destroy the Palestinian population through:

- (i) denial of humanitarian aid beginning with the deliberate rendering of the population dependent on external assistance and thus subject to Israel's will;
- (ii) subsequently the denial of entry of humanitarian aid through the closure of land crossings and arbitrary inspection protocols;
- (iii) the creation of a hostile environment for aid distribution including through military attacks on aid;
- (iv) multifaceted attacks on UNRWA, its personnel and operations;
- (v) policy of starvation and malnutrition, further weakening the population;
- (vi) allowing, aiding and abetting third parties' interference in the delivery of aid.

85. These practices and policies pursue the common purpose of rendering the population ever more vulnerable and susceptible to death or harm as well as to deny members of the group the most basic necessities for survival. Such conduct forms parts of Israel's genocidal acts and cumulatively evidences Israel's genocidal intent.

vi. The Court's Provisional Measures Orders (*South Africa v Israel*)

86. On 26 January 2024, the Court held that at least some of the rights claimed by South Africa and for which it sought protection under the Genocide Convention in its application to the Court on 29 December 2023, are plausible. This is the case with respect to the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts identified in Article III, and the right of South Africa to seek Israel's compliance with the latter's obligations under the Genocide Convention.¹⁰⁵

87. The Court further considered that "the civilian population in the Gaza Strip remains extremely vulnerable. It recalls that the military operation conducted by Israel after 7 October 2023 has resulted, *inter alia*, in tens of thousands of deaths and injuries and the destruction of homes, schools, medical facilities and other vital infrastructure, as well as displacement on a considerable scale".¹⁰⁶ The Court on this basis ordered the State of Israel to "take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip."¹⁰⁷

88. In its Order on 28 March 2024, the Court further ordered Israel to "take all necessary and effective measures to ensure, without delay, in full co-operation with the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and

¹⁰⁴ UN OCHA, 'Humanitarian Situation Update #261 | Gaza Strip' (5 February 2025)

<https://www.ochaopt.org/content/humanitarian-situation-update-261-gaza-strip>.

¹⁰⁵ *South Africa v. Israel* (Provisional Measures, Order) [26 January 2024] para. 54.

¹⁰⁶ *South Africa v. Israel* (Provisional Measures, Order) [26 January 2024] para. 70.

¹⁰⁷ *South Africa v. Israel* (Provisional Measures, Order) [26 January 2024] para. 85, Provisional Measure 4.

humanitarian assistance, including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians throughout Gaza, including by increasing the capacity and number of land crossing points and maintaining them open for as long as necessary”.¹⁰⁸

89. On 24 May 2024, the Court reaffirming its Orders of 26 January 2024 and 28 March 2024, and “in view of the worsening conditions of life faced by civilians in the Rafah Governorate”, ordered Israel to “maintain open the Rafah crossing for unhindered provision at scale of urgently needed basic services and humanitarian assistance”.¹⁰⁹

90. The Court found these provisional measures necessary in order to protect Palestinians’ plausible rights under the Genocide Convention from “further risk of irreparable prejudice”, and deemed that “there is urgency, in the sense that there exists a real and imminent risk that such prejudice will be caused before the Court gives its final decision”.¹¹⁰

91. Israel’s decision to block UNRWA from accessing the OPT and from rendering urgent humanitarian assistance and relief to Palestinians in Gaza, are in direct violation of the Court’s Orders. It fails to meet the necessity of ensuring unrestricted humanitarian aid and large-scale provision of basic services. This also further amounts to a breach by Israel of its obligations under the Genocide Convention, and its *erga omnes* obligations under the Convention and customary international law.

vii. Israel’s actions in the context of apartheid and the unlawful occupation as a whole

92. Israel’s actions in relation to UNRWA are the latest in a deluge of severe international law violations. In the *Legal Consequences* (2024) advisory opinion, the Court held that the State of Israel’s continued presence in the Occupied Palestinian Territory is unlawful and that it is under an obligation to bring to an end its unlawful presence in the Occupied Palestinian Territory as rapidly as possible.¹¹¹

93. The Court further considered as an element of the right to self-determination that:

*“a people is protected against acts aimed at dispersing the population and undermining its integrity as a people. In the past, the Court concluded that Israel’s construction of the wall, along with other measures, contributed to the departure of Palestinian populations from certain areas, thus risking alterations to the demographic composition of the Occupied Palestinian Territory; for that reason, it severely impeded the exercise by the Palestinian people of its right to self-determination.”*¹¹²

94. Israel has made no efforts to end its unlawful presence in the OPT. By banning UNRWA from operating in Israel and illegally annexed East Jerusalem, it is tightening its grip on the OPT, further entrenching its unlawful presence.

¹⁰⁸ *South Africa v. Israel* (Provisional Measures, Order) [28 March 2024], para. 51, Provisional Measure 2.

¹⁰⁹ *South Africa v. Israel* (Provisional Measures, Order) [24 May 2024] para. 57 2(b).

¹¹⁰ *South Africa v. Israel* (Provisional Measures, Order) [24 May 2024] para. 47; *South Africa v. Israel* (Provisional Measures, Order) [28 March 2024] para. 40; *South Africa v. Israel* (Provisional Measures, Order) [26 January 2024] para. 74.

¹¹¹ *Legal Consequences* (2024) advisory opinion para. 285.

¹¹² *Legal Consequences* (2024) advisory opinion para 59.

95. Banning UNRWA enables Israel to more extensively and effectively implement the very practices and policies highlighted by this Court as bringing about changes in “the physical character, legal status, demographic composition and territorial integrity of the Occupied Palestinian Territory”¹¹³ and as violating Palestinians’ right to self-determination — factors which led this Court to conclude Israel’s continued presence in the OPT is unlawful and an unlawful acquisition of territory by force,¹¹⁴ in violation of the Charter.

96. As such, Israel’s ban also constitutes a new measure by Israel in violation of its obligations under the Charter. Its ban would *inter alia* further harm the availability of key humanitarian aid and basic services, as well as any quasi-State functions exercised by UNRWA, and would in so doing not only further forced displacement, attack the Palestinian social fabric, and alter the demographic composition of the territory, but could also further facilitate appropriations and expropriations of property of the newly displaced persons. *In sum*, as a measure further enabling and facilitating such “sustained abuse by Israel of its position as an Occupying Power”,¹¹⁵ Israel’s ban on UNRWA would have the effect of rendering the Palestinian population in the OPT *significantly less resilient* to Israel’s continued efforts to the acquisition of the OPT by force.¹¹⁶

97. For example, the Court has already drawn attention to the unlawfulness of Israel’s water and land policies which have reduced Palestinian agricultural land from approximately 2 400 sqkm in 1980, to approximately 1 000 sqkm in 2010. The share of agriculture in the gross domestic product of the OPT has declined from 25 per cent in 1972 to less than 4 per cent by 2020.¹¹⁷ The Court has determined that, “[d]windling supplies of water and associated environmental degradation have severely undermined the Palestinian agricultural sector, reducing employment possibilities”.¹¹⁸ South Africa would add that Israel’s military campaign since 7 October 2023 has inexorably reduced agricultural production in the OPT, rendering it impossible for Palestinians to produce food in the short term. This is a situation which Israel has deliberately inflicted on Palestinians, and now seeks to take away a remaining lifeline in the form of UNRWA.

98. South Africa considers that UNRWA’s banning by Israel directly violates its core obligations under the Charter. It also amounts to a breach of Israel’s obligations as an Occupying Power under the relevant rules of international humanitarian and human rights law, and *jus cogens* norms which South Africa sets out hereunder.

C. Israel’s obligations towards the United Nations

99. Compliance with the Charter is not merely a political commitment but a legal obligation under international law. South Africa subscribes to the Court’s view that “the Charter has not been content to make the Organization created by it merely a centre for harmonising the actions of nations in the attainment of these common ends”¹¹⁹ but extends to legal obligations which Members accept in furtherance to the principles and purposes of the collective aims of the Charter.

¹¹³ *Legal Consequences* (2024) advisory opinion para. 252.

¹¹⁴ *Legal Consequences* (2024) advisory opinion paras. 261-262.

¹¹⁵ *Legal Consequences* (2024) advisory opinion para. 261.

¹¹⁶ *Legal Consequences* (2024) advisory opinion, para. 256.

¹¹⁷ *Legal Consequences* (2024) advisory opinion para 130.

¹¹⁸ *Ibid.*

¹¹⁹ *Reparation for injuries suffered in the service of the United Nations* (Advisory Opinion) [11 April 1949] ICJ Reports case, p. 8.

100. In the *Reparations* advisory opinion, the Court concluded that “Members of the Organization have entered into certain undertakings, some of which are in the Charter and others in complementary agreements...the Court must stress the importance of the duty to render to the Organization "every assistance" which is accepted by the [UN] Members in Article 2, paragraph 5, of the Charter”.¹²⁰

101. Israel deposited its declaration of acceptance of the UN Charter obligations upon its admission to the United Nations on 29 November 1948 as follows:

*“On behalf of the State of Israel, I, Moshe Shertok, Minister for Foreign Affairs, being duly authorized by the State Council of Israel, declare that the State of Israel hereby unreservedly accepts the obligations of the United Nations Charter and undertake to honour them from the day when it becomes a member of the United Nations.”*¹²¹

102. The General Assembly admitted Israel as a UN Member State by the adoption of Resolution 273 (III) on 11 May 1949. In the Resolution, the General Assembly recalled its Resolutions of 29 November 1947 (i.e. Resolution 181) and 11 December 1948 (i.e. Resolution 194 (III)) and noted the “declarations and explanations made by the representative of the Government of Israel before the ad hoc Political Committee in respect of the implementation of said Resolutions”¹²². To secure its membership in the United Nations, Israel stressed that it “held no views and pursued no policies on any questions which were inconsistent with the Charter or with the Resolutions of the General Assembly and the Security Council”.¹²³

103. Subsequent to the granting of its UN membership, Israel had declared its intention to breach the terms of Resolution 181 (II), which it asserted required “modifications” following “the war against Israel”, which should be regarded as “new realities”.¹²⁴ Additionally, it would keep denying Palestinian refugees their promised right of return pursuant to Resolution 194 (III). It is thus evident that Israel has violated the Charter and its Resolutions since gaining UN Membership in 1949, despite having committed to its obligations under the Charter.

104. The Security Council has reiterated that all Member States, including Israel, in their acceptance of the Charter of the United Nations, have undertaken a commitment to act in accordance with Article 2 of the Charter.¹²⁵ This necessarily includes the duty in Article 2 paragraph 5 to render every assistance to the UN.

105. These are among the core principles upon which the UN is able to deliver on its foundational purposes to “achieve 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...”¹²⁶ States are therefore under an obligation pursuant to Article 2 paragraph 2 of the Charter to “fulfil in good faith the

¹²⁰ *Reparations* advisory opinion p. 8.

¹²¹ UN, ‘Press Release: Israel’s Declaration of Acceptance of Charter Obligations’ (30 November 1948) UN Doc PAL/390 available at <https://www.un.org/unispal/document/auto-insert-206473/>.

¹²² UNGA Res 273 (III) (11 May 1949) UN Doc A/RES/273(III).

¹²³ UN, ‘Official Records of the General Assembly, Third Session, Ad Hoc Political Committee, Forty-fifth meeting’ (5 May 1949) UN Doc A/AC.24/SR.45, p. 230 available at <https://undocs.org/A/AC.24/SR.45>.

¹²⁴ UN, ‘Official Records of the General Assembly, Third Session, 207th plenary meeting’ (11 May 1949) UN Doc A/PV.207 p. 334 available at <https://undocs.org/A/PV.207>.

¹²⁵ UNSC Res 242 (22 November 1967) UN Doc S/RES/242(1967).

¹²⁶ Article 1(3) of the Charter.

obligations assumed by them in accordance with the [Charter]" to ensure the rights and benefits which flow from their membership of the UN.

106. South Africa would point out that Article 2 paragraph 5 of the Charter imposes a positive obligation on Members to render to the UN "every assistance" which is a core requirement in the membership provision in Article 4 paragraph 1. By virtue of that article, UN Members "accept" the obligations contained in the Charter and are "able and willing to carry out these obligations."

107. The Court has determined:

"Again, there are provisions, such as those of Article 56, which state that "All Members pledge themselves to take joint and separate action in cooperation with this Organization - [not "in co-operation with each other" or "with other Members"] for the achievement of ". Such language is difficult to reconcile with any other view but that the framers of the Charter regarded the Organization as possessing an international corporate capacity of its own, separate and distinct from that of its individual Members or of the plurality of its members".¹²⁷

108. Moreover, Article 56 is framed with particular reference to Article 55 of the Charter in which Member States are obligated to undertake joint and separate action, *in cooperation with the United Nations*, based on respect for the principle of *equal rights* and *self-determination* of peoples, to achieve the objectives in Article 55.

109. These objectives encompass the creation of conditions of stability and well-being; promotion *inter alia* of the resolution of international *economic, social, health*, and related challenges; the advancement of international *cultural* and *educational* cooperation, and the universal observance and respect for *human rights* and *fundamental freedoms* without *discrimination* based on race, sex, language, or religion.

110. Israel cannot escape these obligations which are binding on all UN Members and contained in the Charter. The Charter is not an *à la carte* menu from which States may choose which obligations they are willing to carry out in the prevailing circumstances. Doing so would render the UN and its functions nugatory and would fall short of the requirement for Members of the UN to render "every assistance" to it. If there is a conflict between a Member State's obligations under the Charter and its obligations under any other international agreement, the obligations arising from the Charter shall prevail.¹²⁸

111. Firmly rooted in the UN Charter is the principle that Member States undertake to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.¹²⁹ The Charter on this basis specifically provides that the Organization 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.¹³⁰

¹²⁷ *Reparations* advisory opinion p. 9.

¹²⁸ Article 103 of the Charter.

¹²⁹ Article 100 of the Charter.

¹³⁰ Article 104 of the Charter.

112. Having regard to the *travaux préparatoire* of the UN Charter in which the Committee IV/2 considered draft article 105 on the UN's privileges and immunities, the Committee expressed that:

*“The draft article proposed by the subcommittee does not specify the privileges and immunities respect for which it imposes on the Member States. This has been thought superfluous. The terms privileges and immunities indicate in a general way all could be considered necessary to the realization of the purposes of the Organization, to the free functioning of its organs and to the independent exercise of the functions and duties of their officials: exemption from tax, immunity from jurisdiction, facilities for communication, inviolability of buildings, properties, and archives, etc. It would moreover have been impossible to establish a list valid for all the Member States and taking account of the special situation in which some of them might find themselves by reason of the activities of the Organization or of its organs in their territory. But if there is one certain principle it is that no member state may hinder in any way the working of the Organization or take on measures the effect of which might be to increase its burdens, financial or other.”*¹³¹

113. The Committee also considered that the rule in Article 105 paragraph 1 of the Charter “should apply under any circumstances, its authority being in no way subordinated to the exercise by the Assembly of the power specified in [sub] paragraph II”.¹³²

114. Compliance with these provisions of the Charter safeguards the UN's ability to act as a neutral and effective international body so it may – together with its subsidiary organs and agencies – deliver on its important mandate. Giving effect to the above, Article 105 of the Charter provides for the privileges and immunities of the Organisation:

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

115. Recognising the importance of granting the UN privileges and immunities under international law, UN Member States speedily adopted the Convention on the Privileges and Immunities of the United Nations on 13 February 1946 (the General Convention) - a mere four months after the Charter came into force on 24 October 1945. The consideration of the adoption of the General Convention was done at the General Assembly's very first session on 13 February 1946.¹³³

116. The General Convention entered into force on 17 September 1946 and 162 Member States are parties to it, including Israel, following its accession on 21 September 1949. The Convention serves as the legal framework for the UN's autonomy as an international

¹³¹ Report of the Committee IV/2 Legal Problems, UN Charter travaux préparatoire, pg. 682, Volume 13-E-F San Francisco Conference 1945 <https://digitallibrary.un.org/record/1300969?v=pdf>

¹³² Ibid, pg. 682.

¹³³ UNGA Res 1946 UN Doc A/RES/22(I)A-F [https://docs.un.org/en/A/RES/22\(I\)](https://docs.un.org/en/A/RES/22(I)).

organisation operating on the territory of Member States, and is both crucial for its integrity and independence, ensuring that it is not subject to undue influence by any single nation.

117. The Preamble to the General Convention recites Articles 104 and 105 of the Charter and indicates that the substantive provisions of the Convention seek to give effect thereto, that “the Organization 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...and shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.”¹³⁴

118. Importantly, Article 2 of the General Convention provides for the UN’s immunity and inviolability as follows:

SECTION 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

SECTION 3. The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action. (own emphasis).

119. South Africa considers that the General Convention largely reflects customary international law as it relates to the privileges and immunities of the United Nations. Any action by a Member State to revoke the privileges and immunities of a subsidiary organ of the UN would be at odds with the Charter and the General Convention. Further, it would render pointless the privileges and immunities bestowed on the UN and would severely impede the ability of international civil servants to discharge their duties unfettered.

120. Israel’s obligations towards the UN stem from:

- (a) the Charter which imposes obligations on it to render “every assistance,” the obligations which flow by virtue of its membership as it “accepts” the obligations contained in the Charter and is “able and willing to carry out these obligations;”
- (b) flowing from the Charter, the obligations in respect of the UN’s privileges and immunities (Articles 104 and 105);
- (c) the General Convention to which Israel is a party and which accords the UN privileges and immunities; prohibiting “any other form of interference...whether by...legislative action”; and
- (d) its customary international law obligations.

121. Irredeemably, the laws passed by the Knesset amount to interference with a UN subsidiary organ which is explicitly protected under the provisions of Article 104 and 105 of the Charter and Article II section 3 of the General Convention.

¹³⁴ Preamble to the General Convention.

122. Israel's actions amount to the violation of the UN's inviolability, and constitutes an expropriation of UNRWA premises in East Jerusalem which are reportedly to be used for Israeli settlements.¹³⁵ The legislation follows a pattern of attacks on UNRWA premises. In May 2024, a crowd of Israelis accompanied by armed men carried out an arson attack on the UN premises in East Jerusalem, "setting fire twice to the perimeter", which UN staff had to put out themselves, while a crowd chanted "burn down the United Nations".¹³⁶ Demonstrators in a separate incident "under the watch of the Israeli police", threw stones at UN staff and UN buildings. In a widespread pattern of attacks on Gaza, 205 UNRWA installations have been damaged including the UNRWA headquarters in Gaza city,¹³⁷ and at least 744 people sheltering in UNRWA premises have been killed and 2 346 injured since 7 October 2023.¹³⁸

123. It is not for a single Member State to override the will of the wider UN membership which created UNRWA as a subsidiary organ to address the dire plight of Palestinian refugees; a factual situation which Israel caused. It would set a dangerous precedent if States were permitted – without consequence – to enact laws amounting to interference with the UN and its activities and to deprive it of the privileges and immunities vital to the independent functioning of its work.

124. Following allegations by Israel of UNRWA staff involvement in the October 7 attacks, the Secretary General of the UN immediately launched an investigation into the allegations through the Office of Internal Oversight Services (OIOS) - the highest investigative body in the United Nations. Investigations into the 19 staff UNRWA members revealed that: (a) in one case, no evidence was obtained to support the allegations, (b) in nine other cases, the evidence was insufficient to support claims of involvement; and (c) in the remaining nine cases, for which the evidence obtained was not authenticated nor corroborated, their employment was nonetheless formally terminated in the interests of UNRWA.¹³⁹

125. The Colonna Report, an outcome of the independent review of UNRWA, concluded that "UNRWA possesses a more developed approach to neutrality than other similar UN or NGO entities".¹⁴⁰ Israel's allegations have not proven credible, and it has simply failed to provide the evidence to substantiate them.

i. The application of the General Convention to UNRWA

126. Article 22 of the Charter empowers the General Assembly to establish such subsidiary organs as it deems necessary for the performance of its functions. UNRWA was established

¹³⁵ UNRWA, 'Statement by Philippe Lazzarini, Commissioner-General to the United Nations Security Council' (*Relief Web*, 28 January 2025) <https://reliefweb.int/report/occupied-palestinian-territory/statement-philippe-lazzarini-commissioner-general-unrwa-united-nations-security-council-0>.

¹³⁶ UN, 'Global Perspective Human Stories: Outrageous' arson attack forces UNRWA to temporarily shutter East Jerusalem compound' (UN News, 9 May 2024) <https://news.un.org/en/story/2024/05/1149586>.

¹³⁷ UNRWA, 'The Gaza Strip: UNRWA Headquarters compound sustains damage due to ongoing airstrikes' (10 October 2023) <https://www.unrwa.org/newsroom/official-statements/gaza-strip-unrwa-headquarters-compound-sustains-damage-due-to-ongoing-airstrikes>.

¹³⁸ UNRWA, 'UNRWA Situation Report #158 on the Humanitarian Crisis in the Gaza Strip and the West Bank, including East Jerusalem' (7 February 2025) <https://www.unrwa.org/resources/reports/unrwa-situation-report-158-situation-gaza-strip-and-west-bank-including-East-Jerusalem>.

¹³⁹ UN, 'Statement by Philippe Lazzarini, UNRWA Commissioner-General' (3 February 2025) <https://www.un.org/unispal/document/dis-information-and-mis-information-continue-fact-checking-is-key-to-credible-reporting-statement-by-philippe-lazzarini-unrwa-commissioner-general/>.

¹⁴⁰ UNRWA, 'Colonna Report and UNRWA's High Level Action Plan for implementation of the recommendations' (August 2024) p. 1 available at https://www.unrwa.org/sites/default/files/content/resources/final_colonna_report_action_plan_2pager_20240820.pdf.

as a subsidiary organ of the UN, following the adoption by the General Assembly of Resolution 302(IV) on 8 December 1949.¹⁴¹

127. The Resolution called on States to accord to UNRWA the privileges, immunities, exemptions and facilities which have been granted to the United Nations Relief for Palestine Refugees, together with all other privileges, immunities, exemptions and facilities necessary for the fulfilment of its functions.
128. The General Assembly, in its Resolution 1456 (XIV) of 1959, recalled UNRWA's status as a subsidiary organ of the United Nations, which it held "enjoys the benefits of the Convention on the Privileges and Immunities of the United Nations".¹⁴² As UNRWA was duly established as a subsidiary organ under Article 22, Israel, as a UN Member State, is therefore bound by Article 104 of the Charter.
129. Although UNRWA had existed and had been active in Palestine since 1950, on 14 June 1967, the Israeli Government and UNRWA entered into the "Comay-Michaelmore Agreement" in which Israel pledged its full cooperation with UNRWA, that the UNRWA would continue its assistance to the Palestinian refugees in the West Bank and Gaza Strip.¹⁴³
130. This agreement was reached "subject only to regulations or arrangements which may be necessitated by considerations of military security." The agreement which was repealed by the recent Israeli laws, ensured the protection and security of the personnel, installations and property of UNRWA; permitted the free movement of UNRWA vehicles into, within and out of Israel and the areas in question; and recognised that the General Convention, to which Israel is a party, shall govern the relations between the Government and UNRWA in all that concerns UNRWA's functions.
131. It follows that Israel accepted the application of the General Convention to UNRWA as a subsidiary organ of the UN. Israel merely entered into an agreement on a contractual basis with UNRWA in respect of the occupied territories in 1967. The exchange of letters represents an operational agreement and practical arrangement aimed at addressing the urgent need to assist a rapidly growing refugee population. The exchange did not create the legal basis for UNRWA's operations or the broader UN presence in the OPT; it merely reaffirmed the pre-existing presence of UNRWA in the Palestinian territory.
132. South Africa submits that the 1967 occupation did not alter UNRWA's mandate or require it to receive permission from Israel to continue operating in the OPT. The 1967 occupation of Palestinian territory reinforced the need for UNRWA to broaden its access and relief works across the territory, as the occupation triggered IHL obligations which Israel did not care to fulfil.
133. What remains for determination is whether Israel is permitted to withdraw the application of the General Convention to UNRWA on the basis of a domestic law and whether this would have legal effect under international law. South Africa submits that the implementation of the laws is of no legal force and effect on the international plane.

¹⁴¹ UNGA Res 302(IV) (8 December 1949) UN Doc A/RES/302(IV).

¹⁴² UNGA Res 1456(XIV) (9 December 1959) UN Doc A/RES/1456(XIV) available at <https://documents.un.org/doc/Resolution/gen/nr0/142/79/pdf/nr014279.pdf>

¹⁴³ UNGA (1968) United Nations Juridical Yearbook p. 47-48 available at <https://legal.un.org/unjuridicalyearbook/pdfs/english/volumes/1968.pdf>.

134. Article 27 of the Vienna Convention on the Law of Treaties states that “[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”.¹⁴⁴ The General Convention and the relevant provisions of the Charter referred to do not permit any qualification for non-compliance with the obligations stated therein. For a UN Member State to enact domestic laws of this nature would render the very notion of the UN’s privileges and immunities pointless.

135. Moreover, the provision in the Comay-Michaelmore Agreement which makes Israeli cooperation conditional on “regulations or arrangements which may be necessitated by considerations of military security” do not override the application of the UN’s privileges and immunities. The prohibition of interference in Article II of the General Convention by “legislative” or “other means” does not allow for exceptions – whether for military exigencies or on any other ground.

136. In its statement on 30 October 2024, the Security Council expressed its grave concern over the legislation adopted by the Israeli Knesset. It urged the Israeli Government to abide by its international obligations, that it respects the privileges and immunities of UNRWA and live up to its responsibility to allow and facilitate full, rapid, safe and unhindered humanitarian assistance in all its forms into and throughout the entire Gaza strip, including the provision of sorely needed basic services to the civilian population.¹⁴⁵

137. At its Tenth Emergency Special Session on 5 December 2024, the General Assembly adopted a Resolution¹⁴⁶ titled, “Support for the mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East” with 159 votes in favour by which the General Assembly deplored the violation by Israel of its obligations *inter alia* to respect the immunities and privileges, including the inviolability of the premises and assets, of the United Nations and its agencies.

138. The expressions by the General Assembly and Security Council demonstrate the view of the overwhelming majority of the UN Membership that Israel is gravely violating its obligations under the Charter and the General Convention.

139. Evidently, the enactment of the UNRWA-banning laws does not absolve Israel of its obligations under international law. Seventy-five years after the United Nations’ founding, no Member State should have to demand from another the inviolability of United Nations premises, the immunity of its property and assets, and the obligation to protect UN personnel, premises, and property.

D. Israel’s obligations as an Occupying Power

140. The Court has settled the question on the rules and principles of IHL binding on Israel in its conduct in the OPT by virtue of its unlawful occupation, as derived from the provisions of the 1907 Hague Regulations which are part of customary international law, and from the

¹⁴⁴ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

¹⁴⁵ UN Meeting Coverage and Press Releases, ‘ Security Council Press Statement on United Nations Relief and Works Agency for Palestine Refugees in Near East (UNRWA)’ (30 October 2024) <https://press.un.org/en/2024/sc15874.doc.htm#:~:text=The%20members%20of%20the%20Security%20Council%20demand%20to%20all%20parties.to%20respect%20international%20humanitarian%20law.>

¹⁴⁶ UNGA Res (5 December 2024) UN Doc A/ES-10/L.32.

Fourth Geneva Convention, “applicable in any occupied territory”.¹⁴⁷ The basic rules of IHL constitute norms of a *jus cogens* character, and obligations *erga omnes*.¹⁴⁸

141. These rules were held to incorporate obligations which are essentially of an *erga omnes* character¹⁴⁹ and they are thus binding on Israel.¹⁵⁰ The sphere of application of Additional Protocol I, includes “armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination”.¹⁵¹

142. Notwithstanding the Court’s conclusion in the *Legal Consequences* (2024) advisory opinion that Israel’s prolonged occupation of the OPT is unlawful under international law, the Court clarified that the temporal limits set out in Article 6, paragraph 3 of the Fourth Geneva Convention limiting the applicability of certain provisions of the Convention one year after the general close of military operations, “was not aimed at releasing States from their obligations under this Convention in situations of prolonged occupation”.¹⁵² The Court considered that “in circumstances in which the local authorities in the occupied territory have not resumed exercising governmental functions a year after the close of the military operations, the obligations of the Occupying Power under the Fourth Geneva Convention remain in force”.¹⁵³ There is no temporal limit on the application of the obligations of an Occupying Power under the 1907 Hague Regulations.¹⁵⁴ Israel is still required to respect the Palestinian people’s right to self-determination and adhere to its commitments under international humanitarian and human rights law.

143. The Security Council has for its part on at least 25 occasions affirmed the application of the Fourth Geneva Convention to the occupied territory in Palestine.¹⁵⁵ In its Resolution 2712 of 15 November 2023, the Council held that “all parties to conflicts must adhere to their obligations under international law, including international humanitarian law and international human rights law” and recalled that “all parties to armed conflict must comply strictly with the obligations applicable to them under international law for the protection of children in armed conflict, including those contained in the Geneva Conventions of 12th August 1949

¹⁴⁷ *Construction of a Wall* advisory opinion para. 101.

¹⁴⁸ *Construction of a Wall* advisory opinion para.155.

¹⁴⁹ *Construction of a Wall* advisory opinion para 157.

¹⁵⁰ *Construction of a Wall* advisory opinion para 96.

¹⁵¹ Article 1 of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (adopted 12 August 1949, entered into force 7 December 1978) 1125 UNTS 3, (Additional Protocol I).

¹⁵² *Construction of a Wall* advisory opinion para 107.

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

¹⁵⁵ **137 (1967)**: Refers to the Geneva Conventions in the context of protecting civilians and facilitating their return after the 1967 war; **271 (1969)**: Calls on Israel to observe the provisions of the Geneva Conventions; and international law governing military occupation; **446 (1979)**: Explicitly states the Fourth Geneva Convention applies to territories occupied since 1967, including Jerusalem.; **452 (1979)**: Notes Israeli settlement activities violate the Fourth Geneva Convention; **465 (1980)**; **471 (1980)**: Reaffirms the Fourth Geneva Convention's applicability and criticizes Israel's failure to protect civilians; **476 (1980)**: Reaffirms the Fourth Geneva Convention in the context of Jerusalem's status; **478 (1980)**: Reiterates that the Fourth Geneva Convention continues to apply to territories occupied since 1967, including Jerusalem; **484 (1980)**: Reaffirms the applicability of the Fourth Geneva Convention to territories occupied in 1967; **592 (1986)**: Confirms the Fourth Geneva Convention applies to the territories occupied since 1967; **605 (1987)**: Reaffirms that the Fourth Geneva Convention applies to the occupied territories, including Jerusalem; **607 (1988)**; **636 (1989)**; **641 (1989)**; **672 (1990)**; **681 (1990)**: Reaffirms the Fourth Geneva Convention's applicability and calls on Israel to accept it *de jure*; **726 (1992)**: Reaffirms the Fourth Geneva Convention's applicability to occupied territories since 1967; **799 (1992)**; **1322 (2000)**: Calls on Israel to respect the Fourth Geneva Convention; **1544 (2004)**: Reiterates Israel's legal obligations under the Fourth Geneva Convention; **2334 (2016)**: Reaffirms the applicability of the Fourth Geneva Convention to the occupied territories since 1967.

and the Additional Protocols of 1977, as well as the relevant conventions regarding the involvement of children in conflict situations”.¹⁵⁶

144. In the same Resolution, the Security Council demanded that “all parties comply with their obligations under international law, including international humanitarian law, notably with regard to the protection of civilians, especially children.” Similarly, Resolution 2728 of 2024 further reiterated the Security Council’s demand that all parties comply with their obligations under international law, including international humanitarian law and international human rights law, and for all parties to refrain from depriving the civilian population in the Gaza Strip of basic services and humanitarian assistance indispensable to their survival, consistent with international humanitarian law, which has a disproportionate impact on children.”¹⁵⁷

145. Turning now to Israel’s obligations as an Occupying Power, South Africa submits that the laws manifestly violate Israel’s obligations under IHL. The Occupying Power is obliged under Article 43 of the 1907 Hague Regulations to “take all the measures in his power” to ensure public order and civil life in the OPT. Israel’s measures to remove UNRWA from the OPT, effectively dismantles the quasi-State functions of UNRWA in providing and maintaining schools, education, healthcare facilities, and social services.

146. Article 47 of the Fourth Geneva Convention protects the occupied population from being deprived “of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government”.¹⁵⁸ The article protects the civilian population from “a transformation” of the institutions in the occupied territory by the Occupying Power which “may make the position of the inhabitants worse”.¹⁵⁹

147. Given that the Occupying Power merely operates as a temporary *de facto* administrator of the occupied territory, there are strict protections governing the protection of property, including “that of institutions dedicated to religion, charity and education”, shall “be treated as private property” — “[a]ll seizure of, destruction or wilful damage done to institutions of this character . . . is forbidden, and should be made the subject of legal proceedings.”¹⁶⁰ Arieh King, the Deputy Mayor of Jerusalem announced plans “to build a residential neighborhood and public buildings on the plot” where the UNRWA headquarters is located in Jerusalem,¹⁶¹ smearing UNRWA as “the anti-Semitic organization”¹⁶² and “the Nazi enemy”.¹⁶³ The appropriation by the Occupying Power of immovable property in the occupied territory for settlement units breaches the principles of usufruct enshrined in Article 55 of the 1907 Hague Regulations, and amounts to an unlawful transfer of property rights, which are vested in the Palestinian people.

¹⁵⁶ UNSC Res 2712 (2023) (15 November 2023) UN Doc S/RES/2712(2023) available at [https://docs.un.org/S/RES/2712%20\(2023\)](https://docs.un.org/S/RES/2712%20(2023)); UNGA Res 37/120(J) (16 December 1982) available at <https://documents.un.org/doc/Resolution/gen/nr0/425/98/pdf/nr042598.pdf>

¹⁵⁷ UNSC Res 2728 (2024) (25 March 2024) UN Doc S/RES/2728(2024).

¹⁵⁸ Article 47 of the Fourth Geneva Convention.

¹⁵⁹ ICRC, ‘Commentary of 1958 on Article 47 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949’ available at <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-47/commentary/1958?activeTab=>.

¹⁶⁰ Article 56 of the 1907 Hague Regulations.

¹⁶¹ Arieh King @arieh_king, Tweet (4:15 pm, 4 June 2024), https://x.com/arieh_king/status/1798010639216164944 ; see also, “UNRWA headquarters in Jerusalem to be expropriated for thousands of housing units”, Israel Hayom (10 October 2024), <https://www.israelhayom.co.il/news/geopolitics/article/16594811>

¹⁶² Arieh King, @arieh_king, Tweet (9:43 pm, 29 May 2024) https://x.com/arieh_king/status/1795918874027667717.

¹⁶³ Arieh King @arieh_king, Tweet (4:17 pm, 10 October 2024) https://x.com/arieh_king/status/1844396830190338338.

148. Further, the creation of coercive environments to force population transfer is prohibited under Article 49 of the Fourth Geneva Convention.¹⁶⁴ MK Boaz Bismuth (Likud), a drafter of the legislation banning UNRWA, states that UNRWA “perpetuates the Palestinian refugee problem . . . and maintains the false narrative of Palestinian displacement”.¹⁶⁵ By dismantling health, education and critical infrastructures, Israel is creating coercive environments to further force Palestinian displacement without return. As stated by Tally Gotliev MK, “It is clear that once we remove [UNRWA], we will only encourage Egypt to absorb refugees, . . . If UNRWA is removed from the mandate, it will be much easier for us . . . I want to return to the UN Refugee Convention, and without UNRWA”.¹⁶⁶

149. A civilian population in need is entitled to receive humanitarian relief essential to its survival, in accordance with IHL, which necessarily includes a decent standard of living, education, health, infrastructure and food supply. In South Africa’s view, the services rendered by UNRWA fall squarely within the “preferential measures” which Article 50 of the Fourth Geneva Convention contemplates. This provision holds that, “The Occupying Power shall not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war, *which may have been adopted prior to the occupation in favour of children under fifteen years, expectant mothers, and mothers of children under seven years.*” UNRWA’s establishment in 1949 predates the 1967 occupation and served to respond to the dire humanitarian and development needs of Palestinian refugees after the 1948 Arab-Israeli war. Its mandate includes the education, food distribution and medical care to Palestinians in the OPT, the vast majority of beneficiaries being women and children. Therefore, Israel is under an obligation to allow UNRWA to continue its services under Article 50 of the Fourth Geneva Convention.

150. Article 55 of the Fourth Geneva Convention mandates an Occupying Power “to the fullest extent of the means available to it”, to ensure the food and medical supplies of the population, and that “it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate”. Israel is obligated to demonstrate that these needs are met and, should the basic needs not be met, resulting in inadequate supplies for the population, it must itself ensure they are met. At a minimum, where Israel is not itself providing the population with all the necessary assistance, it must ensure impartial humanitarian organisations can deliver such assistance.¹⁶⁷

151. There is no question that the population in the OPT is severely and “inadequately supplied” and that “the resources of the population are inadequate.” This triggers the Occupying Power’s obligations to bring in the required aid. More than 2.23 million¹⁶⁸ Gazans

¹⁶⁴ “In *Prosecutor v. Naletilic & Martinovic*, the Trial Chamber noted that the jurisprudence of the Tribunal supports the proposition that the term “forcible” should not be restricted to physical coercion. In *Prosecutor v. Kunarac*, the Appeals Chamber held that the coercive circumstances made “true consent . . . not possible”; ICRC, ‘IHL Database, Practice relating to Rule 129’.

The Act of Displacement Section A. Forced displacement’, <https://ihl-databases.icrc.org/en/customary-ihl/v2/rule129>

¹⁶⁵ One of the drafters of the law banning UNRWA, MK Illuz stated that “UNRWA perpetuates the refugee status of the Palestinians, with the clear purpose of creating constant friction, inciting to violence and training a new generation of extremists”; Knesset News, ‘Approved in final readings: Bill banning state authorities from maintaining any contact with UNRWA or a representative of the agency’ (29 October 2024)

<https://main.knesset.gov.il/en/news/pressreleases/pages/press291024w.aspx>.

¹⁶⁶ Adalah, *English Summary of the Petition Against Israeli Laws Aimed at Shutting Down UNRWA*,

https://www.adalah.org/uploads/uploads/UNRWA_Petition_English_Summary.pdf, p. 5.

¹⁶⁷ *South Africa v. Israel* (Provisional Measures, Order) [28 March 2024] Joint Declaration of Judges Xue, Brant, Gómez Robledo and Tladi, paras. 2 and 7.

¹⁶⁸ Gaza Strip: Acute Food Insecurity Situation for 15 February - 15 March 2024 and Projection for 16 March - 15 July 2024 | IPC - Integrated Food Security Phase Classification <https://www.ipcinfo.org/ipc-country-analysis/details-map/en/c/1156872/?iso3=PSE>.

are facing high levels of acute food insecurity. North Gaza and Gaza Governorates are in particular facing famine, with 70 per cent (around 210 000 people) of the population in the IPC Phase 5 which is the “catastrophe” categorisation.¹⁶⁹

152. UNRWA continues to distribute food parcels in the southern governorates of Gaza. These include four, rice, chickpeas, lentils, cheese, hummus and canned fish, and are designed to cover approximately 90 per cent of daily caloric needs per quarter. Nearly 1.9 million people have received food parcels since the ceasefire started.¹⁷⁰ In addition to the distribution of UNRWA food parcels, it also distributes food parcels on behalf of other UN organisations, reaching around 1.4 million people.¹⁷¹

153. Since the ceasefire began on 19 January 2025, UNRWA has brought in 60 per cent of the food entering Gaza, reaching more than half a million people.¹⁷²

154. Referring to the “basic needs in occupied territories,” Article 69 of Additional Protocol I expands on the provisions of Article 55 of the Fourth Geneva Convention, on the basis that its interpretation should not be too restrictive only to food and medical supplies. Article 69 of Additional Protocol I thus expands the provision to include means of shelter, clothing and “other” supplies essential to the survival of the civilian population. The list is therefore not exhaustive and must be considered in the context of local conditions. In the OPT, the local conditions require state-like basic services in addition to food and essential supplies, such as education, healthcare and access to clean water, throughout the entire territory. UNRWA fulfils this very function.

155. South Africa records three observations with respect to Article 55 of the Fourth Geneva Convention:

- (a) While the duty imposed on the Occupying Power applies “to the fullest extent of the means available to it,” the Occupying Power is not permitted to evade the obligations of Article 55 by merely stating that it is doing so within its means.
- (b) There is a “positive, complete requirement on the Occupying Power to use all means available to provide the supplies in question” and for it to “arrange for other steps to be taken if it could not supply the requirements in question from its own resources or those of the occupied territory.”¹⁷³

¹⁶⁹ IPC, ‘Gaza Strip: IPC Acute Food Insecurity and Acute Malnutrition Special Snapshot | September 2024 - April 2025’ (17 October 2024).

https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Gaza_Strip_Acute_Food_Insecurity_Malnutrition_Sep2024_Apr2025_Special_Snapshot.pdf.

¹⁷⁰ UNRWA, ‘UNRWA Situation Report #160 on the situation in the Gaza Strip and the West Bank, including East Jerusalem’ (11 October 2024).

¹⁷¹ UNRWA, ‘UNRWA Situation Report #160 on the situation in the Gaza Strip and the West Bank, including East Jerusalem’ (11 October 2024); UNRWA, ‘UNRWA Situation Report #142 on the situation in the Gaza Strip and the West Bank, including East Jerusalem’ (11 October 2024) <https://www.unrwa.org/resources/reports/unrwa-situation-report-142-situation-gaza-strip-and-west-bank-including-East-Jerusalem>.

¹⁷² UN, ‘UNRWA’s personnel and services are integral to the success of the ceasefire: Statement by Philippe Lazzarini, Commissioner-General of UNRWA at the United Nations Security Council’ (28 January 2025) <https://www.un.org/unispal/document/unrwas-personnel-and-services-are-integral-to-the-success-of-the-ceasefire-statement-by-philippe-lazzarini-commissioner-general-of-unrwa-at-the-united-nations-security-council/>.

¹⁷³ Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (Commentary on Additional Protocol I) p. 813 para. 2783.

- (c) An Occupying Power is under an obligation to *accept* relief from other sources, such as international organisations or willing third States, when it is unable to meet the essential needs in respect of an inadequately supplied occupied population.

156. Israel has shown that it cannot be relied upon to meet the basic needs of the OPT. It has demonstrated that it has the capacity to rapidly increase the entry of aid — should it choose to. Its position, however, has been to collectively punish the Palestinian population, and to impose conditions of life on it calculated to bring about the destruction of the Palestinian group in whole or in part.

157. For instance, Israel failed to scale up aid in response to the repeated warnings of famine issued by the international community, including the Court's provisional measures Orders in *South Africa v Israel*.¹⁷⁴ Only after widespread outrage from Israel's allies following Israel's killing of seven international humanitarian aid workers on 1 April 2024, did Israel open the first crossing into northern Gaza since October 2023. Even then, aid entering Gaza was kept below the minimum required to ensure adequate conditions of life for its Palestinian population.¹⁷⁵

158. In the following months of April and May 2024, Israel facilitated the entry of predominantly commercial food aid into northern Gaza, and only in insufficient amounts.¹⁷⁶ This demonstrates Israel's capacity to act rapidly to address an emergency situation — but only if it chooses to do so. Its failure to do so consistently leaves no other inference but that it has no intention to comply with its obligations as an Occupying Power.

159. Instead, the Principles of Humanitarian Agencies have consistently advocated for increased access to humanitarian assistance and a halt to attacks on UNRWA so it could effectively scale up its response to meet the humanitarian needs in Gaza.¹⁷⁷ UNRWA continues to provide large parts of all humanitarian needs, distributing over 60 per cent of incoming relief supplies in Gaza since the ceasefire, and providing water pumping and emergency waste collection services, benefiting approximately 45 per cent of the population, as well as mental health and psychosocial support (MHPSS) to internationally displaced Palestinians, including

¹⁷⁴ *South Africa v. Israel* (Provisional Measures, Order) [24 May 2024]; *South Africa v. Israel* (Provisional Measures, Order) [28 March 2024]; *South Africa v. Israel* (Provisional Measures, Order) [26 January 2024]; *South Africa v. Israel* (Request by South Africa for the indication of provisional measures and modification of the Court's prior provisional measures decisions) [6 March 2024].

¹⁷⁵ IPC, 'GAZA STRIP: IPC Acute Food Insecurity Special Snapshot | 1 May - 30 September 2024' (25 June 2024) available at https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Gaza_Strip_Acute_Food_Insecurity_MaySept2024_Special_Snapshot.pdf.

¹⁷⁶ IPC, 'GAZA STRIP: IPC Acute Food Insecurity Special Snapshot | 1 May - 30 September 2024' (25 June 2024) available at https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Gaza_Strip_Acute_Food_Insecurity_MaySept2024_Special_Snapshot.pdf.

¹⁷⁷ IASC, 'Statement by Principals of the Inter-Agency Standing Committee: We cannot abandon the people of Gaza' (30 January 2024) <<https://interagencystandingcommittee.org/inter-agency-standing-committee/statement-principals-inter-agency-standing-committee-we-cannot-abandon-people-gaza>>; IASC, 'Statement by Principals of the Inter-Agency Standing Committee - Civilians in Gaza in extreme peril while the world watches on: Ten requirements to avoid an even worse catastrophe' (21 February 2024) <<https://interagencystandingcommittee.org/inter-agency-standing-committee/statement-principals-inter-agency-standing-committee-civilians-gaza-extreme-peril-while-world>>; UNRWA, 'Statement by Principals of the Inter-Agency Standing Committee – Stop the Assault on Palestinians in Gaza and on those trying to help them' (1 November 2024) <<https://www.unrwa.org/newsroom/official-statements/statement-principals-inter-agency-standing-committee-stop-assault-on-Palestinians-in-Gaza>>.

children.¹⁷⁸ It had to scale up its responses on all fronts, including by the provision of 4719 shelters in Gaza by 30 June 2024 for over 700 000 internally displaced Palestinians.

160. The right of access by Palestinians to an organisation such as UNRWA is contained in Article 30 of the Fourth Geneva Convention. Under that provision, “protected persons *shall* have every facility for making application to ... the International Committee of the Red Cross, ... as well as to any organization that might assist them”. These organisations *shall* be granted all facilities for that purpose by the authorities, within the bounds set by military or security considerations. “The [d]etaining or Occupying Powers shall facilitate as much as possible visits to protected persons by the representatives of other organizations whose object is to give spiritual aid or material relief to such persons”.

161. The ICRC’s commentary to this article holds that “the right in question is an absolute right, possessed by all protected persons both in the territory of a Party to the conflict and in occupied territory”.¹⁷⁹ The commentary considers that humanitarian organisations will be qualified to intervene and to bring relief in response to appeals from human beings in distress or in order to come to the spiritual or material aid of protected persons.¹⁸⁰ The provision under consideration will not be really effective unless the right of communication can be exercised without hindrance; Israel’s closure of the UNRWA’s East Jerusalem office would deprive Palestinians of this access. So too does Israel’s continued unlawful control over all of Palestine’s points of entry— where it denies access to UN Special Rapporteurs,¹⁸¹ UN Commissions of Inquiry,¹⁸² the staffers of the UN OHCHR,¹⁸³ journalists,¹⁸⁴ and human rights defenders,¹⁸⁵ amongst others.

162. With respect to collective relief consignments, Article 59 of the Fourth Geneva Convention imposes on the Occupying Power an obligation to “agree” to relief schemes on behalf of the occupied population and “shall facilitate” them by “all means at its disposal”. This obligation arises “if the whole or part of the population of an occupied territory is inadequately supplied.” Rule 55 of the ICRC’s Customary International Law Rules requires that “the parties to the conflict must allow and facilitate rapid and unimpeded humanitarian relief for civilians in need”.

¹⁷⁸ OCHA, ‘Humanitarian Situation Update #259 | Gaza Strip’ (28 January 2025)

<https://www.ochaopt.org/content/humanitarian-situation-update-259-gaza-strip>.

¹⁷⁹ ICRC, ‘Commentary of 1958 on Article 30 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949’ available at <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-30/commentary/1958?activeTab=> .

¹⁸⁰ ICRC, ‘Commentary of 1958 on Article 30 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949’ available at <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-30/commentary/1958?activeTab=> .

¹⁸¹ Middle East Monitor, ‘Israel bans entry of UN special rapporteur for Palestinians’ (13 February 2024) <https://www.middleeastmonitor.com/20240213-israel-bans-entry-of-un-special-rapporteur-for-palestinians/>.

¹⁸² UNGA, ‘Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel’ (14 June 2024) UN Doc A/HRC/56/26 available at <https://www.un.org/unispal/document/coi-report-a-hrc-56-26-27may24/>; See also: Laura King and Batsheva Sobelman, ‘UN human rights investigators denied entry to Israel for Gaza inquiry’ (*Los Angeles Times*, 12 November 2014) <https://www.latimes.com/world/middleeast/la-fg-israel-united-nations-20141112-story.html> .

¹⁸³ UN OHCHR, ‘Bachelet deplores Israel’s failure to grant visas for UN Human Rights staff in the occupied Palestinian territory’ (30 August 2022) <https://www.ohchr.org/en/press-releases/2022/08/bachelet-deplores-israels-failure-grant-visas-un-human-rights-staff-occupied>.

¹⁸⁴ NUJ, ‘Israel: journalists blocked from entering Gaza’ (*National Union of Journalists*, 12 January 2024) <https://www.nuj.org.uk/resource/israel-journalists-blocked-from-entering-gaza.html>.

¹⁸⁵ UN OHCHR, ‘UN experts condemn Israeli decision to expel Omar Shakir of Human Rights Watch’ (8 November 2019) <https://www.ohchr.org/en/press-releases/2019/11/un-experts-condemn-israeli-decision-expel-omar-shakir-human-rights-watch>.

163. Third States may provide such schemes or impartial humanitarian organisations, which “shall consist of the provision of consignments of foodstuffs, medical supplies and clothing.”¹⁸⁶ UNRWA’s mandate is precisely that of an impartial humanitarian organisation which was established specifically for Palestinian refugees. The wording of Article 59 is peremptory and Israel must “agree” to the international relief scheme which UNRWA facilitates. Doing so does not absolve Israel of its obligations under Articles 55, 56 and 59 of the Fourth Geneva Convention and UNRWA’s humanitarian assistance is to be supplemental to that of Israel and individual relief by third States which may render such assistance. The Occupying Power carries the primary responsibility to meet the needs of the population, as stipulated in Article 60 of the Fourth Geneva Convention.

164. As the Occupying Power, Israel is obligated to accept and facilitate relief efforts coordinated by third parties, in line with Article 59 of the Fourth Geneva Convention and Article 69 of Additional Protocol I. This obligation also covers other supplies essential for the survival of the civilian population, as well as materials needed for religious practices. Military considerations cannot justify refusal; relief consignments may only be redirected in cases of “urgent necessity,” and solely for the benefit of the civilian population. Such redirection permits adjustments in distribution but does not allow the outright rejection of aid.

165. Israel has a duty to cooperate and supervise in the distribution of the relief consignments.¹⁸⁷ The relief actions for the benefit of the civilian population under occupation “shall be implemented without delay”.¹⁸⁸ This underscores the pressing need for an Occupying Power to facilitate the relief where a population is inadequately supplied – as in the case of Gaza in particular. It would be inadmissible and in violation of its obligations if instead of agreeing to the relief provided by UNRWA, Israel would seek to ban UNRWA’s entry of relief goods to a population constituting UNRWA’s *raison d’être*.

166. Israel’s refusal to consent to humanitarian relief operations in situations where the civilian population lacks adequate supplies, and where the Occupying Power aims to cause, contribute to, and prolong starvation, constitutes a violation of the prohibition against the use of starvation of civilians as a method of warfare. Such conduct engages the State’s responsibility for gross and systematic breaches of fundamental principles of international humanitarian law. These principles are recognised as peremptory norms of general international law, from which no derogation is permitted.

E. Israel’s Apartheid Policies and Practices

167. South Africa has previously pointed out in its written statement in the *Legal Consequences* (2024) advisory opinion proceedings,¹⁸⁹ that the Palestinian reality evokes experiences of South Africa’s own history of racial segregation and oppression. There exists in the Occupied Palestinian Territory an institutionalised and oppressive system of Israeli domination over Palestinians as a group.

168. South Africa submits that Israeli apartheid must be viewed in the context of the inherent illegality of the occupation as a whole; it being an additional breach of peremptory norms under an illegal situation. The fragmentation of Palestinian territory, the subjugation of its

¹⁸⁶ Article 59 of the Fourth Geneva Convention.

¹⁸⁷ Article 61 of the Fourth Geneva Convention.

¹⁸⁸ Article 69 of Additional Protocol I.

¹⁸⁹ Written Statement by the Republic of South Africa in the *Legal Consequences* (2024) advisory proceedings paras .91 – 118 available at <https://www.icj-cij.org/sites/default/files/case-related/186/186-20230725-wri-14-00-en.pdf>.

people, restrictions on movement, racial discrimination and state-sanctioned extrajudicial killings are all calculated to impede the right of the Palestinians to self-determination.

169. Israel's attacks on UNRWA are also designed to create further fragmentation of the Palestinian group, who comprise Palestinians in the OPT, Palestinian citizens of Israel, and Palestinian refugees and exiles in the diaspora. UNRWA is the only international agency that brings together the broader Palestinian group as one unit. By severing Palestinians from the OPT and Israel from the protections of UNRWA, Israel is also further entrenching fragmentation within the Palestinian group, to prevent the realisation of their collective right to self-determination and return. By denying Palestinian refugees the education, health, and social services, and other quasi-State services that UNRWA provides, Israel is deliberately imposing on the Palestinian group living conditions calculated to cause its physical destruction in whole or in part.¹⁹⁰ Israel's legislative measures to ban UNRWA, deny Palestinian refugeehood and the right of Palestinians to leave and return to their country, while deliberately creating conditions preventing the full development of the Palestinian group.¹⁹¹

170. While the law of occupation allows different treatment, it does not permit grave breaches of human rights of the protected populations, nor to maintain a system of racial oppression and domination which would violate a peremptory norm of international law. The State of Israel is obligated to comply with international law, which prohibits discrimination on the basis of race, ethnicity, or nationality. Further, Article 85 paragraph (4)(c) of Additional Protocol I to the Geneva Conventions lists "practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination" as grave breaches of the Geneva Conventions, when committed wilfully.¹⁹²

171. Three international treaties prohibit and/or explicitly criminalise apartheid as a crime against humanity: CERD, the International Convention on the Suppression and Punishment of the Crime of Apartheid (the Apartheid Convention) and the Rome Statute of the International Criminal Court (Rome Statute). The crime of apartheid is an international crime.

172. The available evidence indicates that Israel is responsible for inhuman acts which fall within the ambit of Article 2 paragraphs (c), (d) and (f) of the Apartheid Convention. Palestinians as a group and organisations working to support them are discriminated against through control of border crossings and permit and identity card systems, through the wall and checkpoints and separate roads within the West Bank. The fragmentation and expropriation of Palestinian land, the prevention of the return of Palestinian refugees have divided the Occupied Palestinian Territory into enclaves or similar to Bantustans in the then South African context (Article 2(d)), and which the CERD Inter State Complaint mechanisms concluded amounts to "a situation of racial segregation".¹⁹³ Israel's systematic targeting of organisations and persons who oppose Israel's domination and oppression of Palestinian

¹⁹⁰ Article 2(b) of the International Convention on the Suppression and Punishment of the Crime of Apartheid| (entered into force 18 July 1976) 1015 UNTS 243 (Apartheid Convention).

¹⁹¹ Article 2(c) of the Apartheid Convention.

¹⁹² International Law Commission, 'Peremptory Norms of General International Law (*jus cogens*), Text of the Draft Conclusions and Draft Annex Provisionally Adopted by the Drafting Committee on First Reading' (29 May 2019) UN Doc A/CN.4/L.936, Draft Conclusion 2.

¹⁹³ Committee on the Elimination of Racial Discrimination, 'Report of the ad hoc conciliation commission on the inter-State communication submitted by the State of Palestine against Israel under article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination' (22 August 2024) UN Doc CERD/C/113/3 available at <https://www.un.org/unispal/document/report-of-the-ad-hoc-conciliation-commission-case-state-of-palestine-v-israel-committee-on-the-elimination-of-racial-discrimination-cerd-c-113-3/>.

people in the Occupied Palestinian Territory, including UNRWA, further meet the persecution element as contained in Article 2 paragraph (f) of the Apartheid Convention.

173. Israel's discriminatory treatment of Palestinians must be viewed in its totality: it has created and maintained an institutionalised regime of systematic oppression wherever it controls territory, fuelled by demographic considerations that continue to shape its policies towards Palestinians. These manifest in the different sets of discriminatory and exclusionary laws, policies, and practices which intentionally serve to oppress and dominate Palestinians, to maximise the benefit to Jewish Israelis and to create a Jewish majority which is privileged in every respect.

174. The only conclusion to draw is that UNRWA's ban is a further measure by Israel to seek to advance the Jewish nation whose privilege can only be maintained through the dispossession and fragmentation of Palestinian land, the economic, educational and political malignment of Palestinians, restrictions on their movement, the denial of their dignity and absence of legal protection through arbitrary laws and military orders.

F. Israel's obligations under the Genocide Convention

175. As a State party to the Genocide Convention, Israel must prevent and punish, and may not commit genocide. The prohibition on genocide is a peremptory norm. Israel's attacks on UNRWA, including banning the organisation, form part and parcel of Israel's overall measures seeking to deprive the Palestinian population in Gaza of conditions of life essential for their survival.¹⁹⁴

176. South Africa considers those attacks to be accompanied by genocidal intent vis-à-vis the Palestinian group, and especially vis-à-vis Palestinians in Gaza, whilst Israel's conduct in the West Bank is becoming equally concerning.¹⁹⁵

177. Israel must urgently desist from its attacks and ban on UNRWA — intended to further the extreme vulnerability of the Palestinian population and deprive them of conditions of life essential to their survival — as part of its duty to prevent, and not to commit, genocide.

G. Israel's obligations vis-à-vis other International organisations

178. "Gaza is now a wasteland of rubble, garbage and human remains," UN Special Rapporteur Francesca Albanese reported to the Human Rights Council on 30 October 2024.¹⁹⁶ There is simply nothing for the population of Gaza to return to. Having endured a military

¹⁹⁴ UNGA, 'Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories' (20 September 2024), UN Doc A/79/363, paras. 58-65, 69-70.

<https://docs.un.org/en/A/79/363>; Al-Haq, 'The Systematic Destruction of Gaza's Healthcare System: a Pattern of Genocide' (23 January 2025) https://www.alhaq.org/cached_uploads/download/2025/01/23/destruction-of-gaza-healthcare-system-one-page-view-1737653644.pdf, pp. 97-98; Human Rights Watch, 'Extermination and Acts of Genocide: Israel Deliberately Depriving Palestinians in Gaza of Water' (19 December 2024) <https://www.hrw.org/report/2024/12/19/extermination-and-acts-genocide/israel-deliberately-depriving-palestinians-gaza>.

¹⁹⁵ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (*South Africa v Israel*) (Application Instituting Proceedings and Request for Provisional Measures) [29 December 2023] ICJ Rep; UNSC, 'Letter dated 29 May 2024 from the Permanent Representative of South Africa to the United Nations addressed to the President of the Security Council [and enclosures]' (29 May 2024) UN Doc S/2024/419 available at <https://docs.un.org/en/S/2024/419>; UNGA, 'Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967: Genocide as colonial erasure' (1 October 2024) UN Doc A/79/384 available at <https://docs.un.org/en/A/79/384>; UNGA, 'Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967: Anatomy of a genocide' (1 July 2024), UN Doc A/HRC/55/73 available at <https://docs.un.org/en/A/HRC/55/73>.

¹⁹⁶ UNHRC, 'Statement of Francesca Albanese' (31 October 2024) <https://www.youtube.com/watch?v=jFDhwmsToqA>.

onslaught for over 15 months, urgent international assistance is required to prevent the further erasure of the Palestinian people.

179. In its provisional measures Order of 28 March 2024, the Court unanimously ordered Israel to:

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

180. Humanitarian assistance cannot be effectively distributed and coordinated without relief personnel. In the context of the OPT, UNRWA has cultivated unparalleled expertise in delivering humanitarian services in the OPT over its 75-year history. Its technical, distribution, medical, and educational capabilities are deeply embedded in the local context, making it irreplaceable by any other organisation.

181. The Court’s Order is also unequivocal: Israel must fully cooperate with the United Nations to take all necessary measures to provide urgently needed basic services and humanitarian assistance at scale. As a United Nations Agency, its full cooperation with UNRWA is non-negotiable and required.

i. Basic services and humanitarian and development assistance

182. In the context of humanitarian personnel in the OPT supporting relief and development organisations, it should be the competence of the Government of the State of Palestine to issue the necessary visas and work permits for the duration required to effectively implement such activities. However, in practice, it is Israel who exercises this authority ultimately authorising the Palestinian permits, with the Coordination of Government Activities in the Territories (COGAT) tightly limiting those who are granted entry permits to enter the West Bank, for work and other purposes.¹⁹⁷ Where the Occupying Power continues—by virtue of its continued unlawful occupation and any functions of government usurped by it in that regard—to control movement into the OPT and its borders, it must exercise such control in accordance with its obligations as an Occupying Power to restore and maintain civil life, and to safeguard the wellbeing of the protected population.

183. Concurrently, the Occupying Power bears the obligation to facilitate the unimpeded access and movement of humanitarian personnel within the occupied territory, while ensuring their safety and protection. While Article 60 of the Fourth Geneva Convention explicitly addresses the Occupying Power’s duty to permit the delivery of “relief consignments,” the scope of protection afforded to humanitarian operations under international law extends beyond the mere transfer of goods, encompassing all logistical and operational activities essential to their delivery.

¹⁹⁷ Hamoked, ‘New Israeli Procedure on Entry of Foreigners to the West Bank’ (2022) available at <https://hamoked.org/files/2022/1665645.pdf>; Hamoked, ‘Procedure for entry and residence of foreigners in the Judea and Samaria area, Coordination of Government Activities in the Territories Operations Department’ (20 February 2022) available at https://hamoked.org/files/2022/1665642_eng.pdf.

184. South Africa shares the concern of many States that there are cross-cutting vulnerable populations among the Palestinian population. Persons with disabilities, children, orphans and women have been severely and disproportionately impacted by Israel's ongoing military campaign. These groups of vulnerable persons must be protected and given special attention to safeguard their human rights under international law, as enumerated in Chapter H below.

185. The services of various international organisations and UN entities are required to provide relief at scale, address starvation, de-development, poverty and unemployment across the OPT, and to ensure food security and to rebuild Gaza. This includes UNRWA, the United Nations International Children's Emergency Fund (UNICEF), UN Women, the World Health Organisation (WHO), Office for the Coordination of Humanitarian Affairs (OCHA), UN Habitat, the International Labour Organisation (ILO), Office of the High Commissioner for Human Rights (OHCHR), the United Nations Population Fund (UNPF), the UN World Food Program (WFP), the Food and Agriculture Organization of the UN (FAO) and the ICRC.

186. There is in South Africa's view no distinction between humanitarian and development assistance schemes. Under international law, the protection granted to such assistance does not depend on whether its funding source is categorised as humanitarian or development. Rather, primacy is to be afforded to the essential nature of the assistance in meeting the population's needs and the Occupying Power's legal obligation to restore and maintain public order and civil life, and to safeguard the wellbeing of the protected population.

187. Article 71, Additional Protocol I applies to relief personnel which may form part of the assistance provided in any relief action, such as the transportation and distribution of relief consignments. Such participation is subject to the approval of the Party in "whose territory they will carry out their duties."

188. South Africa submits that in the case of the OPT, and particularly in Gaza, where the population is "inadequately supplied," Israel has a duty under international humanitarian law to approve participation of relief personnel in ensuring the transportation and distribution of relief. Article 55 of the Fourth Geneva Convention contains a positive duty on the Occupying Power as enumerated above and Israel's refusal to permit relief personnel access to the OPT constitutes a violation of this positive duty.

189. Rule 56 of the ICRC's Customary International Law Rules additionally requires that "the parties to the conflict must ensure the freedom of movement of authorised humanitarian relief personnel essential to the exercise of their functions. Only in case of imperative military necessity may their movements be temporarily restricted." The Rules do not permit a permanent banning, and require that "imperative military necessity" may only temporarily restrict their movement.

190. Article 71 of Additional Protocol I states that "each party in receipt of relief consignments shall, to the fullest extent possible, assist the relief personnel...in carrying out their relief mission. Such relief personnel shall be "respected and protected."¹⁹⁸ The participation of relief personnel applies to occupied territories.¹⁹⁹

¹⁹⁸ Article 71(2) of Additional Protocol I.

¹⁹⁹ Commentary to Additional Protocol I, pg. 832, para 2876.

191. South Africa reiterates the Court's provisional measures Orders of 28 March 2024 in *South Africa v Israel* in which it ordered Israel to:

“Take effective measures to ensure the unimpeded access to the Gaza Strip of any commission of inquiry, fact-finding mission or other investigative body mandated by competent organs of the United Nations to investigate allegations of genocide.”

192. Israel has not complied with the Court's Orders in this respect. South Africa considers that urgent access is required by the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (“UN-COI”), established by the Human Rights Council in 2021. Such access would ensure the UN-COI can ascertain the full extent to which Israel has, and is, depriving the Palestinian population of Gaza of the conditions of life necessary for their survival.

193. The International Criminal Court (ICC) has jurisdiction over the crimes being committed on Palestinian Territory and by Palestinian nationals on Israeli territory. On 3 March 2021, the Prosecutor of the ICC initiated an investigation into crimes being committed in the OPT. The Prosecutor noted that Israel's “[i]mpeding [of] relief supplies... may constitute a crime within the Court's jurisdiction”.²⁰⁰ He further indicated that his Office would “scrutinise” all information in relation to Israeli attacks on dwelling houses, schools, hospitals, churches, and mosques, for compliance with international humanitarian law.²⁰¹

194. On 17 November 2023, South Africa, Bangladesh, Bolivia, Comoros, and Djibouti referred the Situation in the State of Palestine for crimes that have been committed since 7 October 2023. Following the referral, the Prosecutor confirmed that his Office is conducting an investigation into the Situation in the State of Palestine, which remains ongoing and extends to the escalation of hostilities and violence since the attacks that took place on 7 October 2023.

195. On 18 January 2024, the Republic of Chile and the United Mexican State additionally submitted a referral to the Prosecutor with respect to the situation in the State of Palestine.

196. On 20 May 2024, the ICC Prosecutor filed applications for warrants of arrest before Pre-Trial Chamber I relating to war crimes — including the war crime of starvation — and crimes against humanity, for both Israeli and Hamas officials (all of the Hamas officials have since been killed), which the Pre-Trial Chamber issued. To conduct its investigation and to preserve evidence, the ICC must be granted access to the OPT which Israel is denying. The refusal by Israel to permit entry by ICC officials into the OPT also violates Article VI of the Genocide Convention and the Court's provisional measures Orders, and breaches Israel's obligations as an Occupying Power to ensure public order and civil life in the occupied territory.

ii. Policy of collective punishment and starvation

197. Together, the laws are to be considered in the context of a wider policy of collective punishment and starvation by Israel on the OPT's population which are prohibited under

²⁰⁰ International Criminal Court, ‘Statement of ICC Prosecutor Karim A. A. Khan KC from Cairo on the situation in the State of Palestine and Israel (30 October 2023) available at <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-cairo-situation-state-palestine-and-israel>.

²⁰¹ Ibid.

international law. The cataclysmic effect of UNRWA's banning as already set out above, would constitute a violation of Articles 50 of the 1907 Hague Regulations, Article 33 of the Fourth Geneva Convention and Article 75(2)(d) of Additional Protocol I. The Rome Statute of the ICC prohibits starvation as a method of warfare (Article 8 (xxv)).

198. Collective punishment is prohibited by the Fourth Geneva Convention - Article 33 provides: "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited." State practice establishes the rule against starvation as a method of warfare as a norm in customary international law.²⁰²

199. In relation to Gaza, Israel has systematically denied lifesaving aid and basic services to Palestinians, and deliberately starved a vulnerable population, inflicting measures of 'slow death' calculated to bring about their physical destruction. Israel's conduct is reminiscent of Srebrenica — which this Court found to be genocide — in which "[a] number of activities were undertaken that created unbearable living conditions in Srebrenica by way of humanitarian aid restrictions, water, electricity and medical aid shortage."²⁰³

200. Israel bears obligations as an Occupying Power to ensure access to basic supplies in the occupied Palestinian territories, including Gaza. Israel's failure to fulfil those obligations prior to 7 October 2023 rendered Palestinians in Gaza almost entirely dependent on humanitarian aid. Since 7 October 2023, Israel has gone a step further and implemented a policy of denial of humanitarian aid affecting an already weakened population with full knowledge of the consequences of doing so and with the specific intent to destroy the population.

201. Israel's pattern of denial of humanitarian aid is starkly demonstrated by its campaign to undermine, attack, and ultimately end UNRWA's operations. UNRWA is the "largest humanitarian organisation on the ground in Gaza",²⁰⁴ and, as humanitarian groups on the ground have underscored, "[t]he plain reality is that UNRWA's humanitarian role in this crisis is indispensable . . . and cannot remotely be replaced by any other aid organization."²⁰⁵ As such, to seek to destroy UNRWA is to destroy the very possibility of the effective provision of humanitarian assistance to Palestinians in Gaza,²⁰⁶ particularly at a time when Gaza is facing the worst humanitarian crisis seen in the world for more than 50 years.²⁰⁷

²⁰² ICRC, 'Rules 53. Starvation as a Method of Warfare as a rule of CIL' <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule53>.

²⁰³ *Prosecutor v. Trbić*, No. X-KR-07/368, First Instance Verdict, 29 April 2010 ('Trbić Trial Judgment'), https://www.worldcourts.com/wcsbih/eng/decisions/2009.10.16_Prosecutor_v_Trbic.htm, para. 323. See also, *Prosecutor v. Tolimir*, Trial Chamber II, Judgment (12 December 2012), IT-05-88/2-T, ('Tolimir Trial Judgment'), paras. 174 and 204; and *Prosecutor v. Radislav Krstić*, Trial Chamber, Judgment (2 August 2001), IT-98-33-T, ('Krstić Trial Judgment'), paras. 38ff and 337.

²⁰⁴ UN, 'UNRWA seeks \$1.2 billion to meet urgent needs in Gaza and the West Bank' (*UN News*, 24 April 2024), <https://news.un.org/en/story/2024/04/1148931>.

²⁰⁵ UNRWA, 'Joint NGO Statement: EU and Member States Must Sustain Funding to UNRWA' (29 February 2024) <https://www.unrwa.org/newsroom/official-statements/joint-ngo-statement-eu-and-member-states-must-sustain-funding-unrwa>.

²⁰⁶ UN, 'UN Humanitarian Chief Martin Griffiths Calls for Immediate Ceasefire and Humanitarian Access in Gaza Crisis – Briefing to the Security Council on the Situation in the Middle East, Including the Palestinian Question' (31 January 2024) <https://www.un.org/unispal/document/ocha-statement-security-council-31jan-2024>.

²⁰⁷ Adam Arnold, "'Gaza is worst humanitarian crisis I have seen in 50 years', top UN official says" (*Sky News*, 14 February 2024) <https://news.sky.com/story/gaza-is-worst-humanitarian-crisis-i-have-seen-in-50-years-top-un-official-tells-sky-news-13071666>.

202. They have also manifested in the form of a “deliberate and concerted” insidious “campaign” aiming to “undermine [UNRWA’s] operations, and ultimately end them”,²⁰⁸ including by (i) imposing blanket restrictions on UNRWA’s aid operations;²⁰⁹ (ii) complete denials of UNRWA’s repeated requests for access to the north of Gaza over a period of several months despite escalating conditions of starvation and reports of famine setting in;²¹⁰ (iii) the detention of UNRWA personnel and their torture by Israeli authorities as well as the attempted extraction of forced confessions;²¹¹ (iv) blocking and evicting staff from UNRWA premises;²¹² (v) militarily occupying UNRWA premises;²¹³ (vi) preventing the Commissioner-General of UNRWA from entering Gaza to coordinate humanitarian aid amidst unfolding famine,²¹⁴ and (vii) failing to renew visas for key UNRWA staff.²¹⁵

203. The UN Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 warned that “Israel’s genocidal violence risks leaking out of Gaza and into the occupied Palestinian territory as a whole”.²¹⁶

204. UNRWA’s banning would extend the precarious situation of Gazans to the rest of the OPT, increasing risk of starvation, malnourishment and the spread of disease if the Agency is unable to service vulnerable Palestinians.

H. Israel’s violations of international human rights in the OPT

205. The Charter is among the foundational treaties which first enshrined fundamental human rights principles. Article 55 defines the basic human rights objectives of the United Nations:

“...the United Nations shall promote:

- (a) higher standards of living, full employment, and conditions and economic and social progress and development;
- (b) solutions of international economic, social health, and related problems; and international cultural and educational cooperation; and

²⁰⁸ UNRWA, ‘Statement of the Commissioner-General of UNRWA to the General Assembly’ (4 March 2024), <<https://www.unrwa.org/newsroom/official-statements/statement-commissioner-general-unrwa-general-assembly>

See also Hanin Abou Salem, ‘Why is Netanyahu trying to disband the UNRWA?’ (*Aljazeera*, 22 June 2017), <<https://www.aljazeera.com/opinions/2017/6/22/why-is-netanyahu-trying-to-disband-the-unrwa>; David Isaac, ‘Israel wants UNRWA out of Gaza’ (*Jewish News Syndicate*, 31 December 2023) <<https://www.jns.org/israel-wants-unrwa-out-of-gaza/>.

²⁰⁹ UNRWA, ‘UNRWA Situation Report #95 on the situation in the Gaza Strip and the West Bank, including East Jerusalem’ (27 March 2024) < <https://www.unrwa.org/resources/reports/unrwa-situation-report-95-situation-gaza-strip-and-west-bank-including-east-jerusalem>.

²¹⁰ Ibid.

²¹¹ UNRWA, ‘UNRWA Situation Report #102 on the situation in the Gaza Strip and the West Bank, including East Jerusalem’ (19 April 2024) <<https://www.unrwa.org/resources/reports/unrwa-situation-report-102-situation-gaza-strip-and-west-bank-including-East-Jerusalem>.

²¹² UN, ‘Global Perspective Human Stories: General Assembly President condemns ‘catastrophic, unconscionable, shameful’ conditions in Gaza’ (*UN News*, 4 March 2024) <<https://news.un.org/en/story/2024/03/1147202>.

²¹³ UNRWA, ‘Statement by the Commissioner-General of UNRWA to the Security Council’ (17 April 2024) <<https://www.unrwa.org/newsroom/official-statements/statement-commissioner-general-unrwa-security-council>.

²¹⁴ Philippe Lazzarini, @UNLazzarini, Tweet (3:05 pm, 18 March 2024), <<https://twitter.com/UNLazzarini/status/1769711761136009310?lang=en>; Josep Borrell Fontelles, @JosepBorrellF, Tweet (1:09 pm, 20 March 2024), <<https://twitter.com/JosepBorrellF/status/1770407223212036215>.

²¹⁵ Patrick Wintour, ‘Israel seeking to close down Unrwa, says agency’s chief after school bombing’ (*The Guardian*, 13 September 2024), <<https://www.theguardian.com/world/2024/sep/13/israel-seeking-to-close-down-unrwa-philippe-lazzarini-school-bombing>.

²¹⁶ UN OCHCHR, ‘Apartheid Israel is targeting Gaza and the West Bank simultaneously, says expert’ (2 September 2-24) <<https://www.ohchr.org/en/press-releases/2024/09/apartheid-israel-targeting-gaza-and-west-bank-simultaneously-says-expert>.

(c) *universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.*”

206. By ratifying the Charter, UN Member States under Article 56 of the Charter “pledge themselves to take joint and separate action in cooperation with the Organisation for the achievement of the purposes set forth in Article 55.”

207. Israel is a State Party to several core human rights treaties, namely: The International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic and Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) including the two optional protocols, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), and the Convention on the Rights of Persons with Disabilities (CRPD).

208. The ICCPR and CAT include specific jurisdictional clauses that apply to the OPT. By ratifying the ICCPR, Israel is obligated “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights contained in the present Covenant, without distinction...”²¹⁷ Article 2(1) of the CAT provides as follows: “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”²¹⁸

209. Despite Israel’s stated position that IHRL does not apply extraterritorially, the Court, UN treaty bodies, and international courts have repeatedly held that human rights obligations extend to all territories under a state’s effective control.

210. The Court has previously found in the *Construction of a Wall* advisory opinion that “the protection of human rights conventions does not cease in cases of armed conflict” and explicitly affirmed that human rights treaties apply concurrently with international humanitarian law in occupied territory.²¹⁹ The Court also made determinations regarding the specific application of the ICESCR, ICCPR, and CRC, as international human rights law instruments outside a State’s national territory, in this case to the OPT.

211. In this determination, the Court found that the ICCPR applies to acts “performed” by a State during the exercise of its jurisdiction outside the State’s territory, that the OPT has been subject to Israel’s “territorial jurisdiction as the Occupying Power” and thus Israel is bound by the ICESCR, and that the CRC is also applicable within the OPT.²²⁰

212. The Court therefore determined that IHRL instruments are applicable in occupied territories, which was reaffirmed by the Court in *the Case Concerning Armed Activities on the Territory on the Congo* and more recently in *Legal Consequences* (2024) advisory opinions.²²¹

²¹⁷ Article 2(1) of the International Covenant on Civil and Political Rights (entered into force 23 March 1976) (ICCPR)

²¹⁸ Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (entered into force 26 June 1987) 1456 UNTS 85 (CAT).

²¹⁹ *Construction of a Wall* advisory opinion para. 106.

²²⁰ *Construction of a Wall* advisory opinion paras. 111-113.

²²¹ *Legal Consequences* (2024) advisory opinion paras 97-100; *Construction of a Wall* advisory opinion paras. 107-113; *Armed Activities on the Territory of the Congo (DRC v Uganda)* (Judgment) [2005] paras. 215-221.

213. The Court observed in the *Legal Consequences* (2024) advisory opinion that Israel remains bound by the ICESCR, ICCPR, and the CRC “in respect of its conduct with regard to the [OPT]” and noted Israel is also bound by CERD and “must comply with obligations under CERD in circumstances in which it exercises its jurisdiction outside its territory”.²²²

214. The Human Rights Committee and the Committee on Economic, Social and Cultural Rights (CESCR) have each underscored the applicability of treaty provisions to the OPT.²²³ The Human Rights Committee’s General Comment No.31 provides as follows:

*“States Parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party....”*²²⁴

215. Due to the extra-territorial application of IHRL instruments and the protection afforded to Palestinian refugees under it, IHRL imposes obligations on Israel regarding action taken within or action that will affect the OPT.

i. Human rights that Israel is under an obligation to respect in the OPT

216. This part of South Africa’s written statement will be restricted to the following IHRL instruments: ICESCR, ICCPR, CRC, CRPD, CEDAW and CERD.

217. Under these various IHRL instruments, the following rights are to be enjoyed by all persons in the territories of States party to the IHL instruments which therefore includes Palestinian refugees within the OPT:

- (a) The right to food under Article 11 of the ICESCR supplemented by Articles 24(2)(c) and 27 of the CRC, Article 28 of CRPD, and indirectly through Article 12(2) of CEDAW which outlines the right to adequate nutrition during pregnancy and lactation.²²⁵
- (b) The right to water and sanitation under Article 11 of the ICESCR supplemented by Article 24(2)(c) of the CRC.
- (c) The right to shelter under Article 11 of the ICESCR supplemented by Article 27(1) and 27(3) of the CRC.
- (d) The right to health under Article 12 of the ICESCR supplemented by Art 24 of the CRC, and Article 12(1) of CEDAW. The CRPD expands on the right to health by including access to services that are gender-sensitive and those that offer habilitation and rehabilitation services.²²⁶ Article 5(d)(iv) of CERD, expands on this and requires States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, “to public health, medical care, social security and social services”.

²²² *Legal Consequences* (2024) advisory opinion paras. 100-101.

²²³ Second periodic report of Israel on the Implementation of the ICCPR, 4 December 2002, CCPR/C/ISR/2001/2, available at <http://www.unhchr.ch/tbs/doc.nsf>.

²²⁴ UN HRC, ‘General Comment No.31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’ (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13.

²²⁵ Article 12(2) of CEDAW.

²²⁶ Articles 25 and 26 of the CRPD.

- (e) The right to subsistence under Article 1(2) of the ICESCR and Article 1(2) of the ICCPR outlines the right to a basic standard of living which includes at a minimum food, shelter, clean water and medical care. Therefore, the right to subsistence reinforces the above listed rights.
- (f) The right to education under Article 13 of the ICESCR, Articles 28 and 29 of the CRC, Article 24 of the CRPD, and Article 5(d)(v) of CERD.

218. The IHRL instruments contain general obligations on State Parties to ensure the realisation of human rights with special emphasis on the realisation of these rights for persons with disabilities, women and children.²²⁷ The CRC further obliges State Parties to ensure children who are considered refugees receive “humanitarian assistance in the enjoyment of applicable rights set forth in the [CRC]” as well as those in other IHRL instruments.²²⁸

219. Moreover, these IHRL instruments emphasise the importance of international cooperation with the CRPD obliging State Parties to undertake measures “in partnership with relevant international and regional organizations” to realise the Convention.²²⁹ The ICESCR additionally creates an obligation on State Parties to fully realise the rights of individuals both “individually and through international assistance and cooperation.”²³⁰

220. The Palestinian population is entitled to these IHRL protections which guarantee the right to an adequate standard of living and its associated human rights as well as the right to education. In the OPT, Palestine is responsible for the realisation of these rights in a domestic context but is not able to do so due to Israel’s unlawful occupation of the territories and amid the ongoing hostilities.

221. However, Israel as the Occupying Power is not only obligated to provide humanitarian assistance under IHL but also has extraterritorial obligations with regard to the human rights, as discussed above, which includes the duty to refrain from taking action that would compromise human rights.

222. The right to an adequate standard of living-as contained in Article 11 of the ICESCR, guarantees the Palestinian population the right to adequate food.²³¹ Despite this Article imposing obligations on Palestine, as discussed, the obligations stemming from the ICESCR are not only domestic in nature but also create food and other related obligations on State Parties to the Covenant from an international perspective that are relevant to the OPT.

223. Under the ICESCR, States “must refrain from taking action that would compromise the right to food extraterritorially.”²³² This is particularly relevant in cases of famine, due to the obligations under IHRL, States are therefore “forbidden from actively hindering” ongoing relief action.²³³

²²⁷ Article 4 of the CRPD; Article 2 of the ICESCR; Article 2 of the CRC; Article 3 of the CEDAW; and Article 23 of the CRC.

²²⁸ Article 22(1) of the CRC.

²²⁹ Article 32 of the CRPD.

²³⁰ Article 2(1) of the ICESCR.

²³¹ ICESCR Article 11.

²³² Randle De Falco, ‘Right to food in Gaza: Israel’s obligations under IL’ (2009) 35 *The Internet of Rutgers School of Law* 11, 17.

²³³ *Ibid.*

224. Therefore, a similar interaction between the extraterritorial application of the ICESCR and other articles under the ICESCR that outline the basic human rights listed above, establish that there is a duty on State Parties not to take action that would compromise the rights to an adequate standard of living and education extraterritorially.

225. This obligation is supported by the general obligations on States under international law to respect, protect and fulfil human rights, as the obligation to respect applies both domestically and extraterritorially. This duty exists regardless of whether a situation of armed conflict is occurring within a State, as the application of IHRL does not cease in situations of armed conflict.²³⁴

226. The implementation of the UNRWA ban will affect the realisation of human rights guaranteed to Palestinians under IHRL. As outlined above and by banning UNRWA Israel is therefore violating its obligations under the various IHRL instruments and general IHRL by acting in a manner that interferes in the realisation of human rights.

227. The IHRL instruments also require State Parties to undertake steps to achieving the full realisation of rights by all appropriate means including by adopting legislative measures.²³⁵ The adoption of legislative measures that actively hinder the realisation of human rights would therefore further constitute a violation of IHRL.

228. This includes – as the UN Committee on Economic, Social and Cultural Rights²³⁶ concluded - that Israeli settlement expansion violates the rights of Palestinians to adequate housing. Furthermore, Israel also exercises discriminatory control over Palestinian water resources.²³⁷

ii. The impact of UNRWA's ban on human rights in the OPT

229. In the OPT, UNRWA operates approximately 400 schools and operates primary health care clinics and hospitals. In addition to these services, UNRWA provides other aid to assist those in the OPT in relieving the effects of poverty by offering food vouchers, emergency assistance and other social services. In addition to general assistance, UNRWA reported that it supported 20 786 persons with disabilities from the period of 7 October 2023 to 2 December 2024.²³⁸

230. The ban will at the very least result in the closure of 6 schools and 1 health clinic, as well as impacting the 2 refugee camps within East Jerusalem.²³⁹ In addition to these closures, UNRWA aid will not be available for refugees within this area, which includes the services available within the refugee camps, schools and health clinics.

²³⁴ *Construction of a Wall* advisory opinion para. 106.

²³⁵ Article 2(1) of the ICESCR.

²³⁶ Committee on Economic, Social and Cultural Rights, 'Concluding observations on the fourth periodic report of Israel' (12 November 2019) UN Doc E/C.12/ISR/CO/4.

²³⁷ UNGA, 'Report of the Secretary General on human rights in the occupied Syrian Golan' (12 February 2018) UN Doc A/HRC/37/40.

²³⁸ UNRWA, 'UNRWA Situation Report #150 on the Humanitarian Crisis in the Gaza Strip and the West Bank, including East Jerusalem | UNRWA' (5 December 2024) <https://www.unrwa.org/resources/reports/unrwa-situation-report-150-situation-gaza-strip-and-west-bank-including-east-jerusalem>.

²³⁹ Jorgen Jensehaugen, Kjersti Berg and Lex Takkenberg 'Consequences of the Israeli UNRWA ban' Mideast Policy Brief 01/2025 available at <https://cdn.cloud.prio.org/files/a31527c0-2f07-4e9f-aca6-63b2f4518c23/MidEast%201-2025.pdf?inline=true>.

231. The impact of the UNRWA ban within the West Bank, including East Jerusalem, and Gaza will be attributed to the logistical challenges faced by UNRWA in conducting humanitarian operations. In addition to these challenges imports labelled as UNRWA will be prohibited.²⁴⁰

232. Therefore, the eviction of UNRWA from East Jerusalem and effectively halting UNRWA operations in Gaza and the West Bank will have dire consequences on the provision of basic necessities and services in the OPT. While the effects of this ban will vary, it ultimately has an impact on the provision of food, water, sanitation and medical services, shelter and education which will greatly impact Palestinian refugees, specifically women, children and disabled persons.

(a) Right to an adequate standard of living

233. The UN OHCHR has previously noted that “the situation of hunger, starvation and famine” in Gaza have been a result of Israel’s restrictions on the entry and distribution of humanitarian aid.²⁴¹ In Gaza alone, UNRWA is reported to have given over 1.46 million people UNRWA food parcels. Therefore, the ban on UNRWA imports will lead to further restrictions on the distribution of aid in Gaza where food shortages have already led to 96 per cent of the population in Gaza facing acute food insecurity which will continue to have “significant implications for maternal and child health” specifically.²⁴²

234. In addition to food shortages, shortages of clean water also plague the OPT. In a report, issued in 2022, 96per cent of ground water in Gaza was labelled as being “unfit for human consumption”.²⁴³ Due to Israel’s war on Gaza, 67 per cent of the water and sanitation infrastructure in Gaza was also damaged or destroyed from October 2023 to July 2024.²⁴⁴

235. Key infrastructure essential to the welfare of Palestinian refugees has not only been destroyed in Gaza but also in the West Bank where 300 agricultural and over 100 water, sanitation and hygiene structures were demolished or confiscated between 7 October 2023 and September 2024.²⁴⁵

236. These confiscations and demolitions, amongst other action committed by Israel, also constitutes an attack on the food sovereignty of the OPT, leaving Palestinians unable to sustain themselves.²⁴⁶ This constitutes a violation of their right to their own subsistence, which impacts Palestinians both now, as they are increasingly reliant on aid, but also for generations to come.

237. The damage and confiscation of these structures in addition to the continued demolition of other structures and homes have led to the continued displacement of Palestinians violating

²⁴⁰ Ibid.

²⁴¹ *South Africa v. Israel* (Provisional Measures, Order) [28 March 2024] para. 34; OHCHR, ‘Comment by UN High Commissioner for Human Rights Volker Türk on the risk of famine in Gaza’ (19 March 2024) <https://www.un.org/unispal/document/comment-by-un-high-commissioner-for-human-rights-19mar24/>.

²⁴² UNDP, ‘Gaza war: expected socioeconomic impacts on the State of Palestine’ E/ESCWA/UNDP/2024/Policy Brief.2 p. 4-5.

²⁴³ Heinrich Boll Stiftung, ‘Gaza Water Desalination Plants Factsheet’ (November 2022) p. 2.

²⁴⁴ UNDP, ‘Gaza war: expected socioeconomic impacts on the State of Palestine’ E/ESCWA/UNDP/2024/Policy Brief.2 p. 5.

²⁴⁵ UNDP, ‘Gaza war: expected socioeconomic impacts on the State of Palestine’ E/ESCWA/UNDP/2024/Policy Brief.2 p. 5.

²⁴⁶ UNGA, ‘Note by the Secretary General: Right to Food’ (17 July 2024) UN Doc A/79/171.

their right to shelter. The right to shelter has become increasingly essential to the survival of Palestinian refugees due to changing weather conditions, where over 70 children died in December 2024 due to winter conditions.²⁴⁷ This reality will be compounded by the UNRWA ban as the closure of UNRWA refugee camps and the banning of UNRWA's aid within East Jerusalem will increase current difficulties faced by Palestinian refugees within this area regarding access to food, water, shelter and sanitation services.

238. However, the impact of water, sanitation and shelter goes beyond just these rights. Due to the destruction of water and sanitation infrastructure along with overcrowding in shelters, polio was detected in Gaza by WHO for the first time in 25 years, with other diseases becoming more prevalent.²⁴⁸

239. The lack of hygiene and overcrowded shelters has increased the prevalence of disease which in addition to a lack of food and water has and will continue to lead to the death of persons in Gaza from preventable health conditions.²⁴⁹

(b) Right to health

240. Israel has not revealed how UNRWA's crucial and essential basic services will be replaced for the 30 000 refugees registered in East Jerusalem. Israel is obligated under Article 12(2) of the ICESCR to create "conditions which would assure to all medical services and attention", and by banning UNRWA operations in East Jerusalem Israel has instead created conditions which leaves a population of almost 30 000 without access to health services.

241. An estimated 3 000 of these registered refugees are children who would be deprived of their right to access health care services in violation of Article 24(1) of the CRC.

242. However, realising the right to health does not only include access to health clinics but also "the prevention, treatment and control" of diseases.²⁵⁰ Israel's military campaign has impacted the functioning of "over 94 per cent of health facilities", also disrupting routine immunisations.²⁵¹ Therefore, vaccination campaigns, specifically those aimed at children, are essential to the realisation of this right. As UNRWA has been responsible for vaccination campaigns, specifically polio, in Gaza, it is essential in realising the rights of those in the OPT to physical health.²⁵²

²⁴⁷ UN, 'Children are now freezing to death: harrowing updates from Gaza' (10 January 2025) <https://palestine.un.org/en/287161-%E2%80%98children-are-now-freezing-death%E2%80%99-harrowing-updates-gaza> ; Al Jazeera, 'Six children die of hypothermia amid freezing conditions in Gaza' (25 February 2025) <https://www.aljazeera.com/news/2025/2/25/six-children-die-of-hypothermia-amid-freezing-conditions-in-gaza>|||.

²⁴⁸ State of Palestine – Nutrition Cluster, Jan-Dec 2024 One year of nutrition response in Gaza page 2; WHO, 'Children in Gaza are now at risk of polio as well as bombs – we need a ceasefire now' (1 August 2024) <https://www.who.int/news-room/commentaries/detail/children-in-gaza-are-now-at-risk-of-polio-as-well-as-bombs---we-need-a-ceasefire-now>.

²⁴⁹ State of Palestine Nutrition Cluster, 'Jan-Dec 2024: One year of nutrition response in Gaza' p. 2.

²⁵⁰ Article 12(2)(c) of the ICESCR.

²⁵¹ State of Palestine Nutrition Cluster, 'Jan-Dec 2024: One year of nutrition response in Gaza' p. 2.

²⁵² UN, 'How has the war in Gaza affected UNRWA's ability to support Palestinians?' (6 November 2024) <https://news.un.org/en/story/2024/11/1156606#:~:text=The%20UNRWA%20education%20programme%20in%20Gaza%20was%20the,10%2C500%20education%20personnel%2C%20serving%20around%20300%2C000%20registered%20students>

243. In the West Bank, there have been increased attacks on medical facilities, ambulances, and workers.²⁵³ The permits for Palestinians to be able to access medical care outside the West Bank was also reported to be declining.²⁵⁴ Therefore, the access to medical assistance provided by aid organisations within these areas is essential to the health of Palestinian refugees.

244. From the various IHRL instruments, the right to health also consists of group specific services such as health-related services that are gender sensitive and services aimed at rehabilitation.²⁵⁵ UNRWA operated 22 healthcare centres which also offered maternal health care and certain clinics attending to special education needs.²⁵⁶ However, the right to health goes beyond the provision of basic medical care and emergency care as the right to health also includes mental health under Article 12 of the ICESCR.

245. UNRWA reported that from the period of 7 October 2023 to 2 December 2024, its social work team provided numerous services in Gaza which includes psychological first aid to 192 560 persons and protection services to 3 639 children, 2 385 of whom were unaccompanied.²⁵⁷ It also conducted awareness sessions on gender-based violence, child protection, disability and special needs, as well as managing social and psychological stressors, which was conducted for 128 320 displaced people.²⁵⁸

246. Therefore, the UNRWA ban will have a direct impact on the right to health of Palestinian refugees, as the closure of clinics in East Jerusalem, the limitations in available supplies and the logistical challenges faced in Gaza and the West Bank will impact Palestinian refugees from accessing medical care, and impact their rights to services that are aimed at addressing specific needs, such as rehabilitation.

247. Palestinians with disabilities will face a disproportionate impact if basic services are no longer rendered by UNRWA. Following 15 months of intense bombardment, there is now a higher number of persons who have become maimed and disabled due to amputation or from injuries caused by indiscriminate bombing by Israel. UNRWA has previously reported that “every day in Gaza, 10 children lose one or both legs amid ongoing Israeli bombardment”.²⁵⁹ The WHO reported in September 2024 that more than 22 500 people have suffered life-changing injuries that require rehabilitation since Israel’s offensive began.²⁶⁰

(c) Right to education

²⁵³ UNGA, ‘Note by the Secretary General: Situation of human rights in the Palestinian territories occupied since 1967’ (1 October 2024) UN Doc A/79/384 p. 12-13.

²⁵⁴ Ibid.

²⁵⁵ Article 25 and 26 of the CRPD.

²⁵⁶ UN, ‘How has the war in Gaza affected UNRWA’s ability to support Palestinians?’ (6 November 2024)

<https://news.un.org/en/story/2024/11/1156606#:~:text=The%20UNRWA%20education%20programme%20in%20Gaza%20was%20the,10%2C500%20education%20personnel%2C%20serving%20around%20300%2C000%20registered%20students>

²⁵⁷ UNRWA, ‘UNRWA Situation Report #150 on the Humanitarian Crisis in the Gaza Strip and the West Bank, including East Jerusalem | UNRWA’ (5 December 2024) <https://www.unrwa.org/resources/reports/unrwa-situation-report-150-situation-gaza-strip-and-west-bank-including-east-jerusalem>.

²⁵⁸ UNRWA, ‘UNRWA Situation Report #150 on the Humanitarian Crisis in the Gaza Strip and the West Bank, including East Jerusalem | UNRWA’ (5 December 2024) <https://www.unrwa.org/resources/reports/unrwa-situation-report-150-situation-gaza-strip-and-west-bank-including-east-jerusalem>

²⁵⁹ UNDP, ‘Gaza war: expected socioeconomic impacts on the State of Palestine’ E/ESCWA/UNDP/2024/Policy Brief.2 p. 4.

²⁶⁰ UN, ‘Global perspective Human stories: Over 22, 500 have suffered ‘life-changing injuries’ in Gaza: WHO’ (UN News, 12 September 2024) <https://news.un.org/en/story/2024/09/1154241>.

248. The UNRWA ban and the impact of it on IHRL in the OPT is not only limited to the right to an adequate standard of living, as the ban has led to the closure of UNRWA schools and logistical challenges in the provision of education, which impacts the right of Palestinian refugee children to access education guaranteed to them by Article 28 of the CRC and Article 13 of ICESCR.
249. The UN reported that prior to 7 October 2023 there were 284 UNRWA schools operating in Gaza, who served an estimated 300 000 students.²⁶¹ The effect of Israeli military action on the education system in Gaza resulted in over 300 schools being damaged or destroyed where 85 per cent of the schools were run by UNRWA.²⁶²
250. The logistical challenges imposed by the UNRWA ban will further affect the provision of education as UNRWA has recently provided educational opportunities in shelters across Gaza where an estimated 9 500 children have “benefitted from this initiative”.²⁶³
251. In the limited instances where Israel has suggested a theoretical alternative to the services provided by UNRWA, such as the absorption of students from UNRWA schools in East Jerusalem into municipality schools, these alternatives still constitute a violation of the protection afforded to them under IHRL.
252. All children are entitled to an education that is directed towards the development of respect for their “cultural identity, languages and values” as well as respect for “the country from which he or she may originate”.²⁶⁴ Absorbing these students into schools based on an Israeli curriculum would constitute a loss of Palestinian identity within their curriculum.

(d) Overall Impact

253. Should Israel, as the Occupying Power, take on the responsibilities to provide education and services, it has only provided alternatives in East Jerusalem. UNRWA activities in Gaza and the West Bank will leave these parts of the territory effectively cut off from UNRWA aid due to import restrictions. Lack of coordination with Israeli authorities will impact the provision of services in Gaza, depriving a significant percentage of the population from guaranteed access to a variety of services and aid.
254. The uncertainty about how the laws are to be implemented has made it difficult to gauge the full effect that the UNRWA ban will have on the OPT.²⁶⁵ However, this will inevitably lead to the continued and exacerbated violation of human rights of Palestinian refugees throughout the OPT as the “severity of human suffering, particularly among children, is at a historic high” which cannot improve if UNRWA, as the main source of aid, is not able to continue its mandate in the OPT.²⁶⁶

²⁶¹ UN, ‘How has the war in Gaza affected UNRWA’s ability to support Palestinians?’ (6 November 2024) <https://news.un.org/en/story/2024/11/1156606#:~:text=The%20UNRWA%20education%20programme%20in%20Gaza%20was%20the,10%2C500%20education%20personnel%2C%20serving%20around%20300%2C000%20registered%20students>

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ Article 29(1)(c) of the CRC.

²⁶⁵ UN, ‘Global perspective Human stories: UNRWA ‘continues to deliver’ as Israeli ban comes into effect’ (*UN News*, 30 January 2025) <https://news.un.org/en/story/2025/01/1159601> .

²⁶⁶ UNDP, ‘Gaza war: expected socioeconomic impacts on the State of Palestine’ E/ESCWA/UNDP/2024/Policy Brief.2 p. 3.

255. South Africa submits that action taken by Israel that affects the realisation of human rights extraterritorially in the OPT constitutes a direct violation of rights guaranteed to the Palestinian population under IHRL, as well as the obligation to respect these rights by hindering their realisation in other territories.

256. The Court has already determined that a decision taken by Israel to build a wall in the OPT constituted a violation of human rights due to the effect of the presence of the wall on Palestinians and their right to health, education and an adequate standard of living.²⁶⁷ UNRWA's ban will compound this factual situation with wide-ranging effects on the realisation of human rights within the OPT.

257. The continued renewal of UNRWA's mandate by the General Assembly over nearly eight decades implies that Israel, despite its obligations as an Occupying Power, is unwilling to provide resources and aid to the OPT to achieve the realisation of human rights. Israel's unlawful policies and practices has required UNRWA to become responsible for the survival and well-being of millions of Palestinian refugees, whereas the provision of aid has decreased due to barriers placed on UNRWA's operations.

258. This is not the first attempt by Israel to terminate UNRWA's work in the OPT. The UN recorded in 2024 that "attempts to undermine and potentially terminate UNRWA are part of an attack against the Palestinian people's right of return and a campaign to undermine the ability of the United Nations to repatriate people back to Palestine".²⁶⁸

259. Therefore, the impact of the ban will not only have an immediate effect on Palestinian refugees but also on their right to self-determination guaranteed under the ICESCR and ICCPR by impacting the development of future generations and the realisation of their rights.

260. The Court has impressed the importance of self-determination and affirmed this in the context of the Palestinian people. This right is impacted by the availability of resources and services, which is also limited due to the occupation and hostilities, and will be exacerbated by Israel's decision to ban UNRWA and effectively strip human rights from the Palestinian people, especially women and children.

I. Palestinian people's right to self-determination

261. Article 1(2) of the Charter states that one of the purposes of the UN is to promote "the principle of equal rights and self-determination of peoples." States are required to respect self-determination in international relations. 269

262. In addition to the UN Charter, key human rights treaties affirm the right to self-determination: the ICCPR and ICESCR, both provide that "all peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development."²⁷⁰ UNGA Resolution 1514271

²⁶⁷ *The Construction of Wall* advisory opinion para. 134.

²⁶⁸ UNGA, 'Report of the Special Rapporteur on the right to food, Michael Fakhri Starvation and the right to food, with an emphasis on the Palestinian people's food sovereignty' (17 July 2024) UN Doc A/79/171 para. 21.

²⁶⁹ Article 55 of the Charter.

²⁷⁰ Common Article 1 of the ICCPR and ICESCR.

²⁷¹ UNGA Res 1514(XV) (14 December 1960).

affirms that all peoples have the right to self-determination and that colonialism must be brought to a speedy and unconditional end.

263. These instruments establish that the Palestinian people, like all other peoples under foreign domination, have a legally recognised right to self-determination and national sovereignty. For the Palestinian people, self-determination remains at the core of their national struggle.

264. The United Nations has repeatedly acknowledged the Palestinian peoples' right to self-determination through binding Security Council Resolutions, General Assembly decisions and reports from UN bodies. Resolution 3236/272 recognised the Palestinian peoples' right to self-determination, national independence and sovereignty. It further affirmed the Palestinian Liberation Organisation as the legitimate representative of the Palestinian people. Following the Palestinian Declaration of Independence in 1988, UNGA Resolution 43/177/273 acknowledged the proclamation of the State of Palestine, recognised Palestine's right to self-determination and sovereignty and upgraded the status of Palestine within the UN system. UNGA Resolution 67/19/274 upgraded Palestine's UN status from "observer entity" to non-member observer status.²⁷²

265. This Resolution made it possible for Palestine to join international treaties and institutions. A significant milestone in the pursuit of Palestinian self-determination was achieved through this Resolution. In December 2023, the UNGA adopted a Resolution, reaffirming the rights of the Palestinian people and calling for the implementation of a two-state solution.²⁷⁵ The Resolution received support from many member states, reflecting a broader international consensus on the issue.

266. The UNSC also remains engaged in supporting the Palestinian right to self-determination and acknowledges that Israel's occupation of Palestinian territories since 1967 is a significant obstacle to achieving this goal.²⁷⁶

267. Several UNSC Resolutions have explicitly affirmed the legal foundation for Palestinian sovereignty, notably Resolutions 242, 338 and 1945. UNSC Resolution 242 calls for the withdrawal of Israeli armed forces from the territories occupied during the conflict and emphasises the need for the recognition of every state's right to live in peace. This Resolution serves as a cornerstone in international discussions on the Israel-Palestine conflict. It enshrines the principle of land for peace, highlighting that a comprehensive peace settlement must ensure the legitimate rights of the Palestinian peoples.²⁷⁷ UNSC Resolution 338 calls for a ceasefire and reaffirms the necessity for negotiations to implement Resolution 242. The emphasis on the need to achieve a just and lasting peace, which includes "the implementation of the provisions of Security Council Resolution 242," reaffirmed the international community's commitment to finding a solution that would respect Palestinian sovereignty.²⁷⁸

²⁷² UNGA Res 3236(XXIX) (22 November 1974).

²⁷³ UNGA Res 43/177 (15 December 1988) UN Doc A/RES/42/177.

²⁷⁴ UNGA Res 67/19 (4 December 2012) UN Doc A/RES/67/19.

²⁷⁵ UNGA Res 78/192 (22 December 2023) UN Doc A/RES/78/192.

²⁷⁶ UN Meetings Coverage and Press Releases, 'Settlement Expansion in Occupied Palestinian Territory Violate International Law, Must Cease, Many Delegates Tell Security Council' (27 September 2023) <https://press.un.org/en/2023/sc15424.doc.htm>.

²⁷⁷ UNSC Res 242 (22 November 1967) UN Doc S/RES/242(1967).

²⁷⁸ UNSC Res 338(1973) (22 October 1973) UN Doc S/RES/338(1973).

268. Another critical Resolution regarding Palestinian self-determination is UNSC Resolution 194, adopted in December 1948. This Resolution addresses the plight of Palestinian refugees, affirming their right to return to their homes and to receive compensation for their loss of property.²⁷⁹ The Resolutions passed by the UNSC embody international legal principles and norms, forming a crucial foundation for human rights frameworks that recognise self-determination as a fundamental right. As outlined above, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights explicitly affirm self-determination as a prerequisite for the realisation of all other rights.

269. The Human Rights Council has consistently worked to address the human rights violations endured by the Palestinian people due to the ongoing conflict and military occupation. A significant example is Resolution 10/15, which was adopted in 2004, calling on Israel to comply with its obligations under international law, including enabling the Palestinian peoples' right to self-determination.²⁸⁰ This Resolution, like others preceding it, stresses the necessity for accountability among states regarding their actions towards Palestinians.

270. The Human Rights Council has also established multiple commissions and fact-finding missions to investigate violations of international law in the Palestinian territories. These inquiries consistently underscore the negative impact of prolonged occupation on the Palestinian pursuit of self-determination. The recurring theme in these Resolutions is the assertion that the Palestinian people have the right to decide their political fate and achieve national independence, affirming human dignity and rights.

271. Additionally, Resolution 40/13, adopted in 2019, addressed "the human rights situation in the Occupied Palestinian Territory," urging Israel to cease its practices impeding the right to self-determination of the Palestinian people and condemning the expansion of settlements and other actions that infringe upon Palestinian rights.²⁸¹ Such Resolutions establish an international legal framework that recognises and upholds the Palestinian right to self-determination.

272. Furthermore, the Court has made notable contributions to this discourse. In its *Construction of a Wall* advisory opinion, the Court reaffirmed that the Palestinian people have the right to self-determination and stressed the need for the respect of their rights in accordance with international law.²⁸² The Court stated that the situation faced by the Palestinian people constitutes a serious breach of their right to self-determination.

273. Although UN Resolutions provide a strong international legal framework, significant challenges still obstruct the fulfilment of Palestinian self-determination. The Israeli occupation of the West Bank and the blockade of Gaza represent significant barriers to Palestinian self-determination. Furthermore, the ongoing expansion of Israeli settlements in occupied territories, further jeopardises the viability of a two-state solution and undermines Palestinian sovereignty.²⁸³

²⁷⁹ UNSC Res 194(III) (11 December 1948) UN Doc A/RES/194.

²⁸⁰ UNGA Res ES-10/15 (2 August 2004) UN Doc A/RES/ES-10/15.

²⁸¹ UNHRC Res 40/13 (3 April 2019) UN Doc A/HRC/RES/40/13.

²⁸² *Construction of a Wall* advisory opinion, paras 122 and 149.

²⁸³ [How Israeli Settlements Impede the Two-State Solution | Carnegie Endowment for International Peace](#)

i. Recognition of self-determination as a *jus cogens* norm

274. *Jus cogens* norms also known as peremptory norms of international law, are those from which no derogation is permitted, and which hold the highest hierarchal status in the international legal order.²⁸⁴ This norm includes prohibitions against genocide, slavery, torture and crimes against humanity.

275. The Court has affirmed that certain norms of international law possess a peremptory character, establishing a hierarchy that prioritises the protection of human dignity and core human rights.²⁸⁵ The recognition of self-determination as a *jus cogens* norm is supported by various legal sources and historical precedents. The seminal case of *East Timor (Portugal v Australia)*²⁸⁶ highlighted the significance of self-determination in international law. This Court ruled that the right to self-determination is a fundamental principle of international law, which must be respected by all states. This case reinforced the notion that self-determination is not merely a political principle but a legal obligation binding upon states.

276. In addition, the International Law Commission has indicated the importance of self-determination in their work on the Draft Articles on State Responsibility (2001)²⁸⁷, wherein it has been pointed out that violations of the right to self-determination could mean international responsibility.

277. State practice underlines, in further detail, the status of self-determination as a *jus cogens* norm. The case of Kosovo, where the Court issued an advisory opinion in 2010, serves as a pertinent example. The Court concluded that the unilateral declaration of independence by Kosovo did not violate international law, underscoring the complexities surrounding self-determination and state sovereignty.²⁸⁸ The Court's ruling implicitly recognised the legitimacy of self-determination claims in certain contexts, thereby reinforcing the status as a *jus cogens* norm.

278. Similarly, the African Commission on Human and Peoples' Rights has recognised the right of self-determination in several cases, further supporting its peremptory status within regional frameworks.²⁸⁹ The conclusions of the Commission bring out the need for the observance of the self-determination of peoples in cases where colonisation and oppression have usually marginalised specific sectors. In the case of *the Mayagna (Sumo) Awas Tingni Community v Nicaragua*²⁹⁰, the Inter-American Court on Human Rights reiterated the indigenous peoples' rights to own land and their right to self-determination was established as a precedent that protected it for the communities within the nation states.

²⁸⁴ Article 53 of the Vienna Convention on the Law of Treaties.

²⁸⁵ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* (Advisory Opinion) [1951] ICJ Rep 15.

²⁸⁶ *East Timor (Portugal v Australia)* [1995] ICJ Rep 90.

²⁸⁷ International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (2001).

²⁸⁸ *Accordance with International Law of the Unilateral Decalration of Independence in Respect of Kosovo* (Advisory Opinion) [2010] ICJ Rep 403.

²⁸⁹ Communication No.276/2003, *The Social and Economic Rights Action Centre and the Center for Economic and Social Rights v Nigeria*

²⁹⁰ Inter-American Court of Human Rights, 2001, *Case of Mayagna (Sumo) Awas Tingni Community v Nicaragua*.

279. Legal scholars and practitioners have increasingly advocated for the recognition of self-determination as a *jus cogens* norms. The evolution of international law indicates a growing consensus on the need to categorise self-determination alongside other established *jus cogens* norms, such as the prohibition of genocide and torture.²⁹¹ This view is congruent with the consistent purpose of international law to defend peoples' rights and promote global justice. Other legal scholars have also argued that self-determination fulfils the criteria for *jus cogens* due to its universality, fundamental importance and the *erga omnes* obligations it imposes on states.²⁹²

280. The recognition of self-determination as a *jus cogens* norm is not only legally defensible but also essential for the promotion of human rights and the maintenance of international peace and security. The overwhelming support from international legal instruments, coupled with the jurisprudence of international courts and the commitment of states, all support its classification as a peremptory norm of international law.

ii. The role of education and a healthy civilian population in self-determination and Israeli actions in undermining this right

281. For the Palestinian people, education represents a pathway to self-determination, enabling them to assert their national identity and engage with the world on their own terms. As discussed above, the right to self-determination is enshrined in international law, notably in the Charter and various human rights instruments. Self-determination is intrinsically linked to education, as it enables individuals to understand their rights and responsibilities and to actively engage in the political, social and economic life of their community.²⁹³ In the Palestinian context, the educational curriculum is designed to promote awareness of Palestinian history, culture, and rights.²⁹⁴

282. Despite the importance of education, Israeli policies have systematically undermined educational opportunities in the Palestinian territories. According to the UN OCHA²⁹⁵ access to education has been severely restricted due to military incursions, movement restrictions, and the destruction of educational facilities.²⁹⁶

283. According to UNICEF, Israeli military operations in and around schools disrupt the educational process, leading to psychological trauma and loss of academic continuity.²⁹⁷ Further, the Israeli government has been accused of implementing discriminatory policies that target Palestinian educational institutions, such as restricting access to resources and funding.²⁹⁸ The international legal framework specifically acknowledges the liberties of individual and community to education, especially in places of conflict.

²⁹¹ Spijkers, A.R.Z (2018), *The Emergence of Jus cogens Norms in International Law*, Leiden: Brill.

²⁹² Crawford, *Brownlie*, Dugard, *International Law: A South African Perspective* (2018).

²⁹³ ICCPR and Article 13 of the ICESCR.

²⁹⁴ Rashis Khalidi, *The Iron Cage: The Story of the Palestinian Struggle for Statehood*. (Boston, Beacon Press, 2006).

²⁹⁵ UN OHCA, '2019: Humanitarian Needs Overview' (17 December 2018) available at <https://www.ochaopt.org/content/humanitarian-needs-overview-2019>.

²⁹⁶ *Ibid*.

²⁹⁷ UNICEF 2019, *Children in Conflict: The Impact of Military Operations on Education in Palestine*, available at <https://www.unicef.org>.

²⁹⁸ Human Rights Watch, 2018. *Israel: Systematic Discrimination against Palestinian Students*.

284. The Fourth Geneva Convention establishes protections for civilian populations under occupation, including the right to education.²⁹⁹ Nevertheless, the Israeli policies currently in effect are at odds with the legal obligations, which in turn, raise serious doubt regarding Israel's commitment to upholding international norms. The UN Special Rapporteur on the Right to Education has explicitly condemned the Israeli government's actions in the Palestinian territories, characterising them as violations of the right to education.³⁰⁰
285. The relationship between education and health is well-established. According to Hyman,³⁰¹ higher levels of education correlate with better health outcomes, including increased life expectancy and reduced rates of disease. The ongoing conflict and occupation have led to significant disruptions in health education programmes, particularly in areas such as nutrition, mental health, and reproductive health.³⁰²
286. The ability to attend good educational institutions can thus contribute greatly to health literacy improvement, which in turn could help individuals make their own decisions about their physical and mental state. However, the ongoing conflict and occupation have led to significant disruptions in health education programmes, particularly in areas such as nutrition, mental health, and reproductive health.³⁰³
287. UNRWA plays a crucial role in supporting education in Palestine by providing essential educational services to Palestinian refugees, helping to mitigate some of the adverse effects of occupation.³⁰⁴ However, these efforts are being hindered by Israeli restrictions on movement and access. International funding is critical for sustaining educational programmes in the Palestinian territories, however, political considerations often complicate funding mechanisms.³⁰⁵ Despite clear international legal recognition, Israel's policies continue to systematically obstruct Palestinian self-determination.
288. Tackling these challenges demands a holistic strategy that upholds the right to education and enforces compliance with international legal commitments. The international community must take an active role in supporting Palestinian education and championing individuals' right to quality educational opportunities. Only through unified and sustained efforts can the Palestinian people achieve their right to self-determination and cultivate a thriving civilian population capable of contributing to a just and lasting peace in the region.

²⁹⁹ Article 94 of the Fourth Geneva Convention.

³⁰⁰ UN Human Rights Council, 2020. Report of the Special Rapporteur on the Right to Education.

³⁰¹ Hyman, 'Education and Health Outcomes: A Review of the Literature' (2014) 33(12) *Health Affairs* p. 2171-2178.

³⁰² World Health Organisation, 2020. Health and Education: A Global Perspective.

³⁰³ World Health Organisation, 2020. Health and Education: A Global Perspective.

³⁰⁴ UNRWA, 'What we do: Education in Emergencies' <https://www.unrwa.org/what-we-do/education-emergencies#>.

³⁰⁵ The Lancet, 2019. Funding and Education in Palestine: Challenges Ahead.

IV. LEGAL CONSEQUENCES

i. Summary of breaches

289. South Africa has detailed the obligations that Israel has in relation to the presence and activities of the UN, its agencies and bodies, as well as other international organisations and third states in and in relation to the Occupied Palestinian Territory. Israel's conduct, manifested through its ban on UNRWA and occurring in the context of its wider attacks on the UN, its personnel and its infrastructure, constitutes a measure by Israel in further breach of the following provisions of international law:

- a. Israel's obligations *vis-à-vis* the United Nations and its activities; including Articles 2(2), 2(5), 55, 56, 104 and 105 of the Charter and the Convention on the Privileges and Immunities of the United Nations;
- b. Israel's other obligations, including *erga omnes* obligations:
 - i. The baseline obligations under international humanitarian law and international human rights law,³⁰⁶ including Articles 43 and 55 of the 1907 Hague Regulations; Articles 30, 47, 49, 50, 55, 56, 59, 60 of the Fourth Geneva Convention;; International Human Rights Law, *inter alia* the right to food, right to water, right to shelter, right to health care or medical service, the right to education;
 - ii. The peremptory norm prohibiting racial discrimination and apartheid,³⁰⁷ as well as the provisions of the Apartheid Convention and the CERD;
 - iii. The peremptory norm prohibiting genocide,³⁰⁸ and the obligations under the Convention on the Prevention and Punishment of the Crime of Genocide to prevent, and not to commit, genocide;
 - iv. The peremptory norm on the right to self-determination;
 - v. The peremptory norm on the non-acquisition of territory by force,³⁰⁹ and the associated provisions of the UN Charter (Article 2(4)).
- c. Israel's obligations under the Provisional Measures orders indicated by this Court on 26 January 2024, 28 March 2024, and 24 May 2024.

290. Israel's legislative measures against UNRWA constitute part of its overarching breach of peremptory norms; and constitute a violation of the UN Charter and the General Convention. They constitute an internationally wrongful act, occurring in the context of a range of other internationally wrongful acts of broad scope and consequence.

291. In its *Legal Consequences* advisory opinion, the Court already specified that it considered Israel's overall conduct in the OPT characterised by violations of a range of *erga omnes* obligations, including Israel's respect for "the right of the Palestinian people to self-determination and the obligation arising from the prohibition of the use of force to acquire

³⁰⁶ *Legal Consequences* (2024) advisory opinion para. 274.

³⁰⁷ Commentary to Article 40 of the ILC's Draft Articles on the Responsibility of States for Internationally Wrongful Acts (2001).

³⁰⁸ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda)* (New Application) [2002] ICJ Rep para. 64.

³⁰⁹ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* (Merits, Judgment) [1986] ICJ Rep para. 190.

territory as well as certain of its obligations under international humanitarian law and international human rights law.”³¹⁰ Israel’s present measures *vis-à-vis* UNRWA add to those existing breaches.

292. South Africa notes that a number of the breaches outlined above may also constitute violations of *ius cogens* norms,³¹¹ entailing that no circumstances precluding their wrongfulness exist.³¹²

293. These breaches further give rise to two different forms of obligations outlined by South Africa below: (1) obligations *vis-à-vis* the presence and activities of the UN and its agencies in the OPT, (2) obligations with regard to the overall unlawful conduct Israel is engaged in, of which its measures aimed at the United Nations, its agencies, and its activities, are but a part. Both are outlined below.

ii. Obligations on Israel

294. Israel must immediately comply with its international obligations under the UN Charter, in particular, with the principles of the United Nations elaborated on in Articles 2(2), 2(5), 4(1), 104 and 105. Israel must uphold the privileges and immunities of the UN, its agencies, and other international organisations operating in the OPT, as guaranteed under international law and reverse its decision to expel or restrict UNRWA or other UN bodies from carrying out their mandated activities.

295. Israel must pay compensation and reparations for destruction of UNRWA facilities, such as schools, hospitals, shelters, assets, and the killings of its staff. Israel must immediately desist from all practices and policies impeding, directly or indirectly, the United Nations’ and its agencies’ activities in the OPT.

296. Israel must allow and facilitate the unhindered provision of essential supplies, including food, water, medical aid, and other humanitarian assistance, for the survival of the Palestinian civilian population. This includes ensuring the smooth operation of UNRWA, other UN agencies, international organisations, and humanitarian actors in the OPT. UN agencies, subsidiary organs and international organisations must urgently be granted access to render relief to the Palestinian population to ensure access to basic services, medical, food, and psychological assistance at scale.

297. As Israel’s attacks on UNRWA, including its legislative ban, are part and parcel of its overall unlawful conduct in the OPT, South Africa invites the Court to reiterate Israel’s obligations in that regard. It is South Africa’s view that Israel is under an obligation to immediately end its unlawful occupation, policies and practices which impede the right of Palestinians to self-determination and reverse all laws, conduct and practices which seek to alter the status of East Jerusalem, including its demographic composition, legal status and to comply with all UN Resolutions, particularly Security Council Resolution 2334 of 2016.

³¹⁰ *Legal Consequences* advisory opinion para. 274.

³¹¹ See the ILC’s Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) 2022, specifically draft conclusion 23 and its Annex, which lists *inter alia*: the prohibition of genocide; basic rules of international humanitarian law; racial discrimination and apartheid; torture; and the right of self-determination.

³¹² Article 26 of the ILC’s Draft Articles on the Responsibility of States for Internationally Wrongful Acts, (2001).

298. Israel is to cease and desist from denying Palestinians their rights under international humanitarian law and international human rights law; return property that has been seized from them, as well as facilitate the return of Palestinians who have been evicted from their homes, lands, cities, and villages, including their descendants; and respect the Palestinian people's right to self-determination, including the right to an independent Palestinian State. Israel must compensate and pay reparations to Palestinians who have lost their moveable and immovable property. Israel must cooperate fully with the United Nations in that regard.
299. As the Occupying Power, Israel must govern the OPT in a manner consistent with its obligations under IHL and IHRL that prioritise the well-being of the Palestinian population. In this respect, it must render humanitarian assistance to the inadequately supplied OPT population in accordance with Article 43 of the 1907 Hague Regulations, and the following Fourth Geneva Conventions provisions: Articles 1, 30, 50, 55, 56, as well as such obligations arising from customary international law.
300. Israel must also allow those UN agencies or UN-mandated bodies competent to investigate the lawfulness of its actions in the OPT to be present and conduct their relevant activities in the OPT.
301. Israel must adhere to the Charter, international humanitarian law, international human rights law, and relevant UN Resolutions, including those of the General Assembly, Security Council, and Human Rights Council.
302. It must also immediately rescind its legislation and measures which constitute a breach of Article 3 of CERD.
303. Israel must immediately comply with the Court's provisional measures Orders in *South Africa v Israel*, and various Resolutions of the General Assembly and Security Council in relation to its actions in Gaza and in the West bank. Israel must halt its commission of genocide, and act to fully prevent and punish genocide.

iii. Obligations on the United Nations

304. The United Nations and its bodies are under a duty not to recognise Israel's internationally wrongful acts, such as its unlawful eviction of UNRWA from East Jerusalem, its unlawful occupation, annexation, system of racial discrimination and apartheid, and its unlawful exercise of powers reserved for a legitimate sovereign occupied Palestinian territory.
305. The UN and its agencies, including UNRWA, must continue to provide aid, essential services, and development assistance to Palestinians in the OPT, despite Israeli restrictions. The UN must demand and negotiate for the removal of barriers to humanitarian access imposed by Israel. The UN must operate within the framework of international humanitarian law, human rights law, and relevant General Assembly and Security Council Resolutions.
306. United Nations publications, maps, and pronouncements must be consistent with international law and all UN Resolutions. Furthermore, the United Nations must refrain from explicitly or implicitly recognising Jerusalem as the "capital of Israel" in any declaration or action taken by the UN.

307. The UN and its Member States must ensure accountability for the most serious crimes under international law through appropriate, fair and independent investigations and prosecutions at the national or international level, and ensure justice for all victims and the prevention of future crimes. They must continue to seek access to the OPT in order to adequately discharge those obligations. These obligations include the obligation to use all means available to them to prevent and punish genocide.

308. Pursuant to General Assembly Resolution ES-10/24 of 18 September 2024, the UN must establish an international mechanism for reparation for all damage, loss or injury arising from the internationally wrongful acts of Israel in the Occupied Palestinian Territory, and to create an international register of damage to serve as a record, in documentary form, of evidence and claims information on damage, loss or injury to all natural and legal persons concerned, as well as to the Palestinian people, caused by the internationally wrongful acts of Israel in the Occupied Palestinian Territory, as well as to promote and coordinate evidence-gathering and initiatives aimed at securing such reparation by Israel.

iv. Obligations on Third States

309. Third States must adhere to the non-recognition of unlawful acts by Israel, may not aid or assist such acts, and must ensure the protection of the privileges and immunities of UN bodies, agencies, and humanitarian organisations working in the OPT. At the very least, this entails third States may not recognise as lawful or aid or assist in Israel's attempt to prevent UNRWA from exercising the functions mandated to it by the General Assembly, and its attempts to shutter the organisation. Similarly, third States may not recognise as lawful or aid and assist in Israel's overall infringements on the privileges and immunities of the UN and its agencies, and in its prevention and restriction on the provision of humanitarian relief by such agencies, including the movement of personnel; or its attempts to gather evidence and document Israel's violations of the rights of the protected persons.

310. Third states are also obliged, in terms of Common Article 1 of the Geneva Conventions, respect and to ensure respect'' for the Geneva Conventions. This creates an obligation on third states to take measures to end violations of the Geneva Conventions both domestically and internationally but also to prevent the occurrence of these violations.³¹³ This formed a component of the General Assembly's Resolution 45/69 of December 1990 where the General Assembly called upon all States party to the Fourth Geneva Convention to ensure that Israel respects the Convention "in all circumstances, in conformity with their obligation under article thereof".³¹⁴

310. It was outlined that the UNRWA ban, amongst other action by Israel, violates IHL. Third States must also cooperate to bring Israel's wrongful acts, including its banning of UNRWA, to an end.

³¹³ Common Article 1 of the Fourth Geneva Convention; Knut Dormann and Jose Serralvo, 'Common Article 1 to the Geneva Conventions and the obligation to prevent international humanitarian law violations' (2014) 96 *International Review of the Red Cross* 895/896 707.

³¹⁴ UNGA Res 45/69 (6 December 1990) UN Doc A/RES/45/69.

311. In light of the abovementioned obligations and Israel's attempt to prevent UNRWA's operating in the OPT in violation of *inter alia* the UN Charter, the Convention on the Privileges and Immunities of the United Nations, IHL, IHRL, CERD, the Genocide Convention; and in light of Israel's further attacks on and attempts to shutter UNRWA, including in the public media, third states must consequently – on a basis of means – ensure continued funding for UNRWA so as to enable the Agency to carry out the mandate it is entrusted with by the UN General Assembly.
312. Third States must act to fully implement, without delay, General Assembly Resolutions 194 (1948) and 302 (1949) and Security Council Resolution 73 (1949) which affirm the right of Palestinian to return to their homes and live at peace with their neighbours, at the earliest practicable date, and to take measures to ensure Israel pays compensation for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the State of Israel.
313. Third States must not recognise or aid and assist in Israel's unlawful annexation and exercise of powers reserved for a legitimate sovereign over the Occupied Palestinian Territory and must address Israel's continued violations of international law, cooperate to end Israel's prolonged unlawful occupation in the Palestinian territory and support and assist the Palestinian people in their realisation of their right to self-determination and actively pursue steps to ensure full implementation of the advisory opinion of the Court in July 2024 and of all relevant United Nations Resolutions.
314. Third States must consequently also take all necessary steps to ensure that their nationals, companies and entities under their jurisdiction, as well as their authorities, do not act in any way that entails recognition or provides aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory, or in recognising as lawful or aiding and assisting in Israel's other wrongful acts in the OPT, outlined in section IV (i) Summary of breaches. For example, third States must ensure their natural and legal persons are not engaged in any business activity involving the operation and control of crossings into the OPT implementing Israeli-imposed unlawful restrictions on the entry of humanitarian relief by the United Nations and the entry of its personnel, or Israeli attempts at forced transfer of the Palestinian population.
315. Third States are obliged to prevent provision or transfer of arms, munitions and related equipment to Israel, in all cases where there is a clear risk that such arms and related items might be used to commit or facilitate violations of humanitarian law, international human rights law, or the prohibition on genocide in compliance with their international obligations and consistent with the Court's advisory opinion of 19 July 2024 and the UN General Assembly Resolution A/RES/ES-10/24.
316. In light of its continued unlawful occupation, and extensive range of associated wrongful practices and policies, all such equipment used by Israel in its activities in the OPT carries such risk. This includes military equipment or dual use goods exported to Israel where there is a risk such goods are used to monitor or fortify Israeli military installations and checkpoints in or into the OPT where Israel enforces its unlawful restrictions on goods and people, including for the purposes of preventing humanitarian assistance of reaching the population or the forced transfer of the population by prohibiting their return.

317. Third States must support evidence gathering and accountability efforts for all victims of war crimes, crimes against humanity and acts of genocide in the Occupied Palestinian Territory.

318. Given the level of destruction in Gaza and the precarious situation of the Palestinian population across the OPT, third States must on a means basis provide financial, logistical, and diplomatic support to ensure the continuation of humanitarian and development assistance in the OPT.

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VP Madonsela

Ambassador Extraordinary and Plenipotentiary to the Kingdom of the Netherlands

**FOR AND ON BEHALF OF THE GOVERNMENT
OF THE REPUBLIC OF SOUTH AFRICA**

DATE:.....