



**REQUEST BY THE UNITED NATIONS GENERAL ASSEMBLY FOR AN  
ADVISORY OPINION ON THE OBLIGATIONS OF ISRAEL IN RELATION TO  
THE PRESENCE AND ACTIVITIES OF THE UNITED NATIONS, OTHER  
INTERNATIONAL ORGANIZATIONS AND THIRD STATES IN AND IN  
RELATION TO THE OCCUPIED PALESTINIAN TERRITORY**

**WRITTEN STATEMENT  
SUBMITTED BY  
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA  
TO THE INTERNATIONAL COURT OF JUSTICE**

**FEBRUARY 2025**

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## I. INTRODUCTION

1. The Government of the Republic of Indonesia ("Indonesia") submits this written statement pursuant to the International Court of Justice's Order of 23<sup>rd</sup> of December 2024, with which the United Nations ("UN") and its Member States, as well as the observer State of Palestine, are considered likely to be able to furnish information on the questions submitted to the International Court of Justice (the "Court") for an advisory opinion.
2. The United Nations General Assembly ("UNGA") in its Resolution 79/232 (2024) requested an advisory opinion to the Court on the following questions:

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

*What are the obligations of Israel, 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. Indonesia believes that the Court has jurisdiction to render the requested advisory opinion, and that there are no compelling reasons for the Court not to render the advisory opinion.
4. Indonesia also submits that there are obligations binding to Israel, as an Occupying Power and as Member state of the UN, that must be fulfilled in good faith. As presented in this written submission, such obligations include: the obligations assumed by every Member of the UN and by an Occupying Power, in accordance with international law, as regard in particular the UN Charter, 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.
5. Due to the breadth of the legal obligations of Israel both as a UN Member and Occupying Power, Indonesia wholly acknowledges that the submissions provided in this written statement does not constitute an exhaustive list of Israel's legal obligations. The absence of legal obligations provided herein shall not be construed as an

acknowledgement of their inapplicability or irrelevance, as the purpose of this written statement is to contribute to the legal determination that will be made by this Court based on the question posed under UNGA Resolution 79/232 (2024).

6. Indonesia attaches its highest importance to the rule of international law and to the Court's role as the principal judicial organ of the UN. Indonesia wishes that the Court considers favorably to the request of the UNGA and brings justice to the oppressed Palestinian people.

## II. THE COURT HAS JURISDICTION TO GIVE THE ADVISORY OPINION REQUESTED BY THE UNGA, AND THERE ARE NO GROUNDS FOR DECLINING TO EXERCISE SUCH JURISDICTION

7. Indonesia asserts that this Court has jurisdiction to render the advisory opinion requested by the UNGA pursuant to Article 65 of the Statute of the International Court of Justice ("Statute"), as (a) the UNGA has the competence to request for an advisory opinion; (b) the question presented is a legal question; and (c) the Court has no compelling reasons to decline to give the requested advisory opinion.

### a. The UNGA Has the Competence to Request for an Advisory Opinion

8. The UNGA has the competence to request for an advisory opinion. Article 65 (1) of the Statute allows the Court to render an advisory opinion requested by "...whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request."<sup>1</sup> The UNGA's competence is well provided under Article 96 (1) of the Charter of the United Nations ("UN Charter"). The Article provides that UNGA is "...an organ duly authorized to seek an advisory opinion under the Charter..."<sup>2</sup> This Court also confirms, such as in *Nuclear Weapons*, that Article 96 (1) gives the UNGA the liberty in requesting an opinion from the Court.<sup>3</sup>
9. Furthermore, the subject matter of the question presented before the Court falls within the scope of activity of the UNGA. The present case relates to the issue of Palestine, which the UNGA has been acutely involved in. This aligns with the practices of the Court<sup>4</sup> which have pointed out that the question the subject of the request relates to the activities of the UNGA.
10. As has been confirmed by the Court, since Resolution 181 (II) concerning the partition of Palestine was adopted by the UNGA in 1947, the Palestinian issue has been brought before the UNGA. It has considered, debated and adopted resolutions on it almost annually.<sup>5</sup> Those resolutions adopted by the UNGA include, but are not limited to, the

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<sup>1</sup> Statute of the International Court of Justice, Article 65 (1).

<sup>2</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports, 8 July 1996 [*Nuclear Weapons*], para. 11.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports, 9 July 2004 [*Wall*], para. 16; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, ICJ Reports, 22 February 2010 [*Kosovo*], p. 21 – 22, paras. 42 – 45.

<sup>5</sup> *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, ICJ Reports, 19 July 2024 [*Israel's Policies and Practices in the OPT*], p. 17, para. 35.

UN Conciliation Commission for Palestine,<sup>6</sup> the UN Relief and Works Agency for Palestinian Refugees in the Near East (“UNRWA”),<sup>7</sup> the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and other Arabs of the Occupied Territories,<sup>8</sup> the Committee on the Exercise of the Inalienable Rights of the Palestinian People (“CEIRPP”),<sup>9</sup> as well as other relevant mechanisms under the auspices of the UNGA.

11. Thus, the Court has jurisdiction to render an advisory opinion based on Article 65 (1) of the Statute, considering the competence of the UNGA to request an advisory opinion provided under Article 96 (1) of the UN Charter.

**b. The Question Presented is a Legal Question**

12. Indonesia considers that the question presented is a legal question within the meaning of Article 65 (1) of the Statute and Article 96 (1) of the UN Charter.
13. As has been consistently held by the Court, a legal question is “... framed in terms of law and [raises] problems of international law...”, and a question which expressly asks “whether or not a particular action is compatible with international law certainly appears to be a legal question...”.<sup>10</sup> The existence of a certain political nature should bear no relevance in depriving the Court’s jurisdiction.<sup>11</sup>
14. Indonesia submits that the question made by the UNGA is formulated in legal terms, raises international law issues and asks the Court to consider the legal consequences arising from specific circumstances.
15. In the Operative Paragraph of the UNGA Resolution 79/232, the Court is explicitly asked to identify, interpret and consider the relevant rules of principles of international law, including the UN Charter, international humanitarian law, international human rights law, privileges and immunities applicable under international law for international organizations and states, relevant resolutions of the United Nations Security Council (“UNSC”), the UNGA and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004 and 19 July 2024, along with the previous Court’s determination of Israel as Occupying Power under international law. This request will result in an advisory opinion that is squarely in accordance with international law, which is “by their nature susceptible of a reply based on law”.<sup>12</sup>
16. Conclusively, the Court has jurisdiction to render an advisory opinion based on Article 65 of the Statute, as well as Article 96 (1) of the UN Charter, in which the question presented as provided under UNGA Resolution 79/232 is a legal question.

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<sup>6</sup> United Nations General Assembly (“UNGA”) Res. 194 (III), 11 December 1948.

<sup>7</sup> UNGA Res. 302 (IV), 8 December 1949.

<sup>8</sup> UNGA Res. 2443 (XXIII), 19 December 1968.

<sup>9</sup> UNGA Res. 3376 (XXX), 10 November 1975.

<sup>10</sup> *Western Sahara*, Advisory Opinion, ICJ Reports, 16 October 1975 [*Western Sahara*], p. 18; *Kosovo*, *supra* n. 4, p. 414 – 415, para. 25.; *Nuclear Weapons*, *supra* n. 2, p. 11, para. 13.

<sup>11</sup> *Nuclear Weapons*, *supra* n. 1, para. 13; *Wall*, *supra* n. 3, paras. 51 – 54; *Kosovo*, *supra* n. 3, paras. 33 – 36.

<sup>12</sup> *Ibid.*

**c. The Court Has No Compelling Reasons to Decline to Give the Requested Advisory Opinion**

17. The Court, by virtue of its discretionary power under Article 65 (1) of its Statute, may refuse to give an opinion if it finds compelling reasons to do so.<sup>13</sup> According to the Court's jurisprudence, instances of compelling reasons may include, that the opinion could in effect circumvent the consent of an interested state to international adjudication,<sup>14</sup> or that the Court will interfere with the work of the UNSC.<sup>15</sup>
18. Indonesia submits that there are no compelling reasons for the Court to refuse giving the advisory opinion requested. The present request neither circumvents Israel's consent, nor does it intend to settle disputes between Israel and Palestine. The opinion of the Court is aimed to assist the UNGA in discharging its function, as this Court emphasized that "no matter what might be its conclusions in any opinion it might give, they would have relevance for the continuing debate on the matter in the UNGA..."<sup>16</sup>
  - i. The Court's opinion would assist the General Assembly in the performance of its functions
19. In *Interpretation of Peace Treaties and Nuclear Weapons*, the Court stated that although the requesting organization is authorized to present a request for an advisory opinion, the Court needs to ascertain itself that the question put to the Court relates and is relevant to the "...activities and concerns of the General Assembly".<sup>17</sup>
20. The present request relates to the activities and concerns of the UNGA, in which it seeks clarification from the Court as to the obligations of Israel including 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, and in support of the Palestinian people's right to self-determination.
21. The UNGA is active in providing humanitarian work in Palestine through, among others, UNRWA. The UNGA also calls for support from UN Member states for humanitarian work done by other international organizations and third states. The importance for unimpeded humanitarian assistance cannot be understated, as the Court itself has called for it in all its Orders of Provisional Measures in *South Africa v. Israel*.<sup>18</sup> The Court's opinion will impact and contribute to the activities of the UNGA, other international organizations, as well as third states.

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<sup>13</sup> *Wall*, *supra* n. 4, paras. 44 – 45; *Kosovo*, *supra* n. 4, p. 30; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Reports, 25 February 2019 [*Chagos*], paras. 65 – 66.

<sup>14</sup> *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (first phase)*, Advisory Opinion, ICJ Reports, 30 March 1950 [*Interpretation of Peace Treaties*], p. 10; *Western Sahara*, *supra* n. 9, para. 21; *Wall*, *supra* n. 3, paras. 44 – 45.

<sup>15</sup> *Israel's Policies and Practices in the OPT*, *supra* n. 5, p. 19, para. 42.

<sup>16</sup> *Wall*, *supra* n. 4, p. 27 – 28, para. 51.

<sup>17</sup> *Nuclear Weapons*, *supra* n. 2, p. 11, paras. 13 – 14.

<sup>18</sup> See generally *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (*South Africa v. Israel*), Orders of 26 January 2024, 28 March 2024, 5 April 2024, and 24 May 2024.

22. Several States during the deliberation of Resolution 79/232 posited that the request for opinion was misplaced, since the underlying issue that must be addressed is the deficit of trust between Israel and relief agencies, including that of the UN, especially the UNRWA.<sup>19</sup> Hence, the opinion rendered by the Court would not assist the UNGA in the discharge of its functions.
23. However, that rationale is misleading. The Court emphasizes in *Wall, Nuclear Weapons*, and in *Kosovo*, "... .. that it is for the organ which requests the opinion, and not for the Court, to determine whether it needs the opinion for the proper performance of its functions", and "... .. the General Assembly has the right to decide for itself on the usefulness of an opinion in the light of its own needs". This confirms that the Court's opinion will assist the UNGA in the performance of its functions.
- ii. The advisory opinion would not interfere with the work of the UNSC
24. Indonesia submits that the present advisory opinion would not interfere with the work of the UNSC, as some states may argue. This Court has consistently refused to entertain such arguments, as the UNGA and UNSC are two separate bodies with differing competencies.<sup>20</sup>
25. The developing practice of the Court shows that there is no overlap between the UNSC and UNGA. While the UNSC has the primary responsibility on the maintenance of international peace and security, the UNGA may also deal on these issues in parallel, including the Israeli-Palestinian conflict.<sup>21</sup> This is because such responsibility is not exclusive to the UNSC, and therefore the UNGA is permitted to recommend measures for the peaceful adjustment of any situation,<sup>22</sup> including by submitting a request for the present advisory opinion.
26. Furthermore, the nature of the work of the UNGA and the UNSC is different, as the nature of their competencies differ. The Court has delved deeper into the differing charter-based competence of these two UN organs, concluding that the UNSC may impose explicit obligation for states through coercive action, while the UNGA is not vested with such power.<sup>23</sup> Even if the Court resorted to interpreting UNSC resolutions to answer the present advisory opinion, this would not constitute an interference to the work of the UNSC, as the UNGA has a legitimate interest on issues relating to the maintenance of international peace and security pursuant to Articles 10 and 11 of the UN Charter.<sup>24</sup>
27. Rather, if this Court were to entertain arguments relating to the effects of the advisory opinion interfering with the work of the UNSC, such exercise, in this Court's own words, would prejudice the outcome or consequences of an advisory opinion and would be conjecture.<sup>25</sup> Therefore, Indonesia submits that the Court should not regard

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<sup>19</sup> *Official Records*, UNGA, 79<sup>th</sup> Session, 54<sup>th</sup> Plenary Meeting, paras. 46 – 47.

<sup>20</sup> *Wall*, *supra* n. 4, p. 148, para. 26; *Israel's Policies and Practices in the OPT*, *supra* n. 5.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*; Charter of the United Nations, 26 June 1945, 7 CTS 1945 [UN Charter], art. 14.

<sup>23</sup> *Ibid.*; UN Charter, art. 24.

<sup>24</sup> *Kosovo*, *supra* n. 4, p. 419 – 420, para. 40; *Ibid.*, UN Charter, art. 10-11.

<sup>25</sup> *Israel's Policies and Practices in the OPT*, *supra* n. 5, p. 18, para. 40; *Kosovo*, *supra* n. 4, p. 418, para. 35.

interference with the work of the UNSC, especially since the competencies of the UNGA and UNSC in this regard differ, as a compelling reason to decline to render the advisory opinion.

### **III. ISRAEL, AS A UN MEMBER, HAS OBLIGATIONS UNDER INTERNATIONAL LAW IN AND IN RELATION TO THE OPT, TO ENSURE AND FACILITATE THE UNHINDERED PROVISION OF URGENTLY NEEDED HUMANITARIAN ASSISTANCE FOR THE BENEFIT OF PALESTINIAN CIVILIAN POPULATION**

28. Israel is a UN Member and was admitted to the UN on 11 May 1949 under UNGA Resolution 273 (III).<sup>26</sup> As a UN Member, Israel is bound by the UN Charter, the constitutive instrument of the UN which establishes the obligations and rights of UN Member states. Article 4 (1) of the Charter obliges a UN Member to “...accept the obligations contained in the present Charter...” and, in accordance with Article 2 (2), must fulfill the obligations set by the Charter with good faith.
29. In light of the present request for Advisory Opinion, and as will be elaborated below, Indonesia submits that as a UN Member Israel must accept and fulfill its obligations under the UN Charter in good faith. This includes the obligation to (a) respect the presence of the UN, including its agencies and bodies, other international organizations and third states in the OPT; and (b) provide assistance to the UN and facilitate the works of other international organizations and third states in and in relation to the OPT. Crucially, this also includes the (c) obligation to comply with the decisions of the Court.
  - a. **Obligation to respect the presence of the United Nations, including its agencies and bodies, other organizations and third states in the OPT**
30. All Members of the UN are obliged to comply with the entirety of the UN Charter, including Israel, as a Member of the UN. This includes any obligations arising out of the instruments or decisions which are products of competent UN bodies, such as the UNSC.<sup>27</sup> To comply with such obligations, all UN Member States must refrain themselves from conducts that could hinder or obstruct the activities of the UN and to take part in efforts to achieve the purposes of the UN.<sup>28</sup>
31. Articles 24 and 25 of the Charter is clear on the obligations to comply with the decisions of the UNSC and provides that “... its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.”<sup>29</sup> This is re-asserted in the Article 25 of the UNSC that all Members of the UN agree to accept and carry out the decisions of the UNSC.<sup>30</sup>
32. A prevailing obligation with regards to respecting the presence of the UN, including its agencies and bodies, other organizations and third states in the OPT is apparent from

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<sup>26</sup> See generally UNGA Res. 273 (III), 11 May 1949.

<sup>27</sup> See generally UN Charter, *supra* n. 22, art. 24-25; 94.

<sup>28</sup> ILC Report 1966, YBILC 1966 II 211, para. 4.

<sup>29</sup> UN Charter, *supra* n. 22, art. 24.

<sup>30</sup> *Ibid.*, art. 25.

various UNSC resolutions.<sup>31</sup> More specifically, such an obligation is affirmed through the adoption of UNSC Res. 2720.

33. UNSC Res. 2720 specifically obliges all Parties to the conflict, including Israel, to protect civilians and enable humanitarian assistance to the Palestinians in Gaza. The resolution further “demands that they allow, facilitate, and enable the immediate, safe and unhindered delivery of humanitarian assistance at scale directly to the Palestinian civilian population...”<sup>32</sup> In order to achieve such an aim, the resolution “...stresses the importance of respecting and protecting...” infrastructure used for the delivery of humanitarian assistance.<sup>33</sup>
34. As a result, there exists an obligation for all UN Members to comply with relevant instruments or decisions of competent UN bodies, particularly the UNSC. In this instance, the operationalization of providing unhindered humanitarian assistance as mandated by UNSC Res. 2720 can only be achieved by, among others, respecting the presence of the UN, including its agencies and bodies, other organizations and third states, by allowing them to deliver their humanitarian assistance within the corridors of such resolution.

**b. Obligation to facilitate the United Nations**

35. As established before, all Members of the UN are obliged to comply with the UN Charter and respect the presence of the UN. In the context of provision of assistance to the UN, the Charter is also clear as stated in Articles 2 (5) that all UN Members are obliged to facilitate the UN.
36. In line with this, the UNSC has also been repeatedly underlining the obligation to enable the full, rapid, safe, and unhindered humanitarian access for United Nations humanitarian agencies, including UNRWA and their implementing partners...” This is as stipulated in UNSC Resolution 2172 adopted on 15 November 2023.<sup>34</sup>
37. In addition to that obligation, the UNSC through its Resolution 2720<sup>35</sup> “...demands that the parties to the conflict cooperate with the Coordinator to fulfill their mandate without delay or obstruction”.
38. This obligation is also clear in the Court’s 28 March 2024 Provisional Measures decision which stipulate “(a) take all necessary and effective measures to ensure, without delay, in full cooperation 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”.

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<sup>31</sup> See UNSC Resolutions: 242 (1967) of 22 November 1967; 338 (1973) of 22 October 1973; 1397 (2002) of 12 March 2002 and 1515 (2003) of 19 November 2003; 2720 (22 December 2023) [UNSC Res. 2720]; 2728 (25 March 2024).

<sup>32</sup> *Ibid.*, UNSC Res. 2720.

<sup>33</sup> *Ibid.*

<sup>34</sup> UNSC Res. S/RES/2172, 15 November 2023.

<sup>35</sup> UNSC Res. 2720, *supra* n. 31.

39. Indonesia submits that Israel is obliged to facilitate the UN in accordance with Articles 2 (5) of the UN Charter and as also has been repeatedly underlined by UNSC resolutions as well as this Court in its relevant provisional measures.

**c. Obligation under international law to respect and comply with the Court's decisions relating to humanitarian assistance and the provision of urgently needed supplies**

40. Article 94 (1) of the UN Charter stipulates that all UN Member States undertake to comply with the decision of the Court in any case to which it is a party. Discussion on the compliance of Israel with the Court's decision is relevant to be considered by the Court. The Court in its provisional measures in the case of *South Africa v. Israel*, had decided that Israel must take all necessary and effective measures to ensure, without delay, in full cooperation with the United Nations for the provision of humanitarian assistance to the OPT.
41. Indonesia submits that there are obligations arising out of the provisional measures of the Court borne by the Parties to the dispute, especially Israel. This obligation is incumbent upon UN Member States on the basis of Article 94 (1) of the UN Charter, which refers to "decisions" of the Court. The term "decisions" was meant to cover judgements, orders, or decisions which are instructive and binding to the parties in dispute.<sup>36</sup> In such regard, provisional measures are to be considered as decisions of the Court.
42. In that light, based on the provisional measures of this Court in *South Africa v. Israel* on 26 January 2024, , Indonesia wishes to highlight certain obligations to be borne by Israel, such as: (i) Take all necessary and effective measures to ensure, without delay, in full cooperation with the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance; (ii) immediately halt its military offensive, and any other action... which may inflict on the Palestinian group in Gaza conditions of life that could bring about its physical destruction in whole or in part; and (iii) Maintain open the Rafah crossing for unhindered provision at scale of urgently needed basic services and humanitarian assistance.

**IV. ISRAEL, AS AN OCCUPYING POWER, HAS OBLIGATIONS UNDER INTERNATIONAL LAW TO ENSURE AND FACILITATE THE UNHINDERED PROVISION OF URGENTLY NEEDED HUMANITARIAN ASSISTANCE FOR THE BENEFIT OF PALESTINIAN CIVILIAN POPULATION**

43. It is undeniable that Israel is an Occupying Power and has the solemn duty to fulfill its obligations as an Occupying Power in the OPT.<sup>37</sup> Israel's status as an Occupying Power in the OPT has been confirmed several times by this Court.<sup>38</sup> Further, various UNSC

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<sup>36</sup> H.W.A Thirlway, *The International Court of Justice*, (Oxford University Press, 2016), p. 134.

<sup>37</sup> *Israel's Policies and Practices in the OPT*, *supra n. 5*, p. 72, para. 264; *Wall*, *supra n. 4*, p. 35, para. 78.

<sup>38</sup> *Wall*, *supra n. 3*, p. 167, para. 78; *Israel's Policies and Practices in the OPT*, *supra n. 13*, p. 28-31, paras 86 – 94.

and UNGA Resolutions have also confirmed Israel status as the Occupying Power.<sup>39</sup>

44. As outlined under the Fourth Geneva Convention, Hague Regulation 1907, as well as Customary International Humanitarian Law (“Customary IHL”), Occupying Powers have the obligation to act in the best interests of the people under occupation.<sup>40</sup> In order to act in the best interest of the people in the OPT, Israel must maintain “public order and safety, while respecting, unless absolutely prevented, the laws in force in the country”, and to treat protected persons humanely at all times, in particular against all acts of violence or threats thereof.<sup>41</sup> This obligation is also affirmed in Article 47 of the Fourth Geneva Convention and prohibits the Occupying Power to deprive “...in any case or in any manner whatsoever, of the benefits of the present Convention.”<sup>42</sup>
45. Further, as clearly stipulated in Article 1, the Fourth Geneva Convention mandated its High Contracting Parties, including Israel, undertake to respect and to ensure respect for the present Convention in all circumstances. Particular obligations for Occupying Power have been elaborated in this Convention, including with respect to humanitarian assistance, such as in Articles 6, 49, 50, 53, 55, 56, 57, 59,60, 61, and 63.
46. Notwithstanding the various obligations of Israel as an Occupying Power, this Court in *Israel’s Policies and Practices in the OPT* has affirmed that Israel’s policies and practices in the OPT are in breach of the right of the Palestinian people to self-determination.<sup>43</sup> This Court has further elaborated that any action which obstructs the right to territorial integrity, integrity as a people, permanent sovereignty over natural resources, as well as freedom to determine their own political status and pursue their economic, social, and cultural development is in violation of such right to self-determination.<sup>44</sup>
47. Indonesia submits that as an Occupying Power, Israel has obligations under the Fourth Geneva Convention, namely (a) to observe the Geneva Conventions; (b) to provide basic supplies; (c) to agree on relief schemes to fulfill basic necessities; (d) to maintain medical services, protect hospitals and humanitarian personnel; (e) prohibition from conducting collective punishment; and (f) to be prohibited from displacing the population, in a further aggravation towards its existing violations against the right of the Palestinian people to self-determination.<sup>45</sup>

**a. Obligations to Observe the Geneva Conventions**

48. Every High Contracting Party to the Geneva Conventions of 1949 assumes the

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<sup>39</sup> Among others, see UNGA Resolutions: 58/292 (6 May 2004), ES-10/24 (18 September 2024); see UNSC Resolutions: 242 (1967) of 22 November 1967; 446 (1979) of 22 March 1979; 465 (1980) of 1 March 1980, 471 (1980) of 5 June 1980; 478 (1980) of 20 August 1980; 2334 (2016) of 23 December 2016.

<sup>40</sup> Report of Special Rapporteur Michael Lynk 2017, *supra n. 78*, p. 12, para. 35; Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, The Hague, 18 October 1907 [Hague Regulation], art. 43.

<sup>41</sup> *Ibid.*

<sup>42</sup> International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287 [Fourth Geneva Convention], art. 47.

<sup>43</sup> *Israel’s Policies and Practices in the OPT*, *supra n. 5*, p. 68, para. 243.

<sup>44</sup> *Ibid.*, p. 65-68, paras. 230-243.

<sup>45</sup> *Ibid.*, p. 68, para. 243.

obligations to undertake the observance of the Conventions, as has been mandated among others in Article 1 of the Fourth Geneva Convention. For an Occupying Power, this obligation includes the duty of providing humanitarian assistance in the occupied territory.<sup>46</sup> Against this backdrop, Israel as a High Contracting Party to all four Geneva Convention and as Occupying Power is obliged to observe the Convention. It cannot derogate from nor justify any violations of International Humanitarian Law through its reliance on its own internal laws.<sup>47</sup>

49. It is a fundamental principle of law that international treaties, including the four Geneva Conventions of 1949, must be observed in good faith.<sup>48</sup> This Court stated in *Gabčíkovo-Nagymaros* that this obligation entails the parties to the Convention to apply relevant treaties in a “reasonable way and in such a manner that its purpose can be realized”.<sup>49</sup>
50. The manifestations of such duty is exemplified under Article 27 of the Vienna Convention on the Law of Treaties 1969 (“VCLT”). As a part of a customary international law<sup>50</sup>, this obligation provides that “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty...”.<sup>51</sup> Such obligations arise from the fact that international treaties are by their very nature designed to alter obligations under domestic law, and to allow domestic law to serve as a justifiable means to deviate from a state’s obligation under an international treaty would render an international treaty useless.<sup>52</sup>
51. Thus, as a High Contracting Party to all four Geneva Conventions, and as an Occupying Power, Israel is obliged to observe the Conventions. The international law mandates that this duty must be performed in good faith, as confined under Article 26 VCLT.

**b. Obligations to provide basic supplies under Articles 50 and 55 of the Fourth Geneva Convention**

52. The obligation to provide urgently needed supplies essential to the survival of the Palestinian civilian population as well as of basic services and humanitarian and development assistance is one of the foundations of contemporary international humanitarian law, which corresponds to the idea that belligerents are not supposed to destroy the livelihoods of individuals.<sup>53</sup> It obliges the Occupying Power “to the fullest extent means available to it... ensure the food and medical supplies of the

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<sup>46</sup> Fourth Geneva Convention, *supra* n. 42, art. 55 and 59.

<sup>47</sup> United Nations, *Vienna Convention on the Law of Treaties*, Treaty Series, vol. 1155, 23 May 1969 [VCLT], art. 27; see also; PCIJ, *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory* PCIJ Ser A.B No. 44/ 24 (1992).

<sup>48</sup> Oliver Dörr and Kristen Schmalenbach, *Vienna Convention on the Law of Treaties A Commentary*, Springer-Verlag Berlin Heidelberg, 2012 [VCLT Commentary], p. 453.

<sup>49</sup> *Gabčíkovo-Nagymaros Project (Hungary / Slovakia)*, Judgment, I.C.J. Reports, 25 September 1997, p. 75, para.142.

<sup>50</sup> *Certain Questions on Mutual Assistance in Criminal Matters (Djibouti v. France)*, Judgment, I.C.J. Reports, 4 June 2008, p. 49-50, para. 124.

<sup>51</sup> VCLT, *supra* n. 47, art. 27.

<sup>52</sup> *Ibid.*, art. 27; see also PCIJ, *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory* PCIJ Ser A.B No. 44/ 24 (1992).

<sup>53</sup> Jean S. Pictet, *The Geneva Conventions of 12 August 1949 Commentary – IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, International Committee of the Red Cross, Geneva, 1994 [Fourth Geneva Convention Commentary], p. 309 – 310.

population.”<sup>54</sup>

53. Under Article 55 of the Fourth Geneva Convention, this includes an obligation to provide “...*necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.*”<sup>55</sup> The importance of this obligation is underscored by the fact that “...*foodstuffs, articles, or medical supplies...*” in the occupied territory can only be requisitioned under strict circumstances, namely if the needs of the civilian population have been taken into account and only for use by the occupation forces and administration personnel.<sup>56</sup> This rule ensures the obligation of the Occupying Power to maintain a reasonable level of material conditions for the livelihood of the occupied territory.<sup>57</sup>
54. In addition, Article 50 of the Fourth Geneva Convention imposes a positive obligation on the Occupying Power with regards to the maintenance of measures “...*in regard to food, medical care, and protection against the effects of war which have been adopted prior to the occupation in favour of children under fifteen years, expectant mothers, and mothers of children under seven years.*”<sup>58</sup>
55. Children remain one of the most vulnerable in war and deserve protection, particularly through preferential treatment during wartime. As a result, the Occupying Power cannot abrogate or hinder the application of measures enacted in support of these vulnerable persons. This principle is a corollary of the obligation of the Occupying Power to maintain “public order and safety, while respecting, unless absolutely prevented, the laws in force in the country” under Customary IHL which is enshrined under the Hague Regulation of 1907.<sup>59</sup>
56. As such, Israel as a High Contracting Party to the Fourth Geneva Convention and as the Occupying Power is required to provide basic necessities, including food and medical supplies as well as maintain preferential measures enacted prior to the occupation aimed to support protected persons, primarily children and expectant mothers of the OPT.

**c. Obligations to agree on relief schemes to fulfill basic necessities under Articles 38, 59, and 62 of the Fourth Geneva Convention**

57. There is an unqualified obligation by the Occupying Power to agree to relief schemes undertaken either by states or impartial humanitarian organizations if it is found that the population is in whole or in part inadequately supplied, especially with regard to foodstuffs, medical supplies, and clothing.<sup>60</sup> However, basic necessities should not be confined to such limited categories so long as they can be used for relief supply purposes.<sup>61</sup> This obligation is further supplemented by Articles 38 and 62 of the Fourth Geneva Convention which affirms the right of protected persons to receive individual

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<sup>54</sup> Fourth Geneva Convention, *supra* n. 42, art. 55(1).

<sup>55</sup> *Ibid.*

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

<sup>57</sup> Fourth Geneva Convention Commentary, *supra* n. 53, p. 310.

<sup>58</sup> Fourth Geneva Convention, *supra* n. 42, art. 50.

<sup>59</sup> Hague Regulation, *supra* n. 40, art. 43.

<sup>60</sup> Fourth Geneva Convention, *supra* n. 42, art. 55(1) and art. 59; F. Lattanzi, “Humanitarian Assistance” in A. Clapham *et.al* (eds), *The 1949 Geneva Conventions: A Commentary*, (Oxford University Press, 2015), p. 248; Y. Dinstein, *The International Law of Belligerent Occupation*, (Cambridge University Press, 2019), p. 164.

<sup>61</sup> Fourth Geneva Convention Commentary, *supra* n. 53, p. 321.

relief consignments.<sup>62</sup>

58. Emphasis must be made on the term “if the whole or part... of the population is inadequately supplied” as it obliges the Occupying Power to agree to a relief scheme or collective relief effort even if the inadequacy of basic supplies occur in a certain locality, or to certain categories of protected persons, and not the entire occupied territory.<sup>63</sup> The importance of accepting a relief scheme is further reinforced by the intentional broadening of actors that may offer such relief assistance, including the International Committee of the Red Cross or any other impartial humanitarian organization, and even states for that matter.<sup>64</sup>
59. In order to carry out the obligation to agree on a relief scheme, the Occupying Power “may not withhold consent to offers to conduct humanitarian relief operations that are exclusively humanitarian and impartial in character”.<sup>65</sup> While consent is a fundamental prerequisite that must be obtained before humanitarian aid services can be rendered, it should not be withheld arbitrarily. If it is proven that there are inadequacies in the fulfillment of the basic needs of the occupied territory and offers of assistance have been made to the Occupying Power, the Occupying Power must agree to such relief schemes.<sup>66</sup> Once consent is granted, an Occupying Power must provide unhindered passage and such humanitarian aid cannot be declared as contraband or seized.<sup>67</sup>
60. An arbitrary withholding of consent can be ascertained from various factors, including whether such withholding would result in the violation of the Occupying Power’s obligations under international law, in connection with the civilians living in the occupied territory. Further, it can also be ascertained based on the assessment of the principles of necessity and proportionality, or whether the withholding of consent was “...unreasonable, unjust, lacking in predictability... or inappropriate”.<sup>68</sup>
61. Applying the test of necessity and proportionality to the present case, an Occupying Power may only exert measures that are necessary and proportionate to the aim of such measures. This includes implementing measures that are “...limited in time, duration, location, and [only to] affected goods and services”.<sup>69</sup> For example, if a humanitarian relief organization were to act contrary to an arrangement made between the Occupying Power and such organization, a necessary and proportionate response would be to terminate the specific members of the humanitarian organization who violated the arrangements, and not to remove their entire presence.<sup>70</sup>
62. Consequently, due to the urgency and dire need to fulfill the basic needs of the population when they are inadequately supplied, Israel as a High Contracting Party to Fourth Geneva Convention and as the Occupying Power, obliged to perform the relief schemes for the people in the OPT pursuant to Articles 38, 59, and 62 of the Fourth

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<sup>62</sup> Fourth Geneva Convention, *supra* n. 42, art. 38 and 62.

<sup>63</sup> Fourth Geneva Convention Commentary, *supra* n. 53, p. 320.

<sup>64</sup> *Ibid.*, p. 321.

<sup>65</sup> *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict: Conclusion 7*, UNOHCR, 2016 [Oxford Guidance on Humanitarian Relief], p. 18.

<sup>66</sup> *Ibid.*, p. 22.

<sup>67</sup> Fourth Geneva Convention Commentary, *supra* n. 53, p. 322.

<sup>68</sup> Oxford Guidance on Humanitarian Relief, *supra* n. 65, p. 23.

<sup>69</sup> *Ibid.*, p. 24.

<sup>70</sup> *Ibid.*, p. 31.

Geneva Convention.

**d. Obligations to maintain medical services, protect hospitals, and protect humanitarian personnel in accordance with Articles 14, 17, 18, 20, 21, 30, 47, 53, 56, and 63 of the Fourth Geneva Convention**

63. An Occupying Power is obliged to act in the best interest of the occupied population, which includes the obligation to ensure the maintenance and availability of medical services as well as ensure the protection of the medical personnel which render such services.
64. The maintenance of medical services are conducted through the establishment of “...hospitals and safety zones and localities so organized as to protect from the the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven.”<sup>71</sup> Specifically in occupied territories, this includes the obligation to “ensure and maintain, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory” and allowing “...Medical personnel of all categories... to carry out their duties”.<sup>72</sup> The concentration of the sick and wounded has practical benefits, namely to provide them with care and treatment as may be required.<sup>73</sup> In order to oversee the establishment of such hospitals and safety zones, the Occupying Power may invite other governments or the International Committee of the Red Cross to engage their good offices.<sup>74</sup>
65. In addition to establishing and maintaining medical facilities, the Occupying Power is also obliged to ensure the safety of hospitals as well as their medical personnel. This includes the prohibition to allow a civilian hospital to “be the object of attack”.<sup>75</sup> Conversely, a hospital can only lose its protection if “they are used to commit, outside their humanitarian duties, acts harmful to the enemy.”<sup>76</sup> Further, any destruction of property, including hospitals, owned by private persons, or to the State, or to other public authorities, or to social or co-operative organizations is prohibited.
66. In order to protect humanitarian personnel, an Occupying Power has the obligation to “... conclude local agreements... for the passage of medical personnel and medical equipment...” on the way to besieged or encircled areas,<sup>77</sup> and the obligation to protect “Persons regularly and solely engaged in operation and administration of civilian hospitals, including personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases...”.<sup>78</sup> Such obligations to protect medical personnel are also extended to “Convoys of vehicles... conveying wounded and sick civilians, the infirm and maternity cases...” under the same manner as hospitals, as they are also regarded as mobile hospitals.<sup>79</sup> In order to afford such protection in occupied territory and in military zones of operation, the

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<sup>71</sup> Fourth Geneva Convention, *supra* n. 42, art. 14(1).

<sup>72</sup> *Ibid.*, art. 56.

<sup>73</sup> Fourth Geneva Convention Commentary, *supra* n. 53, p. 127.

<sup>74</sup> Fourth Geneva Convention, *supra* n. 42, art. 14(3).

<sup>75</sup> *Ibid.*, art. 18.

<sup>76</sup> *Ibid.*, art. 19(1).

<sup>77</sup> *Ibid.*, art. 17

<sup>78</sup> *Ibid.*, art. 20

<sup>79</sup> *Ibid.*, art. 21; Fourth Geneva Convention Commentary, *supra* n. 53, p. 171.

medical staff are recognisable by their identity card confirming their status.<sup>80</sup> Similarly to medical staff, convoys and modes of transport afforded protection are apparent from the markings of the red cross emblem.<sup>81</sup>

67. Notwithstanding the above provisions on the obligation to protect medical personnel incumbent on the Occupying Power, explicit reference to allow relief organizations to conduct “...visits to protected persons whose object is to give spiritual aid or material relief” is also included as an obligation of the Occupying Power.<sup>82</sup> Further, “...relief societies shall be permitted to continue their humanitarian activities under similar conditions” as the recognized National Red Cross.<sup>83</sup> This includes the prohibition for the Occupying Power to alter the personnel or structure of these societies,<sup>84</sup> aimed at maintaining the status quo and allowing them to continue their humanitarian work.<sup>85</sup>
68. The right for relief societies such as the National Red Cross or other “special organizations of a nonmilitary character” to operate in the OPT shall be respected by an Occupying Power so long as such organization has shown the ability to render services necessary to the population.<sup>86</sup> The suspension of humanitarian work can only be conducted by the Occupying Power if its security is threatened by real danger. Even then, the suspension will only continue so long as the circumstances invoking such response continues. This exception cannot be used by the Occupying Power to suspend the entirety of humanitarian activities indefinitely.<sup>87</sup>
69. The above-mentioned obligations are binding to Israel as a High Contracting Party to Fourth Geneva Convention and as the Occupying Power, to maintain medical services, protect hospitals, and protect humanitarian personnel in accordance with the Fourth Geneva Convention.

**e. Obligation not to conduct collective punishment (Article 33 of the Fourth Geneva Convention)**

70. Under Article 33 of the Fourth Geneva Convention as well as provided under Customary IHL, an Occupying Power is prohibited from conducting collective punishment.<sup>88</sup> Pursuant to Article 33 of the Fourth Geneva Convention, the prohibition is directed against the imposition of “collective penalties and likewise all measures of intimidation or of terrorism...”.<sup>89</sup> In other words, collective punishment includes the imposition of sanctions on a group for an act allegedly committed by an individual, in which such a group bears no individual responsibility.<sup>90</sup> Such punishment extends not

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<sup>80</sup> *Ibid.*, art. 20.

<sup>81</sup> Fourth Geneva Convention Commentary, *supra* n. 53, p. 172.

<sup>82</sup> Fourth Geneva Convention, *supra* n. 42, art. 30.

<sup>83</sup> *Ibid.*, art. 63.

<sup>84</sup> *Ibid.*

<sup>85</sup> Fourth Geneva Convention Commentary, *supra* n. 53, p. 333.

<sup>86</sup> ICRC, “Commentary to the Fourth Geneva Convention (1958)”, <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-63/commentary/1958>, accessed 16 February 2025.

<sup>87</sup> Fourth Geneva Convention Commentary, *supra* n. 53, p. 333.

<sup>88</sup> *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, Merits, I.C.J Reports 1984; ICTY, *Prosecutor v. Dusko Tadić*, [Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction], IT-94-1, paras. 89, 9.

<sup>89</sup> Fourth Geneva Convention, *supra* n. 42, art.33.

<sup>90</sup> C. Klocker, *Collective Punishment and Human Rights Law: Addressing Gaps in International Law*, Routledge, New York (2020), p. 11.

only to penal sanctions, but also “sanctions and harassment of any sort, administrative, by police action or otherwise”.<sup>91</sup>

71. The practice of international courts and tribunals has indicated several crucial elements to prove the existence of collective punishments, namely, (i) the existence of a punishment of protected persons for acts that they have not committed, and (ii) the offender’s intent to punish such persons for acts which form the subject of the punishment.<sup>92</sup>
72. In the case of *Armed Forces Revolutionary Council (“AFRC”)* at the Residual Special Court of Sierra Leone (“RSCSL”), the prohibition of collective punishments can occur if punishments are imposed “*indiscriminately without establishing individual responsibility through... due process and without any real attempt to identify the perpetrators, if any.*”<sup>93</sup> This is because the prohibition on collective punishments is one of the most basic tenets of criminal law, that no individual may be punished for actions which they did not commit.<sup>94</sup>
73. The prosecution in *AFRC* alleged that the Revolutionary United Front (“RUF”)/AFRC forces, which overthrew the Sierra Leone government, routinely killed civilians for allegedly collaborating with Civil Defense Forces (“CDF”)/Kamajors, a pro government militia. These targeted killings included the destruction and burning of civilian buildings.<sup>95</sup> No evidence was provided by RUF/AFRC to indicate that the civilians being killed were supporting CDF/Kamajors. Irrespective of the actions of the civilians, the RSCSL held that the *actus reus* of collective punishment was “*not whether the acts were actually committed or not by the victims, but whether the perpetrator indiscriminately and collectively punished these individuals for acts that they might or might not have committed.*”<sup>96</sup>
74. Any policies enacted or actions taken by Israel as a High Contracting Party to the Fourth Geneva Convention and as an Occupying Power must not punish the civilians indiscriminately, particularly for acts that the civilians did not commit. Further, intent to collectively punish the civilian population may be ascertained from statements of officials of the Occupying Power, which can be used to infer that the Occupying Power is exercising collective punishment.<sup>97</sup>

**f. Obligation to observe the prohibition to individual or mass transfers as well as deportation of the protected persons from the OPT (Article 49 of the Fourth Geneva Convention)**

75. It is well established as Customary IHL that an Occupying Power is prohibited from

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<sup>91</sup> Y. Sandoz, C. Swiniarski, B. Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, paras. 3044, 4536.

<sup>92</sup> Special Court of Sierra Leone (SCSL), *Prosecutor v. Moinina Fofana and Allieu Kondewa* (CDF Trials), *Rule 98 Decision*, para.117.

<sup>93</sup> AFRC, Trial Chamber II, Judgment, 20 June 2007, p. 208, para. 680.

<sup>94</sup> *Ibid.*, para. 678.

<sup>95</sup> *Ibid.*, p. 410 – 411, paras. 1465 – 1466.

<sup>96</sup> *Ibid.*, p. 412 – 413, para. 1476.

<sup>97</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 [South Africa v. Israel, Order of 26 January 2024], p. 17 – 18, paras. 51-55.

“...individual or mass forcible transfers, as well as deportations of protected persons...”<sup>98</sup>

76. The only exception to this rule is for the purposes of evacuating the population of the occupied territory. Under such instances, the Occupying Power may undertake partial or total evacuations subject to the fulfillment of three strict criteria, namely (i) due to reasons of security or imperative military reasons; (ii) evacuations cannot displace protected persons from outside the confines of the occupied territory, unless it is impossible to avoid such displacement; and (iii) the protected persons shall be returned as soon as hostilities have ceased.<sup>99</sup>
77. The three-pronged criteria above cannot be taken lightly. The practice of international courts and tribunals have shown that merely gaining a military advantage is not sufficient to cross the threshold of imperative military reasons.<sup>100</sup> Subsequent to the adoption of the Fourth Geneva Convention, the ICTY provided several criteria to determine whether a forcible transfer can be justified based on imperative military reasons.
78. In *Krstić*, the tribunal assessed whether a military threat was present in the area and whether the conduct was consistent with an evacuation.<sup>101</sup> Among the actions assessed include whether advanced planning of the operation was conducted. If there was any indication of advanced planning, such an operation is indicative of a forced displacement as it could not have been done in response to sudden imperative military reasons.<sup>102</sup> In addition, tribunals have also assessed whether the displaced persons were returned to their homes. In *Naletilić & Martinović*, the forced displacements were done whilst the homes of the individuals were destroyed, showing no intent of allowing them to return.<sup>103</sup>
79. Furthermore, even if a situation is dire and requires immediate evacuation of the people residing in the occupied territory, such a dire situation cannot be a result of the actions of the occupying force. In *Stakić*, the Appeals Chambers determined that an evacuation could not be justified as the humanitarian crisis arose out of the own actions of the Bosnian Serb forces.<sup>104</sup>
80. Even after the strict requirements of evacuations have been met, the Occupying Power must return the civilian population to their homes<sup>105</sup> and cannot transfer part of its own civilian population into the territory it occupies.<sup>106</sup>

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<sup>98</sup> Fourth Geneva Convention, *supra* n. 42, art. 49(1); Hague Regulations, *supra* n. 40, art. 46.

<sup>99</sup> *Ibid.*, art. 49(2).

<sup>100</sup> Emma Brandon, *Grave Breaches and Justifications: The War Crime of Forcible Transfer or Deportation of Civilians and the Exception for Evacuations for Imperative Military Reasons*, *Oslo Law Review*, Scandinavian University Press, Volume 6, No. 2-2019, p. 111.

<sup>101</sup> *Prosecutor v. Radislav Krstić (Trial Judgement)*, International Criminal Tribunal for the former Yugoslavia (ICTY), 2 August 2001 [*Krstić*], p. 184 – 185, para. 524 – 527.

<sup>102</sup> *Ibid.*, p. 185, para. 526.

<sup>103</sup> *Prosecutor v Naletilić & Martinović (Trial Chamber Judgement)*, International Criminal Tribunal for the former Yugoslavia (ICTY), 31 March 2003 [*Naletilić & Martinović*], p. 186, para 526.

<sup>104</sup> *Prosecutor v Milomir Stakić (Appeal Judgement)*, International Criminal Tribunal for the former Yugoslavia (ICTY), 22 March 2006 [*Stakić*], p. 94, para. 287.

<sup>105</sup> Fourth Geneva Convention, *supra* n. 42, art. 49(2).

<sup>106</sup> *Ibid.*, art. 49(6).

81. Any measures taken by Israel as a High Contracting Party to Fourth Geneva Convention and as the Occupying Power, with regards to the movement of the population in the OPT must be consistent with international law, particularly the Fourth Geneva Convention. As provided above, evacuations can only be conducted based on imperative military reasons that did not arise due to the Occupying Power's own policies and measures.

**V. LEGAL CONSEQUENCES ARISING FROM THE FAILURE OF ISRAEL TO COMPLY WITH ITS OBLIGATIONS AS A UN MEMBER AND OCCUPYING POWER**

82. As demonstrated in Parts III and IV, Israel has obligations under international law that it must abide by. Indonesia submits that Israel has failed to comply with its obligations in its capacity as both a UN Member and an Occupying Power. As with any violation of international law, this entails legal consequences for Israel.

**a. Israel's failure to comply with its obligations as a UN Member**

83. Part III has elaborated on Israel's obligations to respect and facilitate the work of the UN, other international organizations, and third States in the OPT.
84. Israel's policies and measures have impeded and disrupted the work of international organizations such as UNRWA, and are inconsistent with its obligations to respect and facilitate the work of the UN, other international organizations, and third States in the OPT.<sup>107</sup>
85. Further, Israel has consistently disregarded various decisions of this Court, specifically with regards to cooperating with the UN, in ensuring the unhindered provision of humanitarian aid and ceasing its settlement activities, which is illegal under international law.

**b. Israel's failure to comply with its obligations as an Occupying Power**

86. As an Occupying Power, Israel must act in the best interest of the protected persons in the OPT and comply with all its obligations under the Four Geneva Conventions that it is a party to, as elaborated in Part IV.
87. Israel's policy of a "Complete siege on Gaza" has exposed Palestinian people to an "extreme level of food insecurity".<sup>108</sup> Israel has also failed to agree on relief schemes due to security concerns, alleging the involvement of UNRWA staffers in the October 7, 2023 attacks.<sup>109</sup> In order to address these allegations, the UN Secretary General

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<sup>107</sup> Letter of the UN Secretary General to the President of the UNGA (28 October 2024), [https://www.un.org/pga/wp-content/uploads/sites/109/2024/10/2024-10-28-SG-letter-to-PGA\\_final.pdf](https://www.un.org/pga/wp-content/uploads/sites/109/2024/10/2024-10-28-SG-letter-to-PGA_final.pdf), accessed 9 February 2025; Identical letters dated 9 December 2024 from the Secretary-General addressed to the President of the UNGA and the President of the UNSC (10 December 2024), <https://digitallibrary.un.org/record/4069522?ln=en&v=pdf>, accessed 10 February 2025.

<sup>108</sup> OHCHR, Update Report Sixth-Month Update Report on the Human Rights Situation in Gaza: 1 November 2023 to 30 April 2024, 8 November 2024, p. 17.

<sup>109</sup> E. Fabian, "Israel Reveals 12 UNRWA Staffers it says Took Part in Oct. 7, Says 30 More Assisted", <https://www.timesofisrael.com/israel-reveals-12-unrwa-staffers-it-says-took-part-in-oct-7-says-30-more-assisted/>, accessed 29 January 2025.

established the Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA. In its findings, the review mechanism objectively rejected Israel's allegations.<sup>110</sup>

88. In relation to the maintenance of medical services, the protection of hospitals, and protection of humanitarian personnel, Israel has failed in all accounts to ensure the continuity of their services as well as their protection. Without fail, Israel has targeted both hospitals and humanitarian personnel based on unsubstantiated allegations.<sup>111</sup> This includes the destruction of the Indonesian Hospital, which contrary to Israel's allegations, was not used as a stronghold for Hamas.<sup>112</sup> Based on a UN report, Israeli attacks on hospitals were based on unfounded allegations that have pushed the hospital "to the brink of total collapse with catastrophic effect on Palestinians' access to health and medical care."<sup>113</sup>
89. Further, Israel's attacks against the World Central Kitchen aid convoy was nonchalantly conducted against protected persons, which is a violation of the Fourth Geneva Convention.<sup>114</sup> The World Central Kitchen provided a statement explaining that the humanitarian personnel involved in the aid convoy had no ties to the October 7, 2023 attacks.<sup>115</sup>
90. All together, Israel's policies and measures can be seen as indicative of collective punishment, which is prohibited under international humanitarian law. This is evident from the policies and practices of Israel in the OPT, particularly jeopardizing access to basic and urgent necessities, which has had an indiscriminate effect on civilians in the OPT, regardless of their involvement in the conflict. Israel's intent to punish the entire population in the OPT is also made evidently clear in *Application of the Genocide Convention in the Gaza Strip*, by the statements of its officials, namely the President of Israel who indiscriminately blames "...an entire nation out there that is responsible..." without discerning between civilians and combatants in the OPT.<sup>116</sup>
91. Furthermore, as mentioned above in regard to obligations under the Geneva Convention, Israel cannot displace the population of the OPT without legitimate imperative military reasons. Israel's policies and measures, namely limiting basic

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<sup>110</sup> See generally Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality (Colonna Report), <https://www.un.org/unispal/document/report-independent-review-group-on-unrwa-22april2024/>, accessed 27 January 2025.

<sup>111</sup> United Nations Human Rights Office of the High Commissioner, Thematic Report, Attacks on hospitals during the escalation of hostilities in Gaza (7 October 2023 - 30 June 2024), p. 18; WHO, *Health Conditions in the Occupied Palestinian Territory, including East Jerusalem*, A77/12 17 May 2024, p. 2.

<sup>112</sup> MER-C, MER-C Bantah Tuduhan Israel terhadap Indonesia, <https://mer-c.org/siaran-pers/mer-c-bantah-tuduhan-israel-terhadap-rs-indonesia>, accessed on 27 February 2025.

<sup>113</sup> United Nations Human Rights Office of the Commissioner, "Thematic Report Attacks on hospitals during the escalation of hostilities in Gaza (7 October 2023 - 30 June 2024)," <https://www.ohchr.org/sites/default/files/documents/countries/opt/20241231-attacks-hospitals-gaza-en.pdf>, accessed 27 February 2025.

<sup>114</sup> Al Jazeera, "Israel Kills Three World Central Kitchen aid workers as it pounds Gaza", <https://www.aljazeera.com/news/2024/11/30/israel-kills-world-central-kitchen-aid-workers-in-gaza>, accessed 21 February 2025.

<sup>115</sup> World Central Kitchen, "Vehicle carrying World Central Kitchen colleagues hit by an Israeli airstrike in Gaza", <https://wck.org/news/gaza-air-strike-november>, accessed 21 February 2025.

<sup>116</sup> South Africa v. Israel, Order of 26 January 2024, *supra* n. 97, p. 17, para 52.

necessities and medical facilities, were not based on imperative military reasons. If such reasons do exist, Israel must return the population of the OPT to their own homes once the imperative military reasons have subsided. The destruction of at least 66% of the buildings in Gaza have made it difficult to ascertain that Israel will comply with such obligations.<sup>117</sup>

**c. Legal consequences arising out of Israel's failure to comply with its obligations**

92. Consistent with this Court's pronouncement in the *Wall and Israel's Policies and Practices in the OPT*, Israel's continued illegal presence in the OPT and its various policies and practices, which are done in contradiction to international law, include certain obligations *erga omnes*, particularly with respect to the self-determination of the Palestinian people. These violations entail legal consequences.<sup>118</sup>
93. Israel is obliged to put an end to its unlawful acts that are in contravention to its obligations under international law, and to provide reparation for any damages, material or immaterial, to all natural or legal persons concerned as a consequence of a series of unlawful acts in contravention to its obligation as an Occupying Power.<sup>119</sup> The extent of such reparations should, in any case and as far as possible, "wipe out all consequences of the illegal act and reestablish the situation that would, in all probability, have existed if the act had not been committed".<sup>120</sup> Such reparations may take the form of restitution, compensation, and satisfaction.<sup>121</sup>
94. Furthermore, all states, international organizations and the UN are under an obligation, among others, "not to recognize its illegal presence in the Occupied Palestinian Territory..." and not to "...assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory."<sup>122</sup>
95. The duty not to recognize the illegal situation arising from Israel's internationally wrongful acts also includes the duty not to aid or assist the commissioning of an internationally wrongful act.<sup>123</sup> Any attempt by other states, international organizations as well as the UN to hinder the provision of humanitarian assistance into the OPT, including deliberately obstructing or reducing the capacity of aid organizations such as UNRWA while continuing to supply Israel with weapons, in contravention with international law, should be seen as nothing short of an internationally wrongful act.<sup>124</sup>

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<sup>117</sup> UNITAR, "66% of the Total Structures in the Gaza Strip have Sustained Damage, UNOSAT'S Analysis Reveals", <https://unitar.org/about/news-stories/press/66percent-total-structures-gaza-strip-have-sustained-damage-unosats-analysis-reveals>, accessed 21 February 2025.

<sup>118</sup> *Israel's Policies and Practices in the OPT*, *supra n. 5*, p. 74, para 274.

<sup>119</sup> *Ibid.*, p. 73, para 268; *Wall*, *supra n. 4*, p. 66, para. 152.

<sup>120</sup> PCIJ, *Factory of Chorzow*, Judgement No.13, 1928, P.C.I.J Series A No. 17, p. 47; International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, November 2001, Supplement No. 10 (A/56/10), chp.IV E.1 [ARSIWA], art. 31.

<sup>121</sup> *Ibid.*, art. 34.

<sup>122</sup> *Israel's Policies and Practices in the OPT*, *supra n. 5*, p. 76, paras 278 – 280.

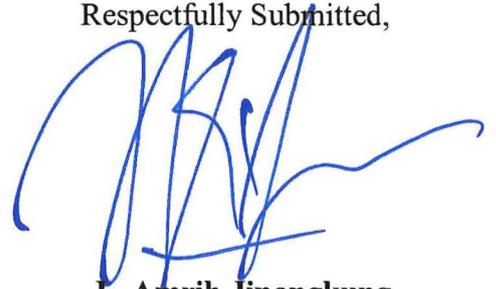
<sup>123</sup> ARSIWA, *supra n. 120*, art. 16.

<sup>124</sup> Amnesty International, Israel/OPT: States must reverse cruel decision to withdraw UNRWA funding, <https://www.amnesty.org/en/latest/news/2024/01/israel-opt-states-must-reverse-cruel-decision-to-withdraw-unrwa-funding/>, accessed 8 February 2025.

## **VI. CONCLUSIONS AND SUBMISSIONS**

96. For the reasons set out in this written statement, Indonesia herewith submits to the Court the following:
- a. The Court has jurisdiction to give the advisory opinion requested in the UNGA Resolution 79/232 (2024), and it has no compelling reasons for declining to exercise such jurisdiction.
  - b. There are obligations under international law for Israel, as a Member of the UN and as the Occupying Power of the OPT. Based on the UN Charter and the relevant UNSC and UNGA Resolutions, Indonesia submits that those obligations include, but are not limited to:
    - i. obligation to comply with the UN Charter and the applicable UNSC and UNGA Resolutions;
    - ii. obligation to respect the presence of the UN, including its Agencies and Bodies, other International Organizations and Third States in and in relation to the OPT; and
    - iii. obligations to provide assistance to the UN, in particular, including but not limited to:
      - (1) Provide every assistance to the UN
      - (2) Facilitate the works of international organizations and third states in the OPT
      - (3) Respect and comply with the Court's decisions relating to humanitarian assistance and the provision of urgently needed supplies
  - c. As a High Contracting Party of the Four Geneva Conventions, in particular to the Fourth Geneva Convention, and as the Occupying Power in the OPT, Israel is obliged 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. Those obligations include, but are not limited to:
    - i. Obligation to respect and to ensure respect of the Geneva Conventions (Article 1 of the Fourth Geneva Convention and Articles 26 and 27 of the VCLT);
    - ii. Obligation to provide basic supplies (Articles 50 and 55 of the Fourth Geneva Convention);
    - iii. Obligation to agree on relief schemes to fulfill basic necessities (Articles 38, 59, and 62 of the Fourth Geneva Convention);
    - iv. Obligation to respect and protect medical services, protect hospitals and humanitarian personnel (Articles 14, 17, 18, 20, 21, 30, 47, 53, 56, and 63 of the Fourth Geneva Convention);
    - v. Prohibition from conducting collective punishment (Article 33 of the Fourth Geneva Convention); and
    - vi. Prohibition from displacing the population (Article 49 of the Fourth Geneva Convention).
  - d. Indonesia submits that Israel has failed to comply with its obligations as a UN Member and as an Occupying Power of the OPT.

Respectfully Submitted,

A handwritten signature in blue ink, consisting of several large, fluid, overlapping loops and strokes, positioned above the printed name.

**L. Amrih Jinangkung**

Director General for Legal Affairs and International  
Treaties / Legal Adviser  
Ministry of Foreign Affairs of the Republic of Indonesia

28 February 2025