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 REPUBLIC OF POLAND

February 2025

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I. Introduction

1. The International Court of Justice in its Order of 23 December 2024 invites States to submit written statements concerning the request of the General Assembly for an advisory opinion on the question of the *Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory.*

2. The request was referred to the Court by the United Nations General Assembly resolution 79/232 of 19 December 2024.

3. In accordance with that resolution, the terms of the request made by the General Assembly of the United Nations are as follows:

> "The General Assembly,
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> (…)
>
> 10. Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, on a priority basis and with the utmost urgency, to render an advisory opinion on the following question, considering the rules and principles of international law, as regards in particular the Charter of the United Nations, international humanitarian law, international human rights law, privileges and immunities applicable under international law for international organizations and States, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, the advisory opinion of the Court of 9 July 2004, and the advisory opinion of the Court of 19 July 2024, in which the Court reaffirmed the duty of an occupying Power to administer occupied territory for the benefit of the local population and affirmed that Israel is not entitled to sovereignty over or to exercise sovereign powers in any part of the Occupied Palestinian Territory on account of its occupation:
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> 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?"

4. The Republic of Poland, in accordance with the Order of the Court of 23 December 2024, decided to present this written statement to the Court. This statement deals with the legal issues pertaining to the General Assembly request.

5. Section II of these Written Observations discusses the issue of the jurisdiction and discretion of the Court to give an opinion. Section III addresses the Court's previous pronouncements on issues relevant to the current advisory proceeding. Section IV discusses certain legal issues contained in questions put to the Court by the General Assembly. Finally, Section V presents the conclusions.

6. The Republic of Poland is of the view that the present proceedings can contribute to clarification of certain important aspects of international law, in particular obligations of occupying Powers to ensure and facilitate the unhindered provision of urgently needed humanitarian assistance for the benefit of the civilian population. Thus, it can have bearing on interpretation of "intransgressible principles of international customary law" which are "fundamental to the respect of the human person and "elementary considerations of humanity."[1]

II. Jurisdiction and discretion of the Court

7. When the Court is seized of a request for an advisory opinion, it must first consider whether it has jurisdiction to give the opinion requested and if so, whether there is any reason why the Court should, in the exercise of its discretion, decline to answer the request.[2]

[1] International Court of Justice, Advisory Opinion of 8 July 1996 on Legality of the Threat or Use of Nuclear Weapons, *I.C.J. Reports 1996*, p. 257, para. 79.
[2] *Ibidem*, para. 10; International Court of Justice, Advisory Opinion of 9 July 2004 on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, *I.C.J. Reports 2004*, p. 136, para. 13; International Court of Justice, Advisory Opinion of 22 July 2010 on Accordance with International Law of the Unilateral

II.1. Jurisdiction

8. The Court's jurisdiction to give an advisory opinion is based on Article 65, paragraph 1, of its Statute which provides that "[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request."

9. The General Assembly is competent to request an advisory opinion by virtue of Article 96, paragraph 1 of the Charter, which provides that "[t]he General Assembly (…) may request the International Court of Justice to give an advisory opinion on any legal question."

10. With respect to the requirement in Article 96, paragraph 1 of the Charter and Article 65 of its Statute that the advisory opinion must be on a "legal question", the Republic of Poland is of the view that a request from the General Assembly for an advisory opinion concerns a legal question. Specifically, the question put to the Court concerns "obligations" (…) "as an occupying Power and as a member of the United Nations, in relation to the presence and activities of the United Nations". As result, there is no doubt that the aforementioned question has a legal character.

11. Accordingly, in the Republic of Poland's view, the request has been made in accordance with the provisions of the Charter and of the Statute of the Court, which therefore has jurisdiction to render an opinion as requested by General Assembly Resolution 79/232.

II.2. Discretion

12. Article 65, paragraph 1 of the Statute provides that "[t]he Court may give an advisory opinion (…)" This provision has been consequently interpreted by the Court to mean that the fact that it has jurisdiction does not imply an obligation to exercise it.[3]

Declaration of Independence in Respect of Kosovo, *I.C.J. Reports 2010*, p. 403, para. 17; International Court of Justice, Advisory Opinion of 25 February 2019 on Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, *I.C.J. Reports 2019*, p. 95, para. 54; International Court of Justice, Advisory Opinion of 19 July 2024 on Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, para. 23ff.

[3] International Court of Justice, Advisory Opinion of 25 February 2019 on Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, para. 63; International Court of Justice, Advisory Opinion of 19 July 2024 on Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, para. 30-49.

13. The Court has taken the view that it "has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met."[4] The aim of this discretion is to protect the integrity of the Court's judicial function as the principal judicial organ of the United Nations.[5] Still, according to the Court's consistent jurisprudence, only "compelling reasons" may lead the Court to refuse its opinion in response to a request falling within its jurisdiction.[6]

14. As the Court stressed in its the most recent Advisory Opinion on the Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem: "It is for the Court to assess, in each case, the nature and extent of the information required for it to perform its judicial function."[7] In the Republic of Poland's view, the complexity of the factual issues should not be considered as such "compelling reasons" in this proceeding. There is an abundance of information, including documentation submitted by the United Nations Secretariat relating to the question before the Court,[8] which provides a solid basis for issuing a fully relevant opinion.

15. As to the connection between the advisory opinion and the functions of the General Assembly, the Republic of Poland notes the Court's long-standing position that it is for the requesting organ to determine the purposes for which it sought an opinion.[9]

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[4] International Court of Justice, Advisory Opinion of 9 July 2004 on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, para. 44; International Court of Justice, Advisory Opinion of 22 July 2010 on Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, para. 29.

[5] International Court of Justice, Advisory Opinion of 9 July 2004 on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, para. 44-45; International Court of Justice, Advisory Opinion of 22 July 2010 on Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, para. 29.

[6] International Court of Justice, Advisory Opinion of 9 July 2004 on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, para. 44; International Court of Justice, Advisory Opinion of 22 July 2010 on Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, para. 30.

[7] International Court of Justice, Advisory Opinion of 19 July 2024 on Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, para. 46.

[8] Introductory Note (documents received from the Secretariat of the United Nations), 30 January 2025, https://www.icj-cij.org/case/196

[9] International Court of Justice, Advisory Opinion of 9 July 2004 on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, para. 62; International Court of Justice, Advisory Opinion of 16 October 1975 on Western Sahara, *I.C.J. Reports 1975*, p. 12, para. 73; International Court of Justice, Advisory Opinion of 8 July 1996 on Legality of the Threat or Use of Nuclear Weapons, *I.C.J. Reports 1996*, p. 226, para. 16; International Court of Justice, Advisory Opinion of 22 July 2010 on Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, para. 34; International Court of Justice, Advisory Opinion of 25 February 2019 on Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, para. 76; International Court of Justice, Advisory Opinion of 19 July 2024 on Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, para. 37.

16. Another pertinent element that the Court must take into account is that the request concerns questions pending between two parties to a specific armed conflict, neither of which has consented to the Court's jurisdiction. However, in an Advisory Opinion issued in 1950 on Interpretation of' Peace Treaties with Bulgaria, Hungary and Romania, First Phase, the Court explained that: "[t]he consent of States, parties to a dispute, is the basis of the Court's jurisdiction in contentious cases. The situation is different in regard to advisory proceedings even where the Request for an Opinion relates to a legal question actually pending between States."[10]

17. It should be noted that the Court has already commented twice on the above-mentioned considerations in relations between Israel and Palestine. In an Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the Court recognized that the subject-matter of the General Assembly's request cannot be regarded as only a bilateral matter between Israel and Palestine. It has taken into consideration the powers and responsibilities of the United Nations, in particular as they relate to the "origin in the Mandate and the Partition Resolution concerning Palestine."[11] Subsequently, the Court noted that request related to a "particularly acute concern to the United Nations, and one which is located in a much broader frame of reference than a bilateral dispute."[12] This led the Court to the conclusion that issuing an advisory opinion would not circumvent the principle of consent to judicial settlement. Similar arguments were presented by the Court in its Advisory Opinion on Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem. In particular, the Court has emphasized that the Palestinian question "is a matter of particular interest and concern to the United Nations."[13]

18. As to the importance of the present proceedings on the negotiation process between Israel and Palestine, it was already stated that "the question of whether the Court's opinion would

[10] International Court of Justice, Advisory Opinion of 30 March 1950 on Interpretation of' Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory, Opinion, *I.C.J. Reports 1950*, p. 65, at p. 71.
[11] International Court of Justice, Advisory Opinion of 9 July 2004 on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, para. 49.
[12] Ibidem, para. 50.
[13] International Court of Justice, Advisory Opinion of 19 July 2024 on Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, para 35.

have an adverse effect on a negotiation process is a matter of conjecture. The Court cannot speculate about the effects of its opinion."[14]

III. The Court's pronouncements on issues relevant to answering the question raised in the General Assembly resolution

19. The question posed in the General Assembly resolution 79/232 of 19 December 2024 concerns issues that were already discussed in the Court's pronouncements. In particular, two issues should be highlighted: the consideration of Israel as an occupying Power in the Occupied Palestine Territory, and the obligation "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."

20. In terms of the territorial scope that should be applied to the General Assembly's question, the Court had observed already in its Wall Advisory Opinion that Israel occupied the West Bank and East Jerusalem.[15] In its Advisory Opinion on the Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, the Court confirmed this legal assessment.[16] Furthermore, in this opinion the Court considered "that Israel remained capable of exercising, and continued to exercise, certain key elements of authority over the Gaza Strip, including control of the land, sea and air borders, restrictions on movement of people and goods, collection of import and export taxes, and military control over the buffer zone, despite the withdrawal of its military presence in 2005. This is even more so since 7 October 2023."[17] This led the Court to the conclusion that "Israel's withdrawal from the Gaza Strip has not entirely released it of its obligations under the law of occupation. Israel's obligations have remained commensurate with the degree of its effective control over the Gaza Strip."[18]

[14] Ibidem, para. 4.
[15] International Court of Justice, Advisory Opinion of 9 July 2004 on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, para. 78 and 87.
[16] International Court of Justice, Advisory Opinion of 19 July 2024 on Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, para. 87.
[17] Ibidem, para. 92.
[18] Ibidem, para 99.

21. In its Order on provisional measures of 26 January 2024 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 indicated that: "The State of Israel shall take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip."[19]

22. Furthermore, in its Order of 28 March 2024 in the case in question, the Court indicated that "[t]he State of Israel shall, in conformity with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, and in view of the worsening conditions of life faced by Palestinians in Gaza, in particular the spread of famine and starvation: (…) 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; (…) 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 Convention on the Prevention and Punishment of the Crime of Genocide, including by preventing, through any action, the delivery of urgently needed humanitarian assistance."[20]

23. Finally, in its Order of 24 May 2024 in the case in question, the Court indicated that: "The State of Israel shall, in conformity with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, and in view of the worsening conditions of life faced by civilians in the Rafah Governorate: (…) Maintain open the Rafah crossing for unhindered provision at scale of urgently needed basic services and humanitarian assistance."[21]

[19] International Court of Justice, Order of 26 January 2024 in case Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa V. Israel), para. 86.
[20] International Court of Justice, Order of 28 March 2024 in case Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa V. Israel), para. 51.
[21] International Court of Justice, Order of 24 May 2024 in case Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa V. Israel), para. 57.

IV. The question put to the Court by the General Assembly

IV.1. Origins of contemporary obligations towards civilian population in case of armed conflicts

24. The experience of brutal occupation during the World War II which affected many states, including Poland (occupied by Nazi Germany and by the Soviet Union), prompted the international community to establish new rules in the International Humanitarian Law of Armed Conflict that regulated, among other matters, the obligations towards civilian populations described in the Geneva Convention on the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention).[22] The parties to this treaty number 196 states (including Israel and Palestine), more than belong to the United Nations. All Geneva Conventions of 1949 are universally considered a part of customary law and particularly important to the international community.[23]

25. Regulations concerning the protection of the civilian population were further developed in the Additional Protocols to the Geneva Conventions of 12 August 1949 relating to the protection of victims of international armed conflicts (Additional Protocol I) and of non-international armed conflicts (Additional Protocol II).[24] As these treaties were being

[22] 75 UNTS 287.

[23] International Court of Justice, Judgment of 27 June 1986 in the case Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America, *I.C.J Reports 1986*, p. 14, para. 218: "The Court, however, sees no need to take a position on that matter, since in its view the conduct of the United States may be judged according to the fundamental general principles of humanitarian law; in its view, the Geneva Conventions are in some respects a development, and in other respects no more than the expression, of such principles. (…) Article 3, which is common to al1 four Geneva Conventions of 12 August 1949, defines certain rules to be applied in the armed conflicts of a non-international character. There is no doubt that, in the event of international armed conflicts, these rules also constitute a minimum yardstick, in addition to the more elaborate rules which are also to apply to international conflicts; and they are rules which, in the Court's opinion, reflect what the Court in 1949 called "elementary considerations of humanity (…)"; International Court of Justice, Advisory Opinion of 8 July 1996, Legality of the Threat or Use of Nuclear Weapons, *I.C.J Reports 1996*, p. 226, para. 79: "It is undoubtedly because a great many rules of humanitarian law applicable in armed conflict are so fundamental to the respect of the human person and 'elementary considerations of humanity' (…), that the Hague and Geneva Conventions have enjoyed a broad accession. Further, these fundamental rules are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law"; Eritrea-Ethiopia Claims Commission, Partial Award, Prisoners of War, Ethiopia's Claim 4, between the Federal Democratic Republic of Ethiopia and the State of Eritrea, 1 July 2003, *RIAA* (2009), vol. XXVI, para. 32: "Consequently, the Commission holds that the law applicable to this Claim is customary international law, including customary international humanitarian law as exemplified by the relevant parts of the four Geneva Conventions of 1949. The frequent invocation of provisions of Geneva Convention III by both Parties in support of their claims and defenses is fully consistent with this holding. Whenever either Party asserts that a particular relevant provision of these Conventions should not be considered part of customary international law at the relevant time, the Commission will decide that question, and the burden of proof will be on the asserting Party".

[24] 1125 UNTS 3.

negotiated, it became evident that states like Poland, whose populations (including millions of citizens of Jewish origin) had experienced horrific crimes against civilians, were particularly interested in securing better protection for civilians and strengthening the legal obligations of Occupying Powers, including placing an absolute prohibition on reprisals against civilians and civilian objects.[25]

26. Palestine has been a party to the Additional Protocols since 2014, but Israel is not. Against this background, the Republic of Poland will refer only to those provisions of the Additional Protocols which it considers as binding for all parties as customary rules. The Republic of Poland also wishes to stress that provisions concerning the protection of civilians and humanitarian and medical workers as well as of civilian goods included in Additional Protocol I were adopted – as the preamble to Additional Protocol I stressed – "to reaffirm and develop the provisions protecting the victims of armed conflicts."

27. A reading of both the 1949 Geneva Conventions and their Additional Protocols of 1977 clearly proves that the horrific experience of World War II prompted states to abandon the concept of total war in order to better protect civilian population. It was clear for states that civilians might fall victim in armed conflicts not only to direct hostilities, but also to the generally harsh objective circumstances caused by war, including limited access to food, fresh water and medical aid. This was the reason for including robust obligations of parties to an armed conflict in the Fourth Geneva Convention.

28. In every armed conflict, International Human Rights Law must also be taken into account, as confirmed by the International Court of Justice in para. 25 of its Advisory Opinion of 8 July 1996 on the Legality of the Threat or Use of Nuclear Weapons. This Advisory Opinion emphasized that "the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency. Respect for the right to life is not, however, such a provision. (…)" Additionally, in para. 106 of the Court's Advisory Opinion of 9 July 2004 on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the Court stressed that it "considers that the

[25] See doc. CDDH/III/103 and CDDH/I/GT/113 (Polish-Syrian proposal); *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva (1974-1977),* vol. IX, pp. 63, 77, 452; vol. X, p. 219; vol. XIV, p. 129; vol. XVI, p. 13.

protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the International Covenant on Civil and Political Rights. As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law. In order to answer the questions put to it, the Court will have to take into consideration both these branches of international law, namely human rights law and, as *lex specialis*, international humanitarian law."[26] In addition, the Court observed in the latter Opinion that the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are binding in respect of its conduct with regard to the Occupied Territory.[27] Recently, in para. 101 of the Advisory Opinion of 19 July 2024 on Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, the Court presented the view that the State must comply with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination in circumstances in which it exercises its jurisdiction outside its territory. Implicitly, the Court confirmed this position also in para. 404 of its Judgment of 31 January 2024 on Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), where it found "that the Russian Federation, by the way in which it has implemented its educational system in Crimea after 2014 with regard to school education in the Ukrainian language, has violated its obligations under Articles 2, paragraph 1 (a), and 5 (e) (v) of the International Convention on the Elimination of Racial Discrimination."[28]

29. Therefore, in the analysis of obligations towards civilian populations, International Human Rights Law concerning humanitarian assistance must also be taken into account. When

[26] *I.C.J. Reports 2004*, p. 136.
[27] *Ibidem*, at para. 111-112.
[28] The occupation of Crimea by the Russian Federation was *inter alia* confirmed by several United Nations General Assembly resolutions: 71/205 of 19 December 2016, 72/190 of 19 December 2017, 73/263 of 22 December 2018, 74/168 of 18 December 2019, 75/192 of 16 December 2020, 76/179 of 16 December 2021 and 77/229 of 15 December 2022 on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine and 79/184 of 6 November 2024 on situation of human rights in the temporarily occupied territories of Ukraine, including the Autonomous Republic of Crimea and the city of Sevastopol.

considering obligations in this respect, provisions of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights of 16 December 1966[29] require analysis. Furthermore, obligations stemming from Article 22 of the Convention on the Rights of the Child of 20 November 1989 and Article 11 of the Convention on the Rights of Persons with Disabilities of 12 December 2006, to which both Palestine and Israel are parties, must be considered.

IV.2. Obligation of the Occupying Power to ensure humanitarian assistance to the civilian population

IV.2.1. Needs of the civilian population

30. Article 55 of the Fourth Geneva Convention emphasizes that the Occupying Power to the fullest extent of the means available to it "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". Apart from Article 55, several other provisions (e.g., Articles 23, 59, 60, 61, 62, 108, 109, 110, 111 and 142 of the Fourth Geneva Convention) refer to humanitarian assistance which needs to be provided to civilians.

IV.2.2. The notion of humanitarian assistance

31. Provisions of the Fourth Geneva Convention clearly indicate typical types of products which might be classified as "relief aid" (in other words – as humanitarian assistance). Article 23 of the Fourth Geneva Convention mentions e.g. "all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians," along with "all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases." Article 59 indicates that relief aid consists "in particular, of the provision of consignments of foodstuffs, medical supplies and clothing." Those provisions were reaffirmed by Article 69 of Additional Protocol I, which explains that goods which the Occupying Power needs to provide to the fullest extent of the means available consist of "food and medical supplies," as well as

[29] 999 UNTS 171 and 993 UNTS 3.

"clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship."

32. The understanding of the notion of humanitarian assistance adopted in the Fourth Geneva Convention and in its Additional Protocol I was confirmed by the judgment of the Court of 27 June 1986 in the case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. Unites States of America),[30] where the Court stressed in paras. 97-99 that "the term 'humanitarian assistance' means the provision of food, clothing, medicine, and other humanitarian assistance, and it does not include the provision of weapons, weapons systems, ammunition, or other equipment, vehicles, or material which can be used to inflict serious bodily harm or death."

33. A similar understanding of humanitarian assistance was adopted by the Institut de Droit International in its Resolution of 2 September 2003 (Bruges session).[31] This resolution, which refers to various disasters, including ones "caused by armed conflicts", explains in para. 1 that:

> "Humanitarian assistance" means all acts, activities and the human and material resources for the provision of goods and services of an exclusively humanitarian character, indispensable for the survival and the fulfillment of the essential needs of the victims of disasters.
>
> a) "Goods" includes foodstuffs, drinking water, medical supplies and equipment, means of shelter, clothing, bedding, vehicles, and all other goods indispensable for the survival and the fulfillment of the essential needs of the victims of disasters; this term never includes weapons, ammunition or any other military material.
>
> b) "Services" means the means of transport, tracing services, medical services, religious, spiritual and psychological assistance, reconstruction, de-mining, decontamination, voluntary return of refugees and internally displaced persons, and all other services indispensable for the survival and the fulfilment of the essential needs of the victims of disasters".

[30] *I.C.J. Reports 1986*, p. 14.
[31] The text of the resolution is available at https://www.idi-iil.org/app/uploads/2017/06/2003_bru_03_en.pdf (accessed 21.02.2025).

34. Therefore, the Republic of Poland is convinced that there is a general understanding in the Fourth Geneva Convention and in binding all parties to the customary law of armed conflict that some types of goods (such as food, drinking water, medical supplies, means of shelter, clothing and other goods indispensable for the survival) and services can be clearly classified as humanitarian assistance and must be provided by the Occupying Power.

IV.2.3. Humanitarian character of assistance

35. To classify the aforementioned goods and services as humanitarian assistance enjoying protection against attacks, the assistance must be of an exclusively humanitarian and impartial nature, i.e. provided without any adverse distinction in accordance with Article 13 of the Fourth Geneva Convention (confirmed by the wording of Article 70 of Additional Protocol I and Article 18 of Additional Protocol II). The principle of impartiality's value was also emphasized by the Court in its judgment of 27 June 1986 in the case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. Unites States of America), where the Court emphasized in para. 243 that "[a]n essential feature of truly humanitarian aid is that it is given 'without discrimination' of any kind. In the view of the Court, if the provision of 'humanitarian assistance' is to escape condemnation as an intervention in the internal affairs of Nicaragua, not only must it be limited to the purposes hallowed in the practice of the Red Cross, namely 'to prevent and alleviate human suffering' and 'to protect life and health and to ensure respect for the human being'; it must also, and above all, be given without discrimination to all in need in Nicaragua, not merely to the contras and their dependents."

36. Neither the provisions of the Fourth Geneva Convention, nor the provisions of Additional Protocol I require that assistance be neutral or independent, but the Security Council e.g. in its resolution 2175 of 2014 does require "all parties to armed conflict to respect the humanitarian principles of humanity, neutrality, impartiality and independence in order to ensure the provision of humanitarian assistance, the safety of civilians receiving assistance and the security of humanitarian personnel and United Nations and its associated personnel." Nevertheless, from the treaties and judgments mentioned above, it can be deduced that that there are two crucial features of humanitarian assistance: firstly, its aim to alleviate suffering; and secondly, its provision in an impartial manner. If the assistance is used for military purposes, it loses its humanitarian character and becomes a military

objective (confirmed by the wording of Article 8(2)(b)(iii)) and Article 8(2)(e)(iii) of the Rome Statute which criminalizes attacks against personnel, installations, materiel, units or vehicles involved in a humanitarian assistance or peacekeeping missions in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict). If assistance is provided in non-impartial way, it cannot be classified as humanitarian, which does not, however, mean that such consignments are automatically classified as a military objective.

IV.3. Obligation to permit free passage of humanitarian assistance

IV.3.1. Free passage of humanitarian assistance in armed conflicts

37. In accordance with Article 23 of the Fourth Geneva Convention, States are required to "allow the free passage of all consignments of medical and hospital stores" intended only for civilians and "the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases". This free passage must be secure in all situations, thus not only in case of occupation. Article 23 was further developed by Article 70 of Additional Protocol I, which stresses that if the civilian population of any territory under the control of a Party to the conflict is not adequately provided with the aforementioned supplies, "relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement of the Parties concerned in such relief actions. Offers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts. In the distribution of relief consignments, priority shall be given to those persons, such as children, expectant mothers, maternity cases and nursing mothers, who, under the Fourth Convention or under this Protocol, are to be accorded privileged treatment or special protection." Also, Article 18 of Additional Protocol II applied in non-international armed conflicts emphasizes that "if the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival (…), relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken." In consequence, the articles mentioned above stress that even without meeting the requirements for classification as an Occupying Power, states should consider giving consent to humanitarian organizations and in principle allow free passage of humanitarian assistance.

A non-occupying power is not obliged to satisfy the basic needs of the civilian population which is not under its control, but nonetheless should not impede humanitarian assistance conducted by humanitarian actors if the civilian population is in need of humanitarian assistance.

38. The customary character of the provisions mentioned above was noted as Rule 55 of the International Committee of the Red Cross Study on Customary International Humanitarian Law, where there is reference to the vast practice of various states, including Israel.[32]

39. Furthermore, the existence of such an obligation is reflected in resolutions of the United Nations Security Council, such as resolution 2730 of 24 May 2024, which in paras. 8-9 "[s]trongly condemns the unlawful denial of humanitarian access and depriving civilians of objects indispensable to their survival, which impede relief supplies and access for responses to conflict-induced food insecurity in situations of armed conflict, which may constitute violations of international humanitarian law" and "urges all parties to armed conflict to allow and facilitate, in a manner consistent with relevant provisions of international humanitarian law, full, safe, rapid and unhindered humanitarian access to all civilians in need, and to promote the safety, security and freedom of movement of humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, and the safety and security of their premises and assets."[33]

IV.3.2. Free passage of humanitarian assistance during occupation

40. In case of occupation, the Occupying Power has even more obligations than merely allowing free passage, as it is obliged to agree on humanitarian assistance schemes, facilitate them, permit the free passage of humanitarian assistance and guarantee its protection. Those obligations are clearly expressed in Article 59 of the Fourth Geneva Convention, which is worth citing in its entirety:

[32] Database is available at https://ihl-databases.icrc.org/en/customary-ihl/v1/rule55 (access 21.02.2025).
[33] Cf. also S/RES/2175 of 29 August 2024, where the UN Security Council "[u]rges all parties involved in an armed conflict to allow full unimpeded access by humanitarian personnel to all people in need of assistance, and to make available, as far as possible, all necessary facilities for their operations, and to promote the safety, security and freedom of movement of humanitarian personnel and United Nations and its associated personnel and their assets".

> "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."

41. The importance of enabling humanitarian assistance was also recognized in other cases of occupation (unrelated to the Palestinian Occupied Territories), as in the case of Russian occupation of Ukrainian territory, where the Independent International Commission of Inquiry on Ukraine consistently recommended that Russian Federation should "[r]espect international humanitarian law applicable to occupied territories and refrain from placing any impediment to humanitarian assistance in those territories."[34]

IV.3.3. Limitations due to military necessity

42. The Fourth Geneva Convention cautiously balances the requirements of the principle of humanity and of military necessity. On the one hand, Article 59 emphasizes that "[a]ll Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection." On the other, it allows consignments to be searched and their passage regulated by prescribed times and routes. Also, Article 70 of Additional Protocol I takes

[34] Report of the Independent International Commission of Inquiry on Ukraine to the Human Rights Council, A/HRC/52/62, 16 March 2023, para. 114; Report of the Independent International Commission of Inquiry on Ukraine to the UN General Assembly, A/78/540, 20 October 2023, para. 110; Report of the Independent International Commission of Inquiry on Ukraine, 18 March 2024, A/HRC/55/56, para. 106.

into account State concerns that humanitarian assistance should be provided subject to the agreement of the Parties concerned in such assistance and that "[t]he Parties to the conflict and each High Contracting Party which allow the passage of relief consignments, equipment and personnel (…) (a) shall have the right to prescribe the technical arrangements, including search, under which such passage is permitted; (b) may make such permission conditional on the distribution of this assistance being made under the local supervision of a Protecting Power; (c) shall, in no way whatsoever, divert relief consignments from the purpose for which they are intended nor delay their forwarding, except in cases of urgent necessity in the interest of the civilian population concerned." However, the same provision stresses that "Offers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts."

43. Therefore, the Republic of Poland is of the view that security reasons might justify restrictions concerning how, when and where humanitarian assistance is provided, but cannot be used to justify entirely depriving civilian populations of goods essential to their survival. States cannot lawfully prevent the provision of humanitarian assistance by humanitarian actors if the needs of the civilian population are not satisfied.

IV.4. Obligation not to arbitrarily prevent humanitarian assistance

44. Article 11 of the Fourth Geneva Convention recognizes the right of impartial humanitarian organizations to undertake humanitarian activities for the protection of civilian persons and for their relief, subject to the consent of the parties to the conflict. Having in mind the aforementioned obligations of states to permit free passage of humanitarian assistance and the obligation of occupying powers to ensure basic supplies to the civilian population, the Republic of Poland considers that states cannot totally deny consent to the activities of humanitarian organizations if they are unable to satisfy the civilian population's basic needs. Such general denial of access to a civilian population in need must be interpreted as arbitrary and therefore illegal.

45. Having in mind the provisions of the International Humanitarian Law of Armed Conflicts and of International Human Rights Law, it is not surprising that the Court in its Judgment of 27 June 1986 in the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) case in para. 242 has already stressed that "[t]here

can be no doubt that the provision of strictly humanitarian aid to persons or forces in another country, whatever their political affiliations or objectives, cannot be regarded as unlawful intervention, or as in any other way contrary to international law."

46. Humanitarian assistance – clearly defined by the provisions of the International Humanitarian Law of Armed Conflicts and International Human Rights Law, including customary law – when provided to the civilian population in a non-discriminatory, impartial manner, i.e. without any adverse distinction, cannot be totally suspended by the arbitrary withdrawal of consent to the operation of humanitarian organizations and by the denial of humanitarian workers' access to the civilian population. If the state has any security concerns, it might always inspect the goods provided and designate routes by which this assistance is transported. The Republic of Poland also wishes to point out that the civilian population of an enemy state cannot be considered in its entirety as a legitimate target of military operations. Thus, a strict distinction needs to be made between civilians directly participating in hostilities (which must be understood narrowly in practice to secure the protection of the civilian population) and civilians who do not take part. Every civilian person not taking part directly in hostilities deserves to be protected. The Republic of Poland would like to also remind that the International Criminal Tribunal for the former Yugoslavia emphasized that: "The presence within a population of persons who do not come within the definition of civilians does not necessarily deprive the population of its civilian character."[35].

47. The value of access to humanitarian assistance is emphasized by the criminalization as a war crime of "intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions" in accordance with Article 8(2)(b)(xxv) and Article 8(2)(e)(xix) of the Rome Statute of the International Criminal Court; as well as by criminalization of "[i]ntentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance (…)" in accordance with Article 8(2)(b)(iii) and Article 8(2)(e)(iii) of the Rome Statute of the International Criminal Court. These provisions of the Rome Statute are based, among

[35] International Criminal Tribunal for the Former Yugoslavia, Judgment of Trial Chamber of 24 March 2016 in case PROSECUTOR v. RADOVAN KARADŽIĆ, IT-95-5/18-T, para. 474.

others, on Article 147 of the Fourth Geneva Convention and on Article 11(4) and Article 85(3)(a) of Additional Protocol I.

IV.5. Protection of humanitarian assistance objects and of humanitarian workers against attacks

IV.5.1. Protection of humanitarian workers

48. Humanitarian workers (who are not members of a state's armed forces) should be considered as civilian persons not taking direct part in hostilities and are thus protected against attack by the principle of distinction recognized already in the St. Petersburg Declaration of 1868 on Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, which states that "the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy." The principle of distinction was subsequently confirmed by the provisions of Articles 48, 51(2) and 52(2) of Additional Protocol I. No state made any reservation to those provisions and the principle of distinction was recognized as Rule 1 by the International Committee of the Red Cross Study on Customary International Humanitarian Law. Moreover, the same Study confirms as Rule 31 the customary character of the obligation of parties to an armed conflict to respect and protect humanitarian assistance personnel, in accordance with Article 71(2) of Additional Protocol I.

49. The Court recognized the principle of distinction, both between civilian goods and military objectives and between combatants and non-combatants, as one of the "cardinal principles" of International Humanitarian Law and one of "intransgressible principles of international customary law" in paras. 78-79 of its Advisory Opinion of 8 July 1996 on the Legality of the Threat or Use of Nuclear Weapons. The Court explained in para. 78 of its Advisory Opinion that this principle "is aimed at the protection of the civilian population and civilian objects and establishes the distinction between combatants and non-combatants; States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets."

IV.5.2. Protection of humanitarian assistance objects

50. Objects which might be classified as humanitarian assistance should be considered as civilian goods which should not be the object of an attack. This rule can be deduced from the prohibition on deliberately impeding the delivery of humanitarian assistance stated in Article 59 of the Fourth Geneva Convention, as any attack against humanitarian assistance objects amounts to an impediment of humanitarian assistance. The International Committee of the Red Cross Study on Customary International Humanitarian Law recognized in Rule 32 the customary obligation of parties to an armed conflict to respect and protect objects used for humanitarian assistance.

51. It is worth repeating that under the Statute of the International Criminal Court and Articles 8(2)(b)(iii) and 8(2)(e)(iii) of the Rome Statute of the International Criminal Court, intentionally directing attacks against installations, material, units or vehicles involved in a humanitarian assistance mission in accordance with the Charter of the United Nations is considered a war crime in international and in non-international armed conflicts, as long as such objects are entitled to the protection given to civilian objects under the international law of armed conflict.

52. Even if objects typically considered as humanitarian assistance are deprived of their humanitarian status, e.g. because they are not distributed in an impartial way, those goods could still be considered as civilian goods. For example, foodstuffs could be classified as objects indispensable to the survival of the civilian population, in which case the prohibition of attacks arises explicitly out of the Additional Protocols (Article 54(2) AP I; Article 14 AP II). This prohibition is recognized as reflecting customary law in Rule 54 of the International Committee of the Red Cross Study on Customary International Humanitarian Law.

IV.5.3. Special protection for medical units and medical personnel

53. One of the first and basic rules introduced in modern International Humanitarian Law – already stated in the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field of 22 August 1864 – was the protection of wounded and sick and of medical personnel, as well as of medical units, medical transport and material.

Those rules were then systematically restated in nearly all subsequent International Humanitarian Law treaties, including numerous provisions of the Geneva Conventions of 1949 and their Additional Protocols. Protection of the wounded and sick is expressed in e.g. Common Article 3 of the Geneva Conventions of 1949; Articles 12 and 15 of the First Geneva Convention; Articles 12 and 18 of the Second Geneva Convention; Article 16 of the Fourth Geneva Convention; Article 10 of Additional Protocol I; and Articles 7 and 8 of Additional Protocol II. Protection of medical personnel is expressed in Common Article 3 of the Geneva Conventions of 1949, as well as in Articles 24-26 of the First Geneva Convention; Article 36 of the Second Geneva Convention; Article 20 of the Fourth Geneva Convention; Article 15 of Additional Protocol I; and Article 9 of Additional Protocol II. Protection of medical units is expressed in Article 27 of the 1907 Hague Regulations concerning the Laws and Customs of War on Land to Convention (IV) respecting the Laws and Customs of War, as well as in Article 19 of the First Geneva Convention; Article 18 of the Fourth Geneva Convention; Article 12 of Additional Protocol I; and Article 11 of Additional Protocol II.

54. In accordance with Article 21 of the First Geneva Convention; Article 19 of the Fourth Geneva Convention, Article 13 of Additional Protocol I; and Article 11(2) of Additional Protocol II, medical units can lose their protection only if they are being used, outside their humanitarian function, to commit acts harmful to the enemy. In such a situation, attacks against medical units can be performed only after prior warning, setting a reasonable time-limit and only if such warning has not been heeded. Even if a medical unit, despite appropriate warning, is still engaged in acts harmful to the enemy, careful analysis of the impact of the attack on civilian population must be performed, in accordance with the principle of proportionality (expressed in Article 51(5)(b) and Article 57 of Additional Protocol I). The value of the principle of proportionality was confirmed by the Court in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons.[36]

55. Medical personnel – whether permanent or temporary – must be respected and protected in any circumstances. Enhanced protection of medical personnel and of medical units is necessary, as the death of any member or destruction of a medical unit goes beyond the loss of a single person or building and has the potential to start an avalanche of additional

[36] International Court of Justice, Advisory Opinion of 8 July 1996, Legality of the Threat or Use of Nuclear Weapons, para. 30.

deaths and sickness affecting the most vulnerable elements of the population, especially children and pregnant women. This obvious truth was pointed out by the United Nations Secretary General during the World Humanitarian Summit in 2016, when he delivered a report entitled "One Humanity: Shared Responsibility" which stated: "Hospitals must remain sanctuaries in wartime."[37]

V. General conclusion

56. The Republic of Poland respectfully asks the Court to respond to the question posed in the General Assembly resolution 79/232 of 19 December 2024, taking into account the considerations presented in this statement.

[37] UN Doc. A/70/709 (2016), para. 58.