

**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**

**(REQUEST FOR ADVISORY OPINION)**



**WRITTEN STATEMENT OF THE PLURINATIONAL STATE  
OF BOLIVIA**

**28 FEBRUARY 2025**

## Introduction

1. The Plurinational State of Bolivia ("**Bolivia**") submits this Written Statement in accordance with the Court's Order of 23 December 2024, to assist the Court in relation to the question submitted to it by the General Assembly in resolution 79/232.
2. In its resolution, the General Assembly requested 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. Bolivia brings to the Court's attention the grave and deteriorating humanitarian situation within the Occupied Palestinian Territory, covering the Palestinian Gaza and West Bank, including East Jerusalem, occupied by Israel since 1967 ("**OPT**"). Reports paint a stark picture of widespread suffering, with statistics revealing alarming rates of poverty, food and water insecurity, and limited access to essential healthcare services. The ongoing conflict, coupled with restrictions on movement and access, has created conditions that demand urgent and sustained attention.
4. As a tangible demonstration of its deep concern and commitment to alleviating the escalating humanitarian crisis, the government and the people of Bolivia undertook a significant effort to dispatch 90 tons of urgently needed aid to Gaza in December 2023. The shipment successfully completed its arduous sea voyage, arriving at the port of Alexandria, Egypt, in May 2024. This consignment included essential medicines to address critical healthcare needs, basic foodstuffs to combat widespread food insecurity, and clean spring water to alleviate the severe water scarcity plaguing the region. This aid, representing a substantial investment and a symbol of the Bolivian solidarity with the Palestinian people, was delivered officially by Bolivian authorities to the Egyptian Red Crescent, a trusted and experienced humanitarian actor, for transfer according to the Protocols established with the Palestinian Red Crescent Society, responsible for the final distribution within the population in Gaza.<sup>1</sup>
5. However, despite the significant resources invested, and the successful completion of the initial stages of the delivery process, this vital aid has yet to reach its intended recipients within Gaza due to the serious impediments and restrictions on entry of humanitarian aid established illegally by Israel. This stark reality serves as troubling illustration of the pervasive and often insurmountable obstacles imposed on humanitarian access to the territory, underscoring the urgent need for the Court to address the legal obligations of Israel to ensure the unhindered flow of life-saving assistance to the civilian population.
6. Central to the question before this Court is the treatment of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Established by the UN General Assembly in 1949, UNRWA is the primary provider of essential services to

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<sup>1</sup> Bolivia sent 90 tons of humanitarian aid to Gaza in May 2024, consisting of 2804 boxes of medicines, 320 sacks of flour, 2047 bottles of water (7.5 liters each), 250 boxes containing bottles of cooking oil, 246 boxes containing powdered milk, and 320 sacks of rice.

Palestinian in the OPT. These services, including education for over half a million children, primary health care for two million patients, as well as relief and emergency response, are critical for the survival and well-being of a vulnerable population.

7. However, UNRWA's ability to fulfil its mandate is now under direct threat. In October 2024, the Israeli Knesset passed legislation designed to effectively dismantle UNRWA's operations within Israeli-controlled territories.<sup>2</sup> The legislation, which came into effect on January 30, 2025, prohibit Israeli authorities from contacting UNRWA and ban the agency from operating in what Israel defines as its "sovereign territory", a definition that includes occupied East Jerusalem.
8. The consequences of these actions are far-reaching and deeply concerning. As UNRWA Commissioner-General Philippe Lazzarini stated, the "no-contact policy" will dismantle the mechanisms ensuring the security of humanitarian operations.<sup>3</sup> Furthermore, the denial of visas to international staff will force their withdrawal, undermining the Agency's capacity to deliver essential services. These measures will severely impede the humanitarian operation in the OPT, further exacerbating the already dire conditions, and lead to a collapse in the provision of essential aid and support to the Palestinian population.
9. Bolivia is aware that Israeli politicians have long criticized UNRWA, with some claiming that members of the agency collude with Hamas. Those claims, which are denied by the agency, have grown louder since the 7 October 2023 Hamas-led attacks on Israel. An independent UN review confirmed in April 2024 UNRWA's long-standing commitment to uphold the principle of neutrality.<sup>4</sup> Even assuming, *arguendo*, the veracity of the claims, the legislation's sweeping restrictions on all of UNRWA's operations are grossly disproportionate and will severely and unlawfully impede the delivery of vital humanitarian assistance.
10. In furtherance of these concerns, Bolivia's Written Statement will proceed as follows: Following this introduction, **Part I** will demonstrate that the Court has jurisdiction to render an advisory opinion on the question posed by the General Assembly and that no compelling reasons exist to decline this essential function. **Part II** will establish that the illegality of Israel's presence in the OPT, rooted in violations of the Palestinian people's right to self-determination and the *jus ad bellum*, necessitates the immediate termination of the occupation. **Part III** will detail Israel's specific obligations as a member of the United Nations, including the duty to cooperate with the UN, respect the privileges and immunities of UN personnel, and guarantee their safety. **Part IV** will articulate Israel's responsibilities under the Fourth Geneva Convention, which mandates the Occupying Power to ensure the food and medical supplies of the population, allow relief consignments, and maintain medical establishments and services. The Statement concludes with a summary of Bolivia's position.

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<sup>2</sup> For an English translation, see <https://main.knesset.gov.il/en/news/pressreleases/pages/press291024q.aspx> (last accessed 27 February 2025).

<sup>3</sup> Remarks by Philippe Lazzarini, UNRWA Commissioner-General at the Third Meeting of the Global Alliance for the Implementation of the Two-State Solution UNRWA Commissioner-General Statement, 15 January 2025, available at <https://www.unrwa.org/newsroom/official-statements/remarks-philippe-lazzarini-unrwa-commissioner-general-third-meeting> (last accessed 27 February 2025).

<sup>4</sup> Final Report: Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality – Independent Review Group on UNRWA, available at <https://www.un.org/en/situation-in-occupied-palestine-and-israel/allegations-against-unrwa-staff> (last accessed 27 February 2025).

## I. Jurisdiction and discretion

11. Bolivia submits that the Court possesses the requisite jurisdiction to render an advisory opinion on the question posed by the General Assembly. Article 65, paragraph 1, of the Statute of the Court states 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”. The General Assembly, under Article 96, paragraph 1, of the Charter, is authorized to request such opinions on any legal question.
12. As regards jurisdiction, it is necessary that the advisory opinion requested be on a “legal question”.<sup>5</sup> The question presented by the General Assembly is manifestly a legal one. It concerns the obligations of Israel, as an Occupying Power and a member of the United Nations, under international law.
13. Article 65, paragraph 1, of the Statute grants the Court discretionary power, but this power must be exercised judiciously, recognizing the Court’s role as the principal judicial organ of the United Nations.<sup>6</sup> As the Court has stated, its answer to a request for an advisory opinion “represents its participation in the activities of the Organization, and, in principle, should not be refused”.<sup>7</sup> Refusal to answer a request should be reserved for exceptional circumstances where “compelling reasons” exist.<sup>8</sup>
14. Bolivia submits that no compelling reasons exist for the Court to exercise its discretion not to exercise its jurisdiction, and does not find it necessary to address each and every potential objection in detail. That said, it will address the two potential concerns relating to the Court’s discretion power, demonstrating their lack of merit in this instance.
15. First, Bolivia acknowledges requests for advisory opinions may be said to be as an attempt to circumvent the principle of consent to judicial settlement. In this case, the request may be seen as relating to either a dispute between Israel and Palestine regarding the legality of Israel’s actions in the OPT, or to a dispute between Israel and the United Nations regarding the privileges and immunities of the UN and its agencies, including UNRWA. Either view would amount to a mischaracterization of the request.
16. On the one hand, the General Assembly’s request transcends a purely bilateral matter between Israel and Palestine, addressing broader issues of international law. On the other hand, while Article VIII, Section 30 of the General Convention on the Privileges and Immunities of the United Nations<sup>9</sup> (“**General Convention**”) provides a mechanism for

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<sup>5</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, pp. 112-113, paras. 55-62.

<sup>6</sup> *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 71; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, I.C.J. Reports 1999 (I), pp. 78-79, para. 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (“**Wall Advisory Opinion**”), Advisory Opinion, I.C.J. Reports 2004 (I), p. 156, para. 44; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019 (I), p. 113, para. 65; *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*, Advisory Opinion, I.C.J. Reports 2024, Advisory Opinion, (“**OPT Advisory Opinion**”) para. 30.

<sup>7</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019 (I), p. 113, para. 65.

<sup>8</sup> See *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019 (I), p. 113, para. 65; see also *OPT Advisory Opinion*, paras. 30-31.

<sup>9</sup> Convention on the Privileges and Immunities of the United Nations (adopted 13 February 1946, entered into force 17 September 1946) 1 UNTS 15.



binding advisory opinions where “the opinion given by the Court shall be accepted as decisive by the parties”, the present request is formulated as a non-binding advisory opinion. As the Court clarified in *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, the resolution requesting the advisory opinion must explicitly reference Section 30 to invoke that binding mechanism. The General Assembly has made no such reference.<sup>10</sup>

17. The fact that the question posed nonetheless relates to the applicability of substantive provisions of the General Convention in a concrete case does not turn the matter into a contentious one. The nature and purpose of the present proceedings are to seek advice on the applicability and interpretation of international law, and not to bring a dispute before the Court for binding determination. With its request, the General Assembly seeks clarification on the legal framework governing Israel’s actions in the OPT, including its obligations towards the UN, including UNRWA. This clarification is necessary for the General Assembly to effectively exercise its functions under the UN Charter.
18. Second, Bolivia acknowledges that the present request may be viewed, as others before it have, as potentially prejudicial to the negotiation process between Israel and Palestine. This view, too, would be mistaken. While there is no denying that the Court’s opinion will have relevance for further negotiations,<sup>11</sup> the Court has consistently declined to speculate as to the effects of its opinion and regard them as a compelling reason to decline to respond to a request by a competent organ.<sup>12</sup>
19. Furthermore, while a ceasefire agreement has been reached, its implementation remains fragile, with reports of ongoing violations and disputes regarding the respect of its terms. The humanitarian situation in Gaza remains dire, with the vast majority of the population displaced, essential services severely disrupted, and the activities of UNRWA curtailed. In this context, the Court’s opinion would clarify the relevant legal framework, thereby strengthening the foundation for further negotiations. Thus, this concern does not constitute a compelling reason to decline to answer the General Assembly’s request.
20. In conclusion, Bolivia submits that the Court possesses the necessary jurisdiction and that no compelling reasons exist to decline to render an advisory opinion on the questions posed by the General Assembly. The Court’s opinion is essential to clarifying the legal obligations of Israel in the OPT, and it would provide valuable guidance to the General Assembly with reference to its own responsibilities regarding the OPT.<sup>13</sup>

## **II. The illegality of Israel’s presence in the OPT and the right to decide on entry and activities**

### ***A. Conduct-regulatory legal framework***

21. The legality of the *conduct* of Israel’s presence in the OPT is regulated by international humanitarian law (“**IHL**”) generally, occupation law in particular, and (on the basis of extraterritorial application) international human rights law (“**IHRL**”), including the law of genocide, and international environment law. Additionally, rules specific to Israel’s

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<sup>10</sup> See *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, Advisory Opinion, I.C.J. Reports 1989, p. 190, para. 34.

<sup>11</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996 (I), p. 237, para. 17.

<sup>12</sup> See *OPT Advisory Opinion*, paras. 38-40.

<sup>13</sup> See also *OPT Advisory Opinion*, para. 36.

relations with other States, and international organizations generally, and the United Nations in particular, are, where relevant, applicable.

22. According to the aspects of the framework regulating Israel's conduct (including, but not limited to, occupation law) triggered on the particular basis of Israel's exercise of effective overall control of the OPT, Israel is obliged to provide a general regime of administration in the OPT through which the rights of the Palestinian people, and the environment, are protected, including through the preservation of order. Other humanitarian and environmental obligations not specifically triggered in situations of effective overall control also apply.
23. Some of these obligations can sometimes be balanced, to a certain extent, with considerations of military necessity. The legal regimes specific to Israel's relations with States and international organizations also regulate the position of these international legal persons in the OPT as far as Israel's treatment of them there is concerned.
24. Overall, the application of this legal regime leads to a position whereby Israel is required, in certain circumstances, to permit access to, and not restrict the presence and activities within, the OPT, including for the purpose of providing humanitarian assistance, on the part of States and international organizations. Bolivia does not dispute that the requirement is not absolute and that a certain degree of restriction on access, presence, and activities may be permissible in certain circumstances, including for reasons of public order and military necessity. This is set out in further detail in Parts III and IV.

## ***B. Presence-existence legal framework***

### *1. Meaning and application*

25. The legality of the *existence* of Israel's presence in the OPT is determined by the law of self-determination and the *jus ad bellum*. The outcome of the application of this law is that, as the present Court determined in the *OPT* Advisory Opinion, in a ruling endorsed and adopted by the General Assembly, the Israeli presence is, in and of itself, illegal.<sup>14</sup>

### *2. Consequences of illegality of presence*

#### *a) Israel must immediately terminate its presence in the OPT*

26. An essential legal consequence for Israel of the illegality of its presence in the OPT is the duty of *cessation*: the illegality must end, which in this case means Israel must end its presence to end this act and so end the legal violations.<sup>15</sup> This duty is vital. Not only is it a necessary step on the path to eliminating the consequences of Israel's wrongful conduct. Also, it safeguards the continuing validity and effectiveness of the rules that have been violated. In this way, in the words of the Commentary to the ILC Articles on State Responsibility, it "protects both the interests of the injured State or States and the

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<sup>14</sup> *OPT Advisory Opinion*, p. 71, paras. 261-262 and p. 78, operative paragraph (3); Advisory opinion of the International Court of Justice on the legal consequences arising from Israel's policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and from the illegality of Israel's continued presence in the Occupied Palestinian Territory, UN Doc. A/ES-10/L.31/Rev.1, 13 September 2024, (hereinafter GA Res. A/ES-10/L.31), para. 2 (124 votes in favour, 14 votes against, 43 abstentions and 12 members not voting).

<sup>15</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *International Law Commission*, 2001, (hereinafter 'ARSIWA'), Article 30(a).

international community as a whole in the preservation of, and reliance on, the rule of law”.<sup>16</sup>

27. Fundamentally, this means Israel is under an obligation to withdraw its presence entirely from the OPT immediately. The right of self-determination being violated by the existence of the occupation is to be realized immediately, since the right itself is an immediate, automatic entitlement to freedom, without preconditions. This realization cannot therefore be made subject to any qualifications, in terms of its temporal character, on any basis. There is, then, no valid legal basis on which Israel can avoid a requirement to terminate the occupation immediately.
28. This position was affirmed by the Court and the UN General Assembly. In the *OPT Advisory Opinion*, the Court, having, as indicated, determined that the Israeli presence in the OPT was illegal, went on to stipulate that it must be brought to an end “as rapidly as possible”.<sup>17</sup> The General Assembly, as well as endorsing, as indicated, this determination of illegality, stipulated that the presence should be brought to an end “without delay”, and “no later than 12 months” from 13 September 2024.<sup>18</sup>
29. This requires a complete and total end to the Israeli presence and exercise of control and authority in and over the OPT. It includes personnel, notably the armed forces, and infrastructure and technology, notably checkpoints and surveillance. It also requires Israel to immediately terminate all political, administrative, and legal arrangements purporting to apply in and exercise authority over the OPT, including ceasing to apply laws, jurisdiction, and administration.

*b) Continuing Israeli presence is illegal and Israel lacks any valid legal authority to do anything in the OPT*

30. Insofar as Israel maintains its unlawful presence in the OPT, all exercise of authority by it there constitutes the operation of an illegal presence and is therefore itself illegal and must be immediately terminated. Consequently, Israel lacks any legal entitlement to do anything in the OPT.
31. Only the Palestinian people as a self-determination unit, and the State of Palestine, have the legal right to operate an administrative presence in and, more generally, exercise internationally-legal-valid authority with respect to, the OPT.

*c) Israel's actions in the OPT are invalid but this does not vitiate the rights of third parties*

32. A basic postulate of law is that actions which are unlawful are invalid—without legal effect. The illegal nature of Israel's presence in the OPT necessarily means that, as a general matter, everything Israel has done and is doing there—including, in the case of certain parts of the West Bank, decisions involving the full-spectrum of territorial administration matters, from the question of land ownership to issues of cultural heritage—on whatever basis (including, potentially, an ostensibly purportedly sovereign basis, notably in the case of East Jerusalem) is legally invalid.
33. Notwithstanding this invalidity, certain actions by Israel in the OPT, which have implications for the rights of third parties—individuals, other States, and international

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<sup>16</sup> ARSIWA, *supra*, Part Two, Ch. I, Article 30 Commentary, para. 5.

<sup>17</sup> *OPT Advisory Opinion*, on existential illegality: p. 72, paras. 261-2 and p. 78, operative para. 3; on ending the presence: p. 73, para. 267 and p. 78, operative para. 4.

<sup>18</sup> GA Res. A/ES-10/L.31, para. 2.

organizations—are not invalid in the sense that they will not taint the rights purportedly created for the third parties concerned, *provided that the enjoyment of these rights by these third parties is compatible with the applicable legal framework*.<sup>19</sup>

34. The right to enter, and be present and conduct activities in, the OPT, is often determined by Israel both *de facto*, and on the basis of purported *de jure* authority, including pursuant to the conduct-regulatory framework and, at least in the case of East Jerusalem, an unlawful purported assertion of sovereignty. These determinations are an expression of an unlawful exercise of authority. Consequently, they are invalid.
35. Pursuant to their general entitlements with respect to the OPT, the representatives of the Palestinian people, including the State of Palestine, have the legal right to give permission for external actors to enter, be present, and conduct activities there. If it is given, the entry, presence and activities covered by it are pursuant to valid legal permission, and whether or not Israel also authorized them is irrelevant. Absent Palestinian permission, the entry, presence and activities of external actors takes place in the absence of any consent by an internationally-legally-valid authority
36. In reality, the opportunities for Palestinian representatives to determine whether to grant such consent are limited. Indeed, the Israeli presence in the OPT is inherently concerned with depriving the Palestinian people of control over their own territory, and vesting such control in Israel. In practice, the presence of external actors is going to often depend exclusively on Israeli permission.
37. It bears recalling that the presence and activities of external humanitarian actors in the OPT is especially significant *precisely* because of the negative impact of the Israeli presence on the legal rights of the Palestinian people, including their right to self-determination. This includes UNRWA providing a wide range of basic services; this Agency, other organizations and States providing humanitarian relief; and foreign States operating diplomatic missions to the State of Palestine, including as a means of shoring up Palestinian statehood in international law through recognition practice.
38. It follows that the entry, presence and activities of States and international organizations in the OPT, in the absence of permission by (and with no objection to) the representatives of the Palestinian people, including the State of Palestine may not amount to a violation of the sovereignty and rights vested in the Palestinian people and the State of Palestine, provided the presence exists on the basis of, and the activities are compatible with, the applicable international legal framework, including the human rights of the Palestinian people, in particular their right of self-determination, and the sovereign rights of the State of Palestine.
39. Any State or international organization whose entry to, presence, or activities in the OPT fails to conform to the framework outlined above will be acting unlawfully. This would include diplomatic missions, such as those in East Jerusalem, operating as if in Israeli territory, or representing a State to Israel. Such missions would fundamentally violate the right of self-determination of the Palestinian people and the sovereignty of the State of Palestine.

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<sup>19</sup> Cf. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, I.C.J. Reports 1971, p. 56, para. 125, cited in *OPT Advisory Opinion*, para. 278.



3. *Significance of the foregoing to the issue of restrictions on entry, presence and activities of States and international organizations*

40. Only the Palestinian people, and the State of Palestine, have the right to regulate entry, presence, and activities within the OPT. Conversely, insofar as Israel operates, from within the OPT, restrictions on entry to, and presence and activities within, the OPT on the part of any actor, including other States and international organizations, it exercises authority as part of its presence in the OPT—in itself a violation of the international law of self-determination and the *jus ad bellum*. Israel has no right under international law to operate such restrictions—in fact, it must remove them, and any it continues to operate will be illegal, legally invalid, and must be terminated.
41. This invalidity applies equally to “permissions” granted by Israel. To determine Israel’s obligations regarding the presence of States and international organizations in the OPT, the Court must first address the gateway question of who possesses the legal authority to control entry into and activities within this territory. This authority rests solely with the Palestinian people and the State of Palestine, not Israel. Consequently, entities may lawfully enter, be present in, and conduct activities within the OPT when, first, representatives of the Palestinian people, including the State of Palestine do not object; and, second, their presence operates within the general international legal framework, particularly concerning Palestinian human rights, including self-determination, and the sovereign rights of the State of Palestine.

***C. Comparing the presence-existence and conduct-regulatory legal frameworks***

42. The illegal nature of Israel’s presence in the OPT as a matter of the *jus ad bellum* and the right of self-determination makes no difference to the applicability of the conduct-regulatory framework. The *jus in bello* in general, and occupation law in particular, applies irrespective of the legality of the use of force under the *jus ad bellum*.
43. All that said, the fact that the occupation constitutes a violation of the *jus ad bellum* and the law of self-determination fundamentally alters Israel’s legal position regarding restrictions on entry, presence, and activities of States and international organizations in the OPT. While the conduct-regulatory framework might permit or even require certain restrictions in specific circumstances, any exercise of authority by Israel within the OPT—even authority seemingly legitimate under that framework—remains unlawful under the *jus ad bellum* and the law of self-determination. The illegality of Israel’s very presence supersedes any authority it might claim under the conduct-regulatory framework.
44. The alternative approach to this issue, which would focus on the conduct-regulatory framework exclusively, is only possible if the *jus ad bellum* and the law of self-determination are somehow disregarded. Such an approach would be tantamount to reasoning, with regard to the *jus in bello*, in *jus in bellum* terms: an occupation would be lawful so long as it complies with occupation law and other components of the conduct-regulatory legal regime.
45. But this is not the position when the *jus ad bellum* and the law of self-determination are applied. In the *OPT Advisory Opinion*, the Court held that Israel was violating the conduct-regulatory framework in its conduct of the occupation.<sup>20</sup> It *also* held, as indicated, that Israel was violating the *jus ad bellum* and the law of self-determination in

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<sup>20</sup> *OPT Advisory Opinion*, Section V.

the very maintenance of the occupation itself.<sup>21</sup> By concluding that Israel must end its presence as rapidly as possible, the Court established that compliance with the conduct-regulatory framework alone is insufficient. Even if Israel eliminated all violations of that framework, it would still be acting unlawfully simply by maintaining its presence. This fundamental illegality takes precedence over any entitlements Israel might claim under the conduct-regulatory framework. The Court found that the occupation must end despite certain permissive elements within the regulatory framework, thereby confirming this hierarchical relationship between these bodies of law.

46. 'Presence' is a totalizing word, which includes any activity by Israel in the OPT concerned with restricting the entry, presence and activities of States and international organizations there. If the overall conclusion reached by the Court, having taken into account *both* the conduct-regulatory framework (including, therefore, any entitlements Israel may have under it) *and* the *jus ad bellum* and the law of self-determination, was that this presence is illegal, and should, therefore, end, then implicitly an answer has been given to the question of whether, *all relevant areas of law taken into account*, Israel has, in the final analysis, any valid entitlement in international law to restrict the entry, presence and activities of States and international organizations in the OPT. The answer is, unequivocally, no.

#### **D. Conclusion**

47. As the remainder of this Written Statement will demonstrate, Israel has obligations to States and international organizations in relation to entry to, and presence and activities of these actors within, the OPT, and to these and other external actors, to allow humanitarian access in certain circumstances.
48. But, more fundamentally, Israel has obligations to the Palestinian people and the State of Palestine derived from the *jus ad bellum* and the law of self-determination. These obligations require Israel to terminate its presence in the OPT. As a consequence, Israel must remove any restrictions it operates within the OPT on the entry, presence, and activities of external actors, including for the purposes of providing humanitarian assistance.
49. Any such continuing restrictions, including those which are lawful in terms of the conduct-regulatory legal framework, will be illegal and invalid. States and international organizations are entitled to enter, and be present and conduct activities in, the OPT, regardless of whether or not they have been purportedly granted (what is legally-invalid) 'permission' to do so by Israel, provided that there is no objection to this by the representatives of the Palestinian people, including the State of Palestine, and their presence in the OPT operates on the basis of, and is compatible with, the applicable international legal framework, notably when it comes to the legal human rights of the Palestinian people, including the right of self-determination, and the sovereign rights of the State of Palestine.

### **III. Israel's Obligations Regarding the Presence and Activities of the UN, Other International Organizations, and Third States in the OPT**

50. Israel has obligations concerning the presence and activities of the United Nations, international organizations, and third States in and in relation to the Occupied Palestinian

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<sup>21</sup> *Ibid.*, Section VI.

Territory (OPT). These obligations derive, first, from Israel's status as a Member of the United Nations under the UN Charter and relevant international law; and, second, from its position as an Occupying Power.

### ***A. Obligations of Israel as a Member of the United Nations***

#### *1. Duty to cooperate with the United Nations*

51. Under article 2(5) of the UN Charter, Israel "shall give the United Nations every assistance in any action it takes in accordance with the present Charter".
52. This obligation has been raised mainly in the context of enforcement actions mandated by the UN Security Council, including the latest Resolutions 2728 (2024), 2712 (2023), and 2720 (2023), which demands "the lifting of all barriers to the provision of humanitarian assistance at scale" in the entire Gaza Strip.<sup>22</sup> Article 2(5) was also recalled in the 1971 *Namibia Advisory Opinion*, in which the Court rejected the proposition that only Security Council Chapter VII Resolutions would bind member States, instead looking to the presence of binding language in the relevant resolution.<sup>23</sup>
53. Article 2(5) has also found applications in other contexts. In the 1949 *Reparations Advisory Opinion*, the Court interpreted this obligation broadly to  

[...] stress the importance of the duty to render to the Organization "every assistance" which is accepted by the Members in Article 2, paragraph 5, of the Charter. It must be noted that the effective working of the Organization-the accomplishment of its task, and the independence and effectiveness of the work of its agents require that these undertakings should be strictly observed.<sup>24</sup>
54. Under article 56 of the UN Charter, Israel pledged "to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55". Those purposes include the creation of solutions of international economic, social, health, and related problems and universal respect for, and observance of, human rights and fundamental freedoms for all. The co-operation required by Article 56 extends to co-operation with UNRWA.

#### *2. Obligation to respect ICJ provisional measures, as well as to respect the law as indicated by ICJ Advisory Opinions*

55. Israel is under a clear obligation to comply with the orders for provisional measures issued by the Court in the case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*. The Court required that Israel "take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip".<sup>25</sup> That obligation extends to the acceptance of aid and services provided by UNRWA, as well as those provided by third States and impartial aid organizations.

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<sup>22</sup> Security Council Resolution 2728, UN Doc. S/RES/2728 (2024), 25 March 2024.

<sup>23</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p.53, para. 116; M. Wood and E. Sthoeger, *The UN Security Council and International Law* (2022), p. 31.

<sup>24</sup> *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, I.C.J. Reports 1949, p. 183.

<sup>25</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order of 26 January 2024, I.C.J. Reports 2024, *dispositif*.

56. ICJ advisory opinions are not binding but are authoritative declarations of the law. The law that the Court applies is binding by the force of the law itself. States are obliged to respect the law. The effects of an advisory opinion can extend beyond its immediate subject matter, including by influencing the interpretation and application of international law.<sup>26</sup>

### *3. Obligations to respect privileges and immunities*

#### *a) Israel's obligation to recognize UNRWA's domestic legal personality*

57. First, Israel is under an obligation to recognize UNRWA's legal personality. Under Article 104 of the UN Charter, Israel is under the obligation to grant to the United Nations all legal capacities as may be necessary for the exercise of its functions and the fulfilment of its purposes. Article 1 of the Convention on the privileges and immunities of the United Nations also requires Israel to grant domestic legal personality to the organization. Israel acceded to the General Convention in 1949, without reservations or declarations.
58. As a subsidiary organ of the General Assembly, UNRWA enjoys the domestic legal personality granted to the United Nations. UNRWA is not a separate legal entity from the UN and Israel cannot therefore deny UNRWA's domestic legal personality without denying the domestic legal personality of the United Nations. The possession of UN's domestic legal personality, encompassing UNRWA, is also implicit in the 1967 Israel-UNRWA agreement to fulfil its mandate.<sup>27</sup>

#### *b) Israel's obligation to respect UNRWA's immunities*

59. Similarly, Israel is obliged to respect the privileges and immunities of the United Nations, based on the United Nations Charter and the General Convention. The 1967 Israel-UNRWA agreement merely refers to the General Convention to guarantee privileges and immunities already established there.
60. Article 105 of the United Nations Charter establishes a system of functional immunities, limiting the scope of the immunities to those "necessary for the fulfilment of its purposes". Conversely, the General Convention provides for absolute immunities. Article 2 of the Convention grants "immunity from every form of legal process" and establishes the inviolability of United Nations premises.

### *4. Obligations to respect privileges and immunities of United Nations personnel*

61. The legal framework governing the immunities of UNRWA personnel rests on two fundamental pillars within the General Convention.
62. Article V, Section 18 of the General Convention establishes that United Nations officials shall enjoy immunity from legal process for all acts performed in their official capacity. The protection extended to experts on mission under Article VI, Section 22.

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<sup>26</sup> See *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, Preliminary Objections, ITLOS Special Chamber Judgment of 28 January 2021, paras. 193-206.

<sup>27</sup> Exchange of letters constituting a Provisional Agreement between The United Nations Relief and Works Agency for Palestine Refugees in the Near East and Israel concerning assistance to Palestine refugees, Jerusalem, 14 June 1967, contained in 620 UNTS 183 and [1968] UN Juridical YB 47 ("**1967 Israel-UNRWA Agreement**").

63. The General Convention establishes a comprehensive system of functional immunities designed to ensure the independent and effective operation of United Nations personnel. Functional immunity must be respected in all circumstances relating to official acts.
64. The functional nature of these immunities reflects a careful balance between the need for operational independence and the legitimate interests of host States (which are in this case further affected by the status of Israel which illegally occupies the OPT). Unlike diplomatic immunity, which is often absolute but only lasts for the duration of the official status, the functional immunity granted to UNRWA personnel is specifically tied to their official acts. Consequently, functional immunities cover UNRWA personnel and experts on missions *during and after* their employment relationship with the United Nations, for all acts done in an official capacity. This linkage ensures that the immunity serves its intended purpose of facilitating humanitarian operations while maintaining appropriate accountability mechanisms.
65. A distinctive and crucial feature of this immunity is its universal application to all UNRWA personnel and experts on mission, *irrespective of their recruitment status*. The General Convention makes no distinction between internationally and locally recruited staff, establishing a uniform standard of protection. This principle of equal protection is particularly significant in the context of UNRWA's operations, where local staff often form the backbone of the organization's humanitarian response capacity and suffer the most from Israeli military activities. The absence of differentiation in protection levels ensures operational continuity and maintains the integrity of UNRWA's mission delivery.

#### 5. *Israel's obligations to guarantee the safety of UNRWA personnel*

66. The safety and security obligations of Israel regarding UNRWA personnel and experts on mission are primarily based on the 1967 Israel-UNRWA agreement, envisaging Israel's responsibility "to ensure the protection and security of the personnel, installations and property of UNRWA", without distinguishing between its territory and the OPT, and as specified in United Nations' duty of care obligations and customary international law.<sup>28</sup>
67. Customary international law and United Nations staff rules and regulations establish a careful balance between the responsibility of Israel as the hosting State of UNRWA in its territory and the duty of care of the organizations. As the United Nations Dispute Tribunal recently contended, "the duty of care on the part of the Organization has been codified and incorporated into the Staff Regulations and Rules, thus ensuring such protection to all staff members as a term of their employment".<sup>29</sup> The practical implementation of these security obligations is guided by an extensive body of United Nations documentation, including Secretary-General reports, field security handbooks, and General Assembly resolutions.<sup>30</sup> These documents provide detailed operational frameworks for security

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<sup>28</sup> Ibid. On the duty of care, see, in general, A. De Guttry and others (eds), *The Duty of Care of International Organizations Towards Their Civilian Personnel* (2018).

<sup>29</sup> *Raikow v. Secretary-General of the United Nations*, 23 March 2021, UNDT/GVA/2021/018 Order No. 72 (GVA/2021), p. 9.

<sup>30</sup> See, among others, Status, Basic Rights and Duties of United Nations staff members, UN Doc. ST/SGB/2016/9, 21 July 2016; Revised security management framework and revised estimates relating to the programme budget for the biennium 2010–2011 under section 5, Peacekeeping operations, related to a strengthened and unified security management system for the United Nations, Report of the Secretary-General, UN Doc. A/65/320 and corr.1, 27 October 2010; Safety and Security of United Nations and Associated Personnel, Report of the Secretary-General, UN Doc. A/73/392, 24 September 2018; Safety and security of humanitarian personnel and protection of United Nations personnel, UN Doc. A/71/395, 21 September 2016; Staff Regulations and Rules of the United



management, establishing clear standards and expectations for host State cooperation. Of particular relevance is UNGA Resolution 70/104, which reinforces the fundamental principles of United Nations personnel protection and sets out specific measures for enhancing security arrangements.<sup>31</sup> This documentation serves not only as guidance for implementation but also as evidence of the international community's consistent recognition of host State obligations regarding United Nations personnel security.

68. Israel's obligations emerge from the fundamental positive obligation under human rights law to protect all individuals under State jurisdiction, combined with the special responsibilities that arise from United Nations operations taking place in the territories under Israeli jurisdiction. The customary nature of these obligations has been consistently reaffirmed through State practice and United Nations General Assembly resolutions, establishing a robust framework of protection that exists independently of treaty commitments.
69. The concept of primary responsibility, as articulated in numerous United Nations documents and reiterated in the 1967 Israel-UNRWA agreement, places a direct obligation on Israel to ensure the security and protection of United Nations personnel, their dependents, and United Nations property, in its territory and in the OPT. Israel's special responsibility under the United Nations Charter as Occupying Power creates additional obligations regarding UNRWA personnel security. The obligation to protect UNRWA personnel extends to all areas under Israeli jurisdiction or effective control, including both Israeli territory and the OPT. This creates a continuous chain of responsibility for personnel protection throughout UNRWA's operational area.
70. Based on the 1967 Israel-UNRWA agreement and customary international law, Israel's obligations include positive duties to protect UNRWA personnel. This includes maintaining effective security arrangements, ensuring freedom of movement for UNRWA personnel, and providing necessary administrative support for their functions. The comprehensive nature of these obligations encompasses protection of UNRWA facilities, assets, and communications systems, all of which are essential to the organization's humanitarian mission.
71. The shared responsibility framework necessitates careful coordination between UNRWA's internal security measures and Israeli security provisions. This coordination extends to various operational aspects, including risk assessment, threat analysis, emergency response planning, and evacuation procedures. The framework must be sufficiently flexible to adapt to changing security conditions while maintaining consistent protection standards. This requires regular review and updating of security protocols, taking into account both lessons learned from incidents and evolving security challenges in the operational environment.
72. A critical aspect of implementing these obligations involves the establishment of clear communication channels and protocols between UNRWA and Israeli authorities.<sup>32</sup> These mechanisms are essential for addressing security incidents, coordinating movements, resolving immunity-related disputes, and ensuring rapid response to emerging threats to personnel safety. The effectiveness of these channels is particularly tested during crisis

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Nations, ST/SGB/2023/1/Rev.1, 1 January 2023; UNDSS Security Policy Manual, Chapter III – Applicability of UN Security Management System.

<sup>31</sup> Safety and Security of Humanitarian Personnel and Protection of United Nations Personnel, UN Doc. A/RES/70/104, 28 December 2015.

<sup>32</sup> See the 1967 Israel-UNRWA Agreement.

situations, where quick decisions and actions may be required to protect UNRWA staff while maintaining operational continuity. The establishment and maintenance of these communication protocols requires ongoing engagement and commitment from both UNRWA and Israeli authorities.

73. The obligations concerning UNRWA extend explicitly to guaranteeing freedom of movement as stipulated in the 1967 agreement, which requires Israel to “permit the free movement of UNRWA vehicles”, “permit the international staff of the Agency to move in, out and within Israel and the areas in question”, and “permit the local staff of the Agency to move within the areas in question”.<sup>33</sup> The ability of UNRWA personnel to effectively carry out their duties depends on their freedom of movement, which must be balanced against Israeli security measures. This includes considerations such as permit systems, checkpoint procedures, and access to restricted areas. The implementation challenge lies in maintaining effective security measures while ensuring these do not unduly impede UNRWA’s humanitarian operations or compromise the safety and dignity of its personnel.

## ***B. As an Occupying Power***

### *1. Duty to allow humanitarian organizations to perform their functions*

74. Israel has obligations under both treaty and customary law towards humanitarian organizations operating in territory under its control. While Israel is party to the four Geneva Conventions of 1949,<sup>34</sup> it is not a Party to the two Additional Protocols of 1977 which set out further obligations in relation to humanitarian organizations.<sup>35</sup> However, there is significant overlap between treaty and custom on this point<sup>36</sup> and Israel, as an Occupying Power, has significant positive obligations under customary international law. These customary obligations are threefold: a) subject to very limited exceptions, to consent to relief operations by impartial humanitarian organizations; b) to allow and facilitate the implementation of these operations; and c) to ensure that the personnel and objects of humanitarian organizations are respected and protected.

#### *a) Consent to humanitarian relief*

75. Under customary international law, impartial humanitarian organizations have the right to offer their services to civilians in need.<sup>37</sup> This right is reflected in Common Article 3

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<sup>33</sup> Ibid.

<sup>34</sup> Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31 (“GC I”); Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 12 October 1949) 75 UNTS 85 (“GC II”); Geneva Convention (III) Relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 12 October 1950) 75 UNTS 135 (“GC III”); Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1953) 75 UNTS 287 (“GC IV”). See GC IV, Articles 23, 55 and 59.

<sup>35</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (“AP I”), Article 70; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609 (“AP II”), Article 18.

<sup>36</sup> See D. Akande and E. Gillard, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict*: Commissioned by the United Nations Office for the Coordination of Humanitarian Affairs (October 2016), para. 88.

<sup>37</sup> See C. Barrat, *Status of NGOs in International Humanitarian Law* (2014), pp. 246-253.

to the Geneva Conventions of 1949,<sup>38</sup> but has been affirmed more broadly by States,<sup>39</sup> organs of the UN,<sup>40</sup> the International Committee of the Red Cross (“ICRC”)<sup>41</sup> and within scholarship.<sup>42</sup> As discussed further below, impartiality in this context refers to the delivery of humanitarian activities without discrimination between groups and being guided solely by the needs of civilians in distress.<sup>43</sup> While a humanitarian organization’s offer of services is subject to the consent of the State which controls the relevant territory, in the present circumstances involving the (illegal) occupation of territory, that consent may be subject only to very limited conditions. Thus imperative security concerns, military necessity or the need to protect fundamental human rights of the civilian population may, exceptionally, permit restrictions or temporary denial of consent. However, consent to entry, if the preconditions requiring the delivery of aid are otherwise met, cannot be arbitrarily withheld.<sup>44</sup> If the State is not able or willing to meet the needs of civilians under its control, it has a correlative obligation to consent to offers of relief from humanitarian organizations.<sup>45</sup> Denial of consent on impermissible, arbitrary or

<sup>38</sup> GC I-IV, Article 3(2). See also GC I-III, Article 9; GC IV, Article 10.

<sup>39</sup> See International Committee of the Red Cross, *Customary International Humanitarian Law* (CUP 2005) (hereinafter “ICRC Customary IHL Study”), Volume II: Practice, Rule 55. Although the ICRC does not articulate this as a separate rule from that of allowing and facilitating operations, the excerpted practice supports both rules. See *ibid*, citing Colombia, *Derecho Internacional Humanitario – Manual Básico para las Personerías y las Fuerzas Armadas de Colombia*, Ministerio de Defensa Nacional, 1995, pp. 21, 22, 30 and 42; Djibouti, *Manuel sur le droit international humanitaire et les droits de l’homme applicables au travail du policier*, Ministère de l’Intérieur, Direction Générale de la Police, 2004, p. 21; Germany, *Humanitarian Law in Armed Conflicts – Manual*, DSK VV207320067, edited by The Federal Ministry of Defence of the Federal Republic of Germany, VR II 3, August 1992, English translation of ZDv 15/2, *Humanitäres Völkerrecht in bewaffneten Konflikten – Handbuch*, August 1992, § 503 and 569; Netherlands, *Humanitair Oorlogsrecht: Handleiding*, Voorschrift No. 27-412, Koninklijke Landmacht, Militair Juridische Dienst, 2005, paras. 1069–1070 and p. 172; Sweden, *International Humanitarian Law in Armed Conflict, with reference to the Swedish Total Defence System*, Swedish Ministry of Defence, January 1991, Section 5.7, p. 114; Ukraine, *Manual on the Application of IHL Rules*, Ministry of Defence, 11 September 2004, § 1.4.16.

<sup>40</sup> UN Secretary-General, Report on Emergency Assistance to Sudan, UN Doc. A/51/326, 4 September 1996, para. 71; UN Commission on Human Rights, Guiding Principles on Internal Displacement, UN Doc E/CN.4/1998/53/Add.2 (11 February 1998) Principle 25(2); UN Secretary-General, Protection of and Assistance to Internally Displaced Persons, UN Doc. A/65/282 (1 August 2010), paras. 75-79.

<sup>41</sup> International Federation of Red Cross and Red Crescent Societies and ICRC, ‘Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief’ (1996) 310 *International Review of the Red Cross* Annex VI, 3.

<sup>42</sup> International Institute of Humanitarian Law, “Guiding Principles on the Right to Humanitarian Assistance, Principle 5” (1993), vol. 297, *International Review of the Red Cross*, pp. 522-523; Barratt, 246-253 citing Mertens, Pierre, “Les modalités de l’intervention du CICR dans le conflit du Nigéria,” *Annuaire français du droit international*, 1969, p. 185; M. El Kouhene, *Les garanties fondamentales de la personne en droit humanitaire et droits de l’homme* (1986), pp. 189-190.

<sup>43</sup> See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, I.C.J. Reports 1986, p.125, para. 243.

<sup>44</sup> ICRC Customary IHL Study, Volume I: Rules, Rule 55, ‘Consent’; E/CN.4/1998/53/Add.2 (1998) Principle 25(2); UN Security Council Resolution 2139, UN Doc S/RES/2139, 22 February 2014; K. Dörmann, T. Ferraro, “Humanitarian Assistance”, in *The Handbook of International Humanitarian Law* (2021), p. 356; R. Barber, “Facilitating humanitarian assistance in international humanitarian and human rights law” (2009), vol. 91, *International Review of the Red Cross*, p. 391.

<sup>45</sup> Fleck, *op. cit.*, p. 356; Barber, *op. cit.*, at p. 356. This is supported by Israel’s other international obligations towards civilians including the customary prohibition on starvation under international humanitarian law and the rights to food, water, health and non-discrimination under international human rights law: See ICRC Customary IHL Study, Volume I: Rules, Rule 53; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, Articles 2(2), 11(1), 12. See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, paras. 106, 130-134.

disproportionate grounds can violate customary international humanitarian law.<sup>46</sup>

76. If Israel has consented to a humanitarian organization's operations on territory under its control, it then has a further obligation as a matter of customary international law to allow and facilitate the rapid and unimpeded passage of humanitarian relief supplies, equipment and personnel.<sup>47</sup> This obligation is set out in Article 70 of the First Additional Protocol which reflects customary international law and therefore binds Israel.<sup>48</sup> This includes the negative obligation to refrain from deliberately impeding humanitarian operations, including through creating administrative or other hurdles.<sup>49</sup> It also comprises a positive obligation to co-operate and take such steps as are necessary to facilitate the overall efficacy of these operations.<sup>50</sup>
77. Under customary international law, Israel retains further a limited right of control over these relief operations, but only to the extent strictly necessary for ensuring that they are exclusively humanitarian; meet health and safety standards; and, do not hamper military operations.<sup>51</sup> Such control must not be exercised to unduly delay or render impossible the delivery of humanitarian relief.<sup>52</sup> While the movements and activities of humanitarian organizations may be restricted in cases of imperative military necessity, this must only be on a temporary basis.<sup>53</sup> Restrictions on this basis must not be disproportionate to the concern being addressed; proportionality involves weighing the concern against the magnitude of humanitarian harm done if the aid is refused, delayed or restricted in its delivery. If it becomes impossible for the humanitarian organization to deliver relief, either by denial of consent to entry or by placing arbitrary or unreasonable conditions upon delivery, this will be tantamount to an unlawful denial of humanitarian access.<sup>54</sup>

*b) Respect and protect humanitarian organizations*

78. Finally, there is an obligation under customary international law for Israel to ensure that personnel and objects associated with a humanitarian organization's relief operations are respected and protected.<sup>55</sup> Respect refers to the duty to refrain from intentionally directing attacks at such personnel or objects.<sup>56</sup> The obligation to protect is wider and includes investigating and holding third parties accountable for looting, destroying or otherwise diverting humanitarian relief.<sup>57</sup> It has been viewed as an obligation of due

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<sup>46</sup> See UN Doc S/RES/2139 (2014) 2.

<sup>47</sup> ICRC Customary IHL Study, Volume 1: Rules, Rule 55; Fleck, *op. cit.*, 356; *op. cit.*, p. 357.

<sup>48</sup> ICRC Customary IHL Study, Volume 1: Rules, Rule 55, 'International Armed Conflict'; see related practice at ICRC Customary IHL Study, Volume II: Practice, Rule 55; Akande and Gillard, *op. cit.*, para. 88.

<sup>49</sup> D. Fleck, *op. cit.*, *The Handbook of International Humanitarian Law* (2021) 356; R. Barber, 'Facilitating humanitarian assistance in international humanitarian and human rights law' (2009) 91 *International Review of the Red Cross*, Vol. 91 at p. 357; Akande and Gillard, *op. cit.*, paras. 61-64, 137. Deliberately impeding relief may also amount to a war crime or the crime against humanity of extermination: Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 ("Rome Statute"), Article 7(1)(b) and 7(2)(b); 8(2)(b)(xxv).

<sup>50</sup> Fleck, *op. cit.*, p. 357; Barber, *op. cit.*, p. 357.

<sup>51</sup> *Ibid.*, 358; ICRC Customary IHL Study, Volume I: Rules, Rule 55, 'Impediment of Humanitarian Relief'.

<sup>52</sup> Fleck, *op. cit.*, 356; Barber, *op. cit.*, p. 358.

<sup>53</sup> *Ibid.*, 359; ICRC Customary IHL Study, Volume I: Rules, Rule 56; Akande and Gillard, *op. cit.*, para. 80.

<sup>54</sup> Fleck, *op. cit.*, 356; Barber, *op. cit.*, p. 358. See also UN Doc S/RES/2139 (2014) 2.

<sup>55</sup> ICRC Customary IHL Study, Volume 1: Rules, Rules 31 and 32. See also E/CN.4/1998/53/Add.2 (1998) Principle 26.

<sup>56</sup> Fleck, *op. cit.*, 356; Barber, *op. cit.*, 359. This would also constitute a war crime under the Rome Statute, Article 8(2)(b)(iii).

<sup>57</sup> Akande and Gillard, *op. cit.*, para. 82.

diligence, requiring a State to “create the circumstances” that would allow humanitarian organizations to effectively perform their functions.<sup>58</sup>

#### **IV. Israel’s obligations regarding ensuring and facilitating the unhindered provision of urgently needed supplies, basic services, and humanitarian assistance**

##### ***A. Obligations of Israel as a member of the United Nations***

*1. Duty to cooperate in promoting economic and social progress (Article 55 of the UN Charter).*

79. Article 55 constitutes “the normative basis for a programme to be fulfilled by UN organs”.<sup>59</sup> Such a program is implemented through its subsidiary organs and agencies under Article 7(2) and Article 22 of the United Nations Charter. Under Article 55 (c) of the UN Charter, the Organization “shall promote universal respect for, and observance of, human rights and fundamental freedoms for all”. Such obligation responds to the broader objective, set in Article 55, of “creating conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”.
80. The core objectives to be achieved by the United Nations impose an obligation on Member States, under Article 56, to “take both joint and separate action in cooperation with the Organization to achieve purposes set forth in Article 55”. This cooperative duty must be understood alongside the broader obligation under Article 2(5), “to assist the United Nations in any action taken in accordance with the Charter”, as further reinforced by the Preamble of the Charter and by the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States.<sup>60</sup> As noted by the present Court, “the Charter has not been content to make the Organization created by it merely a centre ‘for harmonizing the actions of nations in the attainment of these common ends’ [...]. It has equipped that centre with organs, and has given it special tasks. It has defined the position of the Members in relation to the Organization by requiring them to give it every assistance in any action undertaken by it”.<sup>61</sup>
81. In practice, United Nations Member States must actively work towards guaranteeing the respect of fundamental human rights, while not engaging themselves in actions that hinder the United Nations or prevent other States from fulfilling their Charter-based obligations. “Such duty to cooperate can certainly not be denied by virtue of Art 2 (7) and requires States to cooperate in good faith and to abstain from any obstruction”.<sup>62</sup>
82. Israel’s duty to cooperate by facilitating the provision of essential services and humanitarian aid has been repeatedly emphasized by the Court.

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<sup>58</sup> Fleck, *op. cit.*, 356; Barber, *op. cit.*, p. 359.

<sup>59</sup> E. Frenz, D. Hanschel, ‘Article 55 (c)’, in *The Charter of the United Nations* (2024), p. 1983.

<sup>60</sup> UNGA Res 2625 (XXV), 1970.

<sup>61</sup> *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion*, I.C.J., Reports 1949, p. 8.

<sup>62</sup> T. Stoll, ‘Article 56’, in B. Simma and others, *op.cit.*, p. 2102. See also L. Bouony, ‘Article 56’, in *La Charte des Nations Unies* (2005), p. 1507: “[L]es Etats doivent s’abstenir de toute action, obstruction ou manoeuvre contraire à l’esprit qui l’anime et agir de bonne foi pour réaliser les fins qu’ils se proposent d’atteindre après son adoption. La coopération constructive est requise dans ces conditions”.



83. On 26 January 2024, the ICJ mandated Israel, *inter alia*, to “take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip”.<sup>63</sup> In response to the further deterioration of living conditions and widespread deprivation of food and basic necessities, the Court issued additional provisional measures in March 2024, stating that Israel

[...] shall (a) 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; and (b) ensure with immediate effect that its military does not commit acts which constitute a violation of any of the rights of the Palestinians in Gaza as a protected group under the Genocide Convention, including by preventing, through any action, the delivery of urgently needed humanitarian assistance.<sup>64</sup>

84. As conditions worsened, the Court issued Orders for provisional measures for the third time on 24 May 2024, emphasizing that the unhindered provision of urgently needed basic services and humanitarian assistance required Israel to “maintain open land crossing points, and in particular the Rafah crossing”.<sup>65</sup>
85. Israel, as a member of the United Nations with effective control over the OPT,<sup>66</sup> has a positive obligation to facilitate the unhindered delivery of humanitarian assistance, the provision of essential services, and the protection of the civilian population’s fundamental rights and, by implication, a negative obligation not to prevent or otherwise hinder aid in the OPT.
86. Due to the *erga omnes* nature of human rights obligations,<sup>67</sup> and the fact that “there is a United Nations Charter obligation to promote universal respect for, and observance of, human rights and fundamental freedoms”, “every State party has a legal interest in the performance by every other State party of its obligations”.<sup>68</sup>
87. It follows that Israel’s negative and positive obligations with respect to the basic needs at the core of the very survival of the Palestinian people in the OPT are a concern of the international community as a whole. Third States have both a legal interest in the protection of the most fundamental rights in the OPT, and parallel duty to cooperate to ensure that such rights are fulfilled.
88. Israel’s wholesale ban on UNRWA, which represents the “backbone” of humanitarian response in Gaza, is not compatible with Israel’s own duty to cooperate under the UN Charter in order to guarantee access to aid to those in need.

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<sup>63</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order of 26 January 2024, p. 23, para. 80.

<sup>64</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order of 28 March 2024, p. 11, para. 45.

<sup>65</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order of 24 May 2024, p. 13, para. 52.

<sup>66</sup> *OPT Advisory Opinion*, I.C.J. Reports 2024, p. 31, para. 94.

<sup>67</sup> *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Judgment, I.C.J. Reports 1970, p. 3, para. 34; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 422, paras. 64-70.

<sup>68</sup> Human Rights Committee, General Comment 31: The Nature of the General Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add13, 26 May 2004, para. 2.

89. The UN Secretary General warned that “the cessation of or restrictions on UNRWA activities in the OPT would have devastating consequences for Palestine refugees, considering that there is currently no realistic alternative to UNRWA which could adequately provide the services and assistance required”.<sup>69</sup>
90. Most recently, the UN General Assembly acknowledged that “no organization can replace or substitute the Agency’s capacity and mandate to serve Palestine refugees and civilians in urgent need of life-saving humanitarian assistance”.<sup>70</sup> It reiterated its demand that Israel comply with its legal obligations under international law, namely taking all necessary and effective measures, in full cooperation with the United Nations, to ensure the unhindered and large-scale provision of urgently needed basic services and humanitarian aid to the Palestinian civilian population throughout the Gaza Strip.<sup>71</sup>
91. The fundamental and unreplaceable role of UNWRA in assisting the Palestinian population in the OPT, and therefore its role in achieving the purposes of the UN under the Charter, is a decisive element in assessing whether Israel is complying with its duty to cooperate. Conducts that deliberately undermine UNWRA’s ability to function frustrate the object and purpose of the UN Charter, in breach of Israel’s obligation to perform its obligations in good faith, as required by Article 28 and 31 VCLT.
92. Israel’s obligation to cooperate in good faith implies that it must also refrain from impeding other States to deliver urgently needed supplies, basic services, and humanitarian assistance to the affected population.
93. As reiterated by the UN General Assembly, there is a “solemn commitment of all States to enhance international cooperation in the field of human rights and in the solution to international problems of a humanitarian character in full compliance with the Charter of the United Nations, inter alia, by the strict observance of all the purposes and principles set forth in Articles 1 and 2 thereof”.<sup>72</sup>
94. The entire international community has been called upon to “provide urgently needed assistance and services in an effort to alleviate the difficult humanitarian situation being faced by Palestinian women, children and their families”.<sup>73</sup>
95. By obstructing or restricting humanitarian relief efforts undertaken by other States or international actors, Israel would not only fail to uphold its own duty of cooperation but would also actively undermine the collective responsibility of the international community to address humanitarian crises in accordance with the UN Charter.

## *2. Duty to support the right to self-determination*

96. The right of self-determination has been identified by the Court as “one of the essential

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<sup>69</sup> Letter from the Secretary-General to the President of the General Assembly and the President of the Security Council regarding UNRWA’s operations in the Occupied Palestinian Territories. Identical letters dated 9 December 2024 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, 9 December 2024, UN Doc. A/79/684-S/2024/892, p. 2.

<sup>70</sup> Support for the mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, UN Doc. A/RES/ES-10/25, 16 December 2024, para. 7.

<sup>71</sup> *Ibid.*, para. 13.

<sup>72</sup> Respect for the purposes and principles contained in the Charter of the United Nations to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms and in solving international problems of a humanitarian character, UN Doc. A/RES/59/204, 23 March 2005, para. 1.

<sup>73</sup> Assistance to the Palestinian people, UN Doc. A/RES/79/141, 12 December 2024, para. 11, recalling UN Doc A/RES/77/30 of 8 December 2022 and UN Doc. A/Res/78/121, 13 December 2023.

principles of contemporary international law,”<sup>74</sup> and is reflected in Article 1(2) of the United Nations Charter. This right imposes a correlative obligation on member States “to promote, through joint and separate actions” its realization.<sup>75</sup> Such obligation has an *erga omnes* character.<sup>76</sup>

97. The Court confirmed that “Israel is bound to comply with its obligation to respect the right of the Palestinian people to self-determination and its obligations under international humanitarian law and international human rights law”.<sup>77</sup>
98. In the *OPT* Advisory Opinion, the Court concluded that the right to self-determination “in cases of foreign occupation [...] constitutes a peremptory norm of international law”.<sup>78</sup> The Court also recalled that a fundamental aspect of the right to self-determination is a people’s ability to pursue social and cultural development, as recognized in UN resolutions 1514 (XV) and 2625 (XXV). The Court has examined how Israel’s policies affect Palestinians’ economic, social, and cultural life, particularly by restricting their fundamental rights, noting that the reliance of the West Bank, East Jerusalem, and especially Gaza, on Israel for essential goods and services undermines their ability to fully exercise self-determination.<sup>79</sup>
99. Israel’s obligation to respect the right to self-determination of the Palestinian people entails a duty to refrain from any conduct that could threaten the very survival of the population. The duty to respect this thus extends beyond non-interference. It requires positive action to facilitate the unobstructed flow of aid and essential services. Denying or limiting access to such resources not only exacerbates humanitarian suffering but also entrenches conditions of subjugation that violate the principle of self-determination under international law.

### 3. Additional human rights obligations

100. International human rights law remains applicable during times of armed conflict, in a position complementary to international humanitarian law.<sup>80</sup> All of Israel’s obligations

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<sup>74</sup> *Case Concerning East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 102, para. 29; see also *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019 (I), p. 139, para. 180.

<sup>75</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019 (I), p. 139, para. 180, quoting Resolution 2625 (XXV), “Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations”; see also Written Statement of the Commission of Small Islands States on Climate Change and International Law, para. 67; Written Statement of Bangladesh, para. 121; Written Statement of Sierra Leone, para. 3.88; Written Statement of Liechtenstein, para. 74; Written Comments of Nauru, para. 79.

<sup>76</sup> *Case Concerning East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 102, para. 29; see also *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019 (I), p. 199, para 155; *OPT Advisory Opinion*, paras. 232, 274, 280.

<sup>77</sup> *Wall Advisory Opinion*, p. 147, para. 149.

<sup>78</sup> *OPT Advisory Opinion*, p. 66, para. 233.

<sup>79</sup> *Ibid.*, para. 241.

<sup>80</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 239, para. 24; *Wall Advisory Opinion*, p. 178, para. 196; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 168. See also Human Rights Committee, General Comment 31: The Nature of the General Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add13, 26 May 2004, para. 11: “[T]he Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be especially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.”

under human rights treaties apply to it extraterritorially in the OPT, including on the basis, where relevant, of the exercise of effective overall control.

101. Israel is a party to several human rights treaties.<sup>81</sup> Israel's control over borders, crossings, airspace, and essential infrastructure in the OPT means that it has jurisdiction over such territory. It follows that people in the OPT fall under the jurisdiction of Israel, which has to comply with its obligations to respect, protect and fulfil human rights extraterritorially.<sup>82</sup>
102. Israel's duty to respect, protect and fulfil human rights includes an obligation not to impose arbitrary and unjustified restrictions on the operations of United Nations bodies, humanitarian agencies, other international organizations and States engaged in providing essential humanitarian assistance, as well as to take positive action to facilitate their operations. These actors can play a crucial role in ensuring the realization of human rights obligations that Israel is required to uphold under human rights treaties.
103. Any act that unduly restricts the ability of humanitarian actors to deliver aid directly undermines several such rights, including, but not limited to, the right to life,<sup>83</sup> freedom from inhuman treatment,<sup>84</sup> the right to an adequate standard of living, including food and health,<sup>85</sup> the rights of children to survival and development.<sup>86</sup> As the Court has made clear, these rights must be respected and upheld, irrespective of the security concerns invoked by the Occupying Power.
104. As to the right to life under Article 6 of the International Covenant on Civil and Political Rights ("**ICCPR**"), the UN Human Rights Committee ("**HRC**"), in General Comment No. 36, has clarified that the right to life includes the obligation to ensure "access without delay by individuals to essential goods and services such as food, water, shelter, health care, electricity and sanitation, and other measures designed to promote and facilitate adequate general conditions".<sup>87</sup> State parties have an obligation to ensure the rights under Article 6 to "persons located outside any territory effectively controlled by the State whose right to life is nonetheless affected by its military or other activities in a direct and reasonably foreseeable manner".<sup>88</sup>
105. With respect to economic, social and cultural rights, the Committee on Economic Social and Cultural Rights ("**CESCR**") highlighted that "in accordance with Articles 55 and 56

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<sup>81</sup> Among which: International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR); International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entered into force 4 January 1969) 660 UNTS 195 (ICERD); Convention on the Elimination of All Forms of Discrimination against Women (adopted New York, 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted New York, 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT); Convention on the Rights of the Child (adopted New York, 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC); Optional Protocol to the CRC on the involvement of children in armed conflict (adopted New York 25 May 2000, entered into force 12 February 2002) 2173 UNTS 222 (CRC-OP-AC).

<sup>82</sup> See Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Israel' UN Doc. CCPR/C/ISR/CO/4, para.5.

<sup>83</sup> ICCPR, Article 6.

<sup>84</sup> *Ibid.*, Article 7.

<sup>85</sup> ICESCR, Articles 11 and 12.

<sup>86</sup> CRC, Article 6.

<sup>87</sup> HRC, General Comment No. 36: Right to Life (Article 6), UN Doc. CCPR/C/GC/36, 3 September 2019, para. 26.

<sup>88</sup> *Ibid.*, para. 65

of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States”.<sup>89</sup>

106. According to CESCR, States “have a core obligation to take the necessary action to mitigate and alleviate hunger [...] even in times of natural or other disasters”,<sup>90</sup> and to “ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant, including essential primary health care”,<sup>91</sup> being prohibited from “limiting access to health as a punitive measure during armed conflicts”.<sup>92</sup> With specific regard to the right to food, CESCR noted that

the obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must proactively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly. This obligation also applies for persons who are victims of natural or other disasters.<sup>93</sup>

107. As a State Party to the Convention on the Rights of the Child (“**CRC**”), Israel has also an obligation to ensure the survival and development of children.<sup>94</sup> The CRC Committee has clarified that “States have individual and joint responsibility, including through United Nations mechanisms, to cooperate in providing disaster relief and humanitarian assistance in times of emergency. In these cases, States should consider prioritizing efforts to realize children’s right to health, including through appropriate international medical aid; distribution and management of resources, such as safe and potable water, food and medical supplies; and financial aid to the most vulnerable or marginalized children”.<sup>95</sup>

### ***B. Obligations of Israel as Occupying Power***

108. The Convention (IV) relative to the Protection of Civilian Persons in Time of War was adopted in Geneva on 12 August 1949 (“**Fourth Geneva Convention**”). Israel acceded to Geneva IV on 6 July 1951. Palestine acceded to Geneva IV on 2 April 2014.
109. As the Court determined in the *Wall Advisory Opinion*,<sup>96</sup> the provisions of the Fourth Geneva Convention are applicable to Israel as the Occupying Power in the Occupied Palestinian Territory. Israel has previously accepted that the humanitarian provisions of

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<sup>89</sup> CESCR, General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant), UN Doc. E/1991/23, 17 April 2013, para. 14.

<sup>90</sup> CESCR, General Comment No. 12: The Right to Adequate Food (Article 11), UN Doc. E/C12/1999/5, 12 May 1999, para. 6.

<sup>91</sup> CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12), UN Doc. E/C.12/2000/4, 11 August 2000, para. 43.

<sup>92</sup> *Ibid.*, para. 34.

<sup>93</sup> CESCR, General Comment No. 12: The Right to Adequate Food (Article 11), UN Doc. E/C12/1999/5, 12 May 1999, para. 15.

<sup>94</sup> CRC, Article 6.

<sup>95</sup> CRC, General Comment No. 15 on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (Article 24), UN Doc. CRC/C/GC/15, 17 April 2013, para. 88.

<sup>96</sup> *Wall Advisory Opinion*, para. 101.



the Fourth Geneva Convention are applied within the Occupied Palestinian Territory, but has asserted that the Convention is not binding in the Territory *de jure*. Israel's argument in that regard was correctly rejected by the Court in the *Wall Advisory Opinion*;<sup>97</sup> the proposition that the Fourth Geneva Convention applies only to occupations following, or in the course of, an armed conflict, is inconsistent with the object, purpose and text of the Convention itself, as well as with common Article 2(2).

110. The Fourth Geneva Convention must be interpreted in the context of Israel's other obligations, including those arising under customary international law, discussed above, and by reason of binding resolutions of the Security Council. In that context, the special needs of women and children must be given prominence. Women, pregnant women and children have been disproportionately affected by the humanitarian crisis in Gaza.<sup>98</sup> As to the special case of children, paragraph 11 of Security Council Resolution 1261, binding upon Israel, requires that Israel "ensure the full, safe and unhindered access of humanitarian personnel and the delivery of humanitarian assistance to all children affected by armed conflict".<sup>99</sup> As to the special position of women, Security Council Resolution 1325 (2000) calls on states to respect their existing obligations. Israel to apply the provisions of the Fourth Geneva Convention so as to respect fully international law applicable to the rights and protection of women and girls.<sup>100</sup>
111. Article 6 of Geneva IV extends the protection of the Convention during the conduct of the military operations. Because the military operations with which these proceedings are concerned are either still enduring, or alternatively ended only at the point of the temporary cease-fire on 19 January 2025, the further operation of Article 6 which limits the operation of the Convention to certain enumerated provisions of the Convention after the expiry of a 12 month period from the end of hostilities, is not engaged.
112. The relevant obligations of the Fourth Geneva Convention place a positive obligation upon Israel to ensure the physical safety, health and well-being of the population of the Occupied Territory by ensuring the provision of food, medicines and the necessities of life.<sup>101</sup> They apply in the present situation because Israel has been unable, or unwilling, to exercise its primary function<sup>102</sup> of meeting the primary needs of the civilian population under its control.<sup>103</sup>

#### 1. Duty to allow the free passage of all consignments of medical and hospital stores and

<sup>97</sup> *Ibid.*

<sup>98</sup> World Health Organization, *Women and newborns wearing the brunt of the conflict in Gaza, UN agencies warn*, 3 November 2023, (available at: <https://www.who.int/news/item/03-11-2023-women-and-newborns-bearing-the-brunt-of-the-conflict-in-gaza-un-agencies-warn>, accessed on 26 February 2025); and United Nations Human Rights Office of the High Commissioner, *Onslaught of violence against women and child in Gaza unacceptable: UN Experts*, 6 May 2024, (available at: <https://www.ohchr.org/en/press-releases/2024/05/onslaught-violence-against-women-and-children-gaza-unacceptable-un-experts>, accessed on 26 February 2025).

<sup>99</sup> UNSC Res. 1261 (1999), 30 August 1999, para. 11.

<sup>100</sup> UNSC Res. 1325 (2000), 31 October 2000, para. 9.

<sup>101</sup> See Akande and Gillard, *op. cit.*, p. 12; ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Report prepared for the 31<sup>st</sup> International Conference of the Red Cross and Red Crescent, Geneva, 2011, p. 24.

<sup>102</sup> See (non-exhaustively) Strengthening the Coordination of Humanitarian Emergency Assistance of the United Nations, UN Doc. Res. 46/182, 19 December 1991; UNSC Res. 1894 (2009), 11 November 2009, preambular paras. 5 and 6, and UNSC Res. 1923 (2010), 25 May 2010, para. 2.

<sup>103</sup> See by analogy Office of the High Commissioner for Human Rights (OHCHR), Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No 3: The Nature of States Parties Obligations* (Article 2, para. 1 of the Covenant) (14 December 1990), UN Doc E/1991/23 at para. 13.



*objects necessary for religious worship*

113. Article 23 of the Fourth Geneva Convention provides that:

“Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.”

114. As discussed above, Article 23 is reflective of customary international law. It requires the free passage of two categories of supplies: medical and hospital stores and objects intended for religious worship intended only for civilians, and also consignments of essential foodstuffs, clothing and tonics for children under 15 and expectant and nursing mothers. As discussed above, because Article 70 of Additional Protocol I is a statement of customary international law, the obligation to allow free access in Article 23 also requires the rapid and unimpeded access of medical and food supplies. Only where it is reasonable to suspect that the foods, medical and other supplies referred to in Article 23 may be diverted from their humanitarian objective, or diverted to military use, is there an exception to the Article 23 obligation; no such exception arises in this case.

*2. Duty to ensure the food and medical supplies of the population*

115. Article 55(1) provides that:

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.

116. The ICRC has interpreted Article 55(1) as placing the Occupying Power “under an obligation to utilize all the means at its disposal” to ensure food and medical supplies in cases of inadequacy.<sup>104</sup> As described earlier, the immensity of the humanitarian disaster in Gaza leaves no doubt that the threshold of inadequacy is established.

117. The contextual interpretation of Article 55(1)<sup>105</sup> which demonstrates that the primary concern of the High Contracting Parties was to safeguard the physical well-being of a civilian population in time of occupation, creates a positive obligation upon Israel to accept the provision of food and medical supplies from the United Nations, international organizations, and third States. That is so because they are a means of ensuring the delivery of food and medicine that is at the disposal of Israel.

118. As part of its positive duties under Article 55, Israel must ensure that food and medical supplies and other articles necessary to sustain life are given free, unimpeded and rapid transit within the OPT, subject only to the right of verification, which must be exercised in a manner that is not arbitrary, nor disproportionate to the humanitarian risk. Any verification of essential aid that is required should, in the absence of agreement, be made by the ICRC or any other impartial humanitarian organization designated as a substitute.<sup>106</sup>

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<sup>104</sup> ICRC, Article 55 Commentary, (available at: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-55/commentary/1958?activeTab=1949GCs-APs-and-commentaries>, accessed 20 February 2025).

<sup>105</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p. 31, para. 53.

<sup>106</sup> ICRC, How Does Law Protect War, (available at: [https://casebook.icrc.org/a\\_to\\_z/glossary/protecting-powers](https://casebook.icrc.org/a_to_z/glossary/protecting-powers), accessed 21 February 2025).



### 3. *Duty to maintain medical establishments and services*

119. Article 56 places a further positive obligation on Israel, requiring Israel to the fullest extent of the means available to it, to ensure the continued function and existence of medical and hospital establishments and services, public health and hygiene in the OPT. Article 56 specifies that this obligation is to be carried out with the cooperation of national and local authorities and also makes specific reference to ‘the adoption and application of the prophylactic and preventative measures necessary to combat the spread of contagious diseases and epidemics’.<sup>107</sup> As part of this duty, Israel must also permit all medical personnel of all categories to carry out their duties. To the extent that these activities are in practice primarily carried out by UNRWA, Israel is obliged to the fullest extent of the means available to it to assist the activities of UNRWA.
120. The public health component of Article 56 requires Israel to prevent as well as respond to infectious disease crises. The Occupying Power is placed under an obligation to ensure, “to the fullest extent of the means available to it”, the food and medical supplies of the population. This obligation requires the Israel to maintain at a reasonable level the material conditions under which the population of the occupied territory lives.
121. Whilst Article 43 of the Hague Regulations spoke of ensuring, “as far as possible, public order and safety”, Article 55 extends considerably the responsibility of Israel as an Occupying Power by reference to the fullest extent of the means available to it. The Occupying Power must then, with the co-operation of local authorities and to the fullest extent of the means available to it, ensure that hospital and medical services can work properly and continue to do so.<sup>108</sup> That may require, as here, the acceptance of external aid when Israel is unable or unwilling to discharge its primary burden.
122. Noting Israel’s obligations under Article 55 to import necessary medical supplies, the effect of Article 56 is that Israel must also ensure that it has the necessary supplies to ensure the maintenance of its health services.
123. The reference to ‘all medical personnel of all categories’ must be broadly construed and therefore includes not just doctors and nurses but also dentists, paramedics (including ambulance drivers), allied health professionals and orderlies. It follows that it includes medical personnel from the United Nations, third States and international organizations. It incumbent upon Israel to ensure that it implements measures to ‘safeguard’ the activities of all medical personnel so that they are able to carry out their duties. This requires Israel to ensure that medical personnel are “exempted from any measures (such as restrictions on movement, requisitioning of vehicles, supplies or equipment) liable to interfere with the performance of their duty.”<sup>109</sup>

### 4. *Duty to allow relief consignments*

124. Article 59 of the Fourth Geneva Convention, binding upon Israel,<sup>110</sup> places a mandatory, unconditional and positive obligation upon Israel to facilitate the supply of essential food and medicine by humanitarian organizations. It provides that:

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<sup>107</sup> GC IV, Article 56.

<sup>108</sup> ICRC, Article 56 Commentary, (available at: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-56/commentary/1958?activeTab=>, accessed 21 February 2025).

<sup>109</sup> *Ibid.*

<sup>110</sup> *Wall Advisory Opinion*, para. 101.

If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.

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

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

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

125. The effect of Article 59 is impose an obligation on the Occupying Power to accept such relief in all cases where occupied territory is inadequately supplied (including where that failure of supply is a result of the inability, or failure, of the Occupying Power to fulfil its primary obligation as Occupying Power to ensure the welfare of the population under its control).<sup>111</sup> Where there is inadequate supply, the phrase “shall agree” triggers an obligation to accept aid from impartial aid organizations (including, in this case, UNRWA). As events in Gaza have demonstrated with stark and tragic clarity, the need for unimpeded humanitarian relief to flow to a civilian population in a time of armed conflict is essential to prevent disaster. The obligations placed upon States in Article 59 must be interpreted in that context.
126. Under international law, the threshold of inadequate supply must be evaluated on a case-by-case basis.<sup>112</sup> However, once the threshold of ‘inadequate supply’ is met, it is then open to any State, or an “impartial” humanitarian organization, to undertake a relief scheme, in particular in relation to consignments of foodstuffs, medical supplies and clothing. In the present case, the magnitude of the humanitarian disaster leaves no room for doubt that the threshold of inadequacy has been reached.
127. Article 59 not only requires that Israel must “agree” to relief schemes on behalf of the population, but also requires that Israel “facilitate” them by all the means at its disposal. In practical terms, this includes making provision for transport, stores, facilities for distributing and supervising agencies. It requires Israel to do all in its power to ensure the unimpeded and rapid transport of relevant goods.<sup>113</sup> It also necessarily requires that Israel permit access, and not impede access by, those humanitarian organizations or third States that are in a position to provide aid.
128. The legal obligation to permit aid organizations to provide assistance to a population in need is limited to organizations which are “impartial”. This terminology does not indicate that the organization is precluded from having expressed any views, or having taken any position, even if controversial. That is because it is clear beyond any doubt that the concept of impartiality in relation to the provision of humanitarian aid within the meaning of the Geneva Conventions is limited to a requirement that the organization be one that is prepared to offer aid and assistance to all who need it on an impartial and non-

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<sup>111</sup> See J. Pictet, (ed.), *The Geneva Conventions of 12 August 1949; Commentary, IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (1958), p. 320.

<sup>112</sup> ICRC Commentary to the Additional Protocols, para. 2794.

<sup>113</sup> See also ICRC Study on Customary International Humanitarian Law, Rule 55.

discriminatory basis.<sup>114</sup> References to impartiality throughout the Geneva Conventions, and Additional Protocol I and Additional Protocol II, similarly relate to the provision of humanitarian assistance on an impartial basis.<sup>115</sup> Where an organization is recognized by the competence of the UN Humanitarian Coordinator and operating within the framework of the Humanitarian Response Plan, the requirement of impartiality will presumptively be met.

129. It must be accepted that Israel retains a limited ability to refuse consent to the entry into its own territory by a particular aid organization. However, first, international law does not permit the arbitrary denial of consent to entry if the threshold requirements permitting aid delivery are otherwise met,<sup>116</sup> and secondly, international law distinguishes between entry into the territory of a sovereign State on the one hand, and (as in this situation) entry into a territory that is under occupation on the other where no issues of sovereignty and associated consent arise.
130. Further, any residual entitlement to control the process of aid delivery on asserted security grounds is limited to the denial of access of particular individuals, not to the United Nations, third States or international organizations as a whole.<sup>117</sup>
131. As the commentary of the ICRC to Additional Protocol I describes, the primary concern in relation to the issue of consent was the need to protect the national sovereignty of the State receiving relief.<sup>118</sup> The concern to protect national sovereignty over territory is of less, or no, relevance in a case of an Occupying Power, where the prescriptive and adjudicative jurisdiction exercised is not that of sovereignty, but is instead that of the *de facto* Occupying Power. Instead, in a case of occupation, the rights of the population of the Occupied Territory, including the right to exercise rights of self-determination, take priority.
132. As the Official Records of the negotiations of the Additional Protocols make clear, it is understood that aid may be refused only upon clear and legitimate grounds, when offered by impartial and legitimate aid organizations.<sup>119</sup> That is more the case when the organization is recognised within the UN humanitarian co-ordination system.
133. This analysis is strengthened by reference to the Draft Articles on Protection of Persons in the Event of Disasters. Draft Article 2 provides that relevant NGOs may offer assistance, and draft Article 11 provides that consent to external assistance shall not be withheld arbitrarily.
134. Whether or not consent is withheld arbitrarily will be determined by reference to principles of proportionality, necessity, or the existence of circumstances that are unjust,

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<sup>114</sup> ICRC, *The Fundamental Principles of the Red Cross and Red Crescent*, Publication Ref. 0513, Geneva, 1996, p. 4; Akande and Gillard, *op. cit.*, p. 21.

<sup>115</sup> See, e.g. Additional Protocol I (Article 70) and Additional Protocol II (Article 18(2)); see also UNGA Res. 46/182, 19 December 1991 and UNGA Res. 58/114, 5 February 2004.

<sup>116</sup> UN Secretary-General, *Report on Protection for Humanitarian Assistance to Refugees and Others in Conflict Situations*, UN Doc. S/1998/883 (1998), para. 15; Yearbook of the Institute of International Law, Session of Bruges, Paris, Vol. 70, Part I, 2003, p. 563; *Guiding Principles on Internal Displacement, Principle 25*, United Nations, Economic and Social Committee, UN Doc. E/CN.4/1998/53/Add.2, 11 February 1998.

<sup>117</sup> Consistently with the limited exception in Article 74(1) of AP-I.

<sup>118</sup> ICRC Commentary to the Additional Protocols, para. 2805.

<sup>119</sup> Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (CDDH), Geneva, 1974–1977, Vol. 12 (potentially Vol 7 for that time period?), CDDH/II/SR.87, (available at: [https://tile.loc.gov/storage-services/service/ll/llmlp/RC-records\\_Vol-7/RC-records\\_Vol-7.pdf](https://tile.loc.gov/storage-services/service/ll/llmlp/RC-records_Vol-7/RC-records_Vol-7.pdf), accessed on 22 February 2025), p. 336–337. See also, for example, Security Council Resolution 2139 S/RES/2139 (2014).



lacking in predictability or inappropriate.<sup>120</sup>

135. Article 60 makes clear that the delivery of any relief consignments in no way relieve Israel of any of its responsibilities under Articles 55, 56 and 59. This is to ensure that relief consignments retain their 'humanitarian character' because they are not intended to 'represent the normal source of supply to the country'.<sup>121</sup> As the word suggests, they are 'commodities offered for relief purposes'.<sup>122</sup>
136. Article 60 also confers a further positive obligation upon Israel in that it must not divert relief consignments from the purpose for which they are intended, except in cases of urgent necessity and in the interests of the population of the occupied territory. The ICRC Commentary suggests that 'divert' ought to be given a broad interpretation, "as covering a change of destination of any kind, including requisition".<sup>123</sup>
137. The practical effect of Article 60 is that relief supplies cannot be diverted or requisitioned by Israel unless three cumulative conditions are met: first, the diversion or requisition of the relief consignments must be due to urgent necessity; second, it must be in the interests of the population of the Occupied Territory.<sup>124</sup>
138. The central feature of the obligation in Article 60 is that relief consignments should never be diverted for the benefit of Israel: 'they must be kept wholly and exclusively for the population of the Occupied Territory'.<sup>125</sup> The ICRC Commentary observes that 'to invoke the reservation on a large scale would represent a violation of the Convention, whose authors wished to ensure that the intentions of the donors were followed as far as possible.'<sup>126</sup>

## V. Summary of Bolivia's position

139. For the reasons set out in this Written Statement, Bolivia is of the view, in relation to the question contained in General Assembly resolution 79/232, that the Court possesses the necessary jurisdiction to render an advisory opinion on the questions posed by the General Assembly, and no compelling reasons exist to decline to do so.
140. Furthermore, Bolivia is of the view that Israel has a host of obligations under international law in relation to the presence and activities of the United Nations, other international organizations, and third States in the OPT, arising under the UN Charter, customary international law, the Fourth Geneva Convention and general principles of law. In particular:
  - a. Israel's presence in the OPT is illegal under international law, specifically violating the Palestinian people's right to self-determination and the *jus ad bellum*. Consequently, Israel must immediately end its presence in the OPT, including removing all restrictions on entry and activities by external actors, including States and international organizations providing humanitarian assistance.

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<sup>120</sup> Akande and Gillard, *op. cit.*, para. 52.

<sup>121</sup> ICRC Commentary to the Fourth Geneva Convention, p. 323.

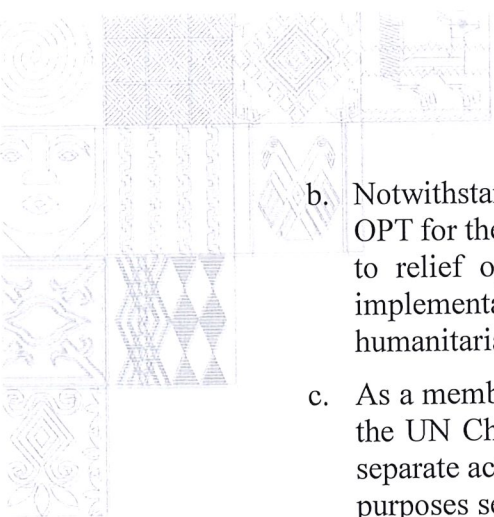
<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*, p. 324.

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

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- b. Notwithstanding the illegality of its presence, Israel has a duty to administer the OPT for the benefit of the Palestinian population. It is also obligated to consent to relief operations by impartial humanitarian organizations, facilitate the implementation of these operations, and ensure the personnel and objects of humanitarian organizations are respected and protected.
  - c. As a member of the United Nations, Israel is bound by Articles 2(5) and 56 of the UN Charter, obligating it to cooperate with the UN and to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55. Israel is further obligated to respect the law as indicated by ICJ Advisory Opinions and General Assembly Resolutions.
  - d. Israel must comply with the provisional measures issued by the International Court of Justice and is obligated to respect the privileges and immunities of the UN, and of UN personnel, as per Articles 104 and 105 of the UN Charter and the 1946 Convention on the Privileges and Immunities, including guaranteeing the safety of UNRWA personnel.
  - e. As a member of the UN and the Occupying Power, Israel has a duty to cooperate in promoting economic and social progress, and to support the right to self-determination of the Palestinian people. As such, it must ensure the unhindered provision of urgently needed supplies, basic services, and humanitarian assistance to the Palestinian population, particularly respecting and fulfilling the applicable human rights dimensions.
  - f. Israel has a positive obligation to ensure the physical safety, health and well-being of the population of the Occupied Territory by ensuring the provision of food, medicines and the necessities of life, allowing relief consignments, and maintaining medical establishments and services.
  - g. While Israel has legitimate security concerns, these cannot be used to justify actions that violate international law, such as restricting humanitarian access or undermining the privileges and immunities of the United Nations.
  - h. Israel's obligations under the Fourth Geneva Convention, as an Occupying Power, are not absolved by its illegal presence in the OPT. It remains responsible for the welfare of the occupied population, and for the aforementioned immediate humanitarian duties under IHL, until effective governance is transferred.



Roberto Calzadilla Sarmiento  
**Ambassador**