

CR 2025/4

International Court
of Justice

THE HAGUE

Cour internationale
de Justice

LA HAYE

YEAR 2025

Public sitting

held on Monday 28 April 2025, at 3 p.m., at the Peace Palace,

President Iwasawa presiding,

***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***

(Request for advisory opinion submitted by the General Assembly of the United Nations)

VERBATIM RECORD

ANNÉE 2025

Audience publique

tenue le lundi 28 avril 2025, à 15 heures, au Palais de la Paix,

sous la présidence de M. Iwasawa, président,

***sur les Obligations d'Israël en ce qui concerne la présence et les activités de l'Organisation
des Nations Unies, d'autres organisations internationales et d'États tiers dans
le Territoire palestinien occupé et en lien avec celui-ci***

(Demande d'avis consultatif soumise par l'Assemblée générale des Nations Unies)

Present: President Iwasawa
 Vice-President Sebutinde
 Judges Tomka
 Abraham
 Xue
 Bhandari
 Nolte
 Charlesworth
 Brant
 Gómez Robledo
 Cleveland
 Tladi

Registrar Gautier

Présents : M. Iwasawa, président
M^{me} Sebutinde, vice-présidente
MM. Tomka
Abraham
M^{me} Xue
MM. Bhandari
Nolte
M^{me} Charlesworth
MM. Brant
Gómez Robledo
M^{me} Cleveland
M. Tladi, juges

M. Gautier, greffier

The Government of the State of Palestine is represented by:

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HE Mr Ammar Hijazi, Ambassador, Permanent Representative of the State of Palestine to International Organizations in the Kingdom of the Netherlands,

HE Mr Omar Awadallah, Ambassador, Assistant Minister for Foreign Affairs for Multilateral Relations,

HE Ms Feda Abdelhady, Ambassador, Deputy Permanent Representative of the State of Palestine to the United Nations,

HE Mr Majed Bamy, Ambassador, Deputy Permanent Representative of the State of Palestine to the United Nations, Senior Legal Adviser,

Mr Alain Pellet, Emeritus Professor, University Paris Nanterre, former Chairperson of the International Law Commission, member and former President of the Institut de droit international,

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Ms Blinne Ní Ghrálaigh, KC, Barrister, Matrix Chambers, member of the Bars of Ireland, Northern Ireland, and England and Wales,

Mr Ardi Imseis, Professor of International Law, Faculty of Law, Queen's University, Canada, Barrister at Law, Law Society of Ontario,

Mr Ahmed Mousa, Deputy Permanent Representative of the State of Palestine to International Organizations in the Kingdom of the Netherlands,

Ms Haya Alfarra, Counsellor, Permanent Mission of the State of Palestine to International Organizations in the Kingdom of the Netherlands,

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Mr Mohammad Ayyad, Legal Adviser, Permanent Mission of the State of Palestine to International Organizations in the Kingdom of the Netherlands,

Ms Loureen Sayej, Legal Adviser, Permanent Mission of the State of Palestine to the United Nations,

Ms Abeer Abed Alhaq, Legal Adviser, Permanent Mission of the State of Palestine to International Organizations in the Kingdom of the Netherlands,

Ms Marthe De Roos, Media Officer, Permanent Mission of the State of Palestine to International Organizations in the Kingdom of the Netherlands,

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- S. Exc. M. Omar Awadallah, ambassadeur, ministre délégué auprès du ministre des affaires étrangères, chargé des relations multilatérales,
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- M^{me} Marthe De Roos, responsable des médias, mission permanente de l'État de Palestine auprès des organisations internationales au Royaume des Pays-Bas,
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Mr Oliver Mills, Barrister, 11 King's Bench Walk, London,

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Mr Raji Sourani, Director, Palestinian Centre for Human Rights.

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HE Mr Emad Magdy Hanna, Ambassador of the Arab Republic of Egypt to the Kingdom of the Netherlands,

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M. Kareem Mohamed Hassan, deuxième secrétaire, ambassade de la République arabe d'Égypte au Royaume des Pays-Bas.

Le Gouvernement de la Malaisie est représenté par :

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S. Exc. Dato' Umar Saifuddin Jaafar, *Solicitor General II*, bureau de l'*Attorney General*,

S. Exc. Dato' Roseli Abdul, ambassadeur de la Malaisie auprès du Royaume des Pays-Bas,

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Mr Mohd Afiq Hassan Mohd Ayub, Press Secretary to the Minister, Prime Minister's Department,

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Ms Nurul Ainy Yahaya, Legal Attaché, Embassy of Malaysia in the Kingdom of the Netherlands,

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M^{me} Nurul Ainy Yahaya, attachée juridique, ambassade de la Malaisie au Royaume des Pays-Bas,

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The PRESIDENT: Please be seated. Good afternoon. The sitting is now open.

The Court meets this afternoon to hear Palestine complete its presentation, followed by the oral statements of Egypt and Malaysia. Palestine can use up to one hour of this afternoon's session, Egypt will have 45 minutes and Malaysia 30 minutes. The Court will observe a short coffee break upon completion of Palestine's presentation.

Je donne maintenant la parole au Professeur Alain Pellet. Monsieur, vous avez la parole.

M. PELLET : Merci, Monsieur le président.

5. LES OBLIGATIONS RÉSULTANT DES VIOLATIONS ISRAÉLIENNES

1. Monsieur le président, Mesdames et Messieurs les juges, il m'appartient de tirer les conclusions des plaidoiries que vous avez entendues ce matin. Elles vont presque de soi. Le comportement inhumain et proprement monstrueux d'Israël vis-à-vis des Palestiniens habitant dans le territoire occupé ne laisse en effet aucune place pour le doute : il consiste en une multitude de faits internationalement illicites qui entraînent à l'évidence et la responsabilité aggravée d'Israël lui-même et des conséquences pour les autres États et les organisations internationales.

2. Selon une position isolée, « [l]a question posée à la Cour porte uniquement sur “les obligations” d'Israël relatives à la présence et aux activités de certaines entités dans le Territoire palestinien occupé ». Partant, il conviendrait, selon cet État, de ne pas se préoccuper « des conséquences juridiques éventuelles qui découleraient, le cas échéant, de leur violation »¹. C'est assez curieux. Il vous est demandé de déterminer

« [q]uelles sont les obligations d'Israël, en tant que puissance occupante et membre de l'Organisation des Nations Unies, en ce qui concerne la présence et les activités de l'Organisation ... d'autres organisations internationales et d'États tiers dans le Territoire palestinien occupé et en lien avec celui-ci ».

Sans qu'il soit besoin d'entrer dans le détail de la distinction entre normes primaires ou secondaires (Hart ou Ago, peu importe), il est clair que la violation des premières — les normes primaires — est à l'origine de nouvelles obligations, secondaires. Ces obligations sont indissociables les unes des autres et forment ce que la doctrine aujourd'hui dominante considère comme le « système de la

¹ Exposé écrit de la République française, par. 14. *Contra*, par exemple, l'exposé écrit de l'Égypte, par. 47, al. d), premier tiret, ou par. 333.

responsabilité internationale »² ; les unes comme les autres créent des obligations pour les sujets de droit. Il est totalement artificiel de les dissocier. Le libellé de la question posée à la Cour non seulement ne l'impose nullement mais l'exclut. Les violations d'obligations primaires créent de nouvelles obligations secondaires.

3. Établir une violation et ses suites constitue bien une opération unique. Mes collègues ont montré — après avoir défini le contenu des obligations imposées par les règles pertinentes du droit international — que nombre de ces obligations, et des plus essentielles, ont été violées par Israël, en lien avec l'objet de la question, compliqué mais précis, que je ne cite pas à nouveau : vous le connaissez. Détailler « les suites » de ces manquements en est le complément logique et nécessaire.

4. D'ailleurs, à quoi pourrait bien servir d'énumérer les obligations d'Israël, dont, la plupart non seulement sont bien établies mais ont déjà été consacrées par la Cour, si vous n'en tirez pas de conséquences concrètes ? Si l'Assemblée générale vous a demandé de vous prononcer « à titre prioritaire et de toute urgence », c'est pour que vous alliez plus loin que ce simple rappel au vu de « la situation humanitaire désastreuse dans le Territoire palestinien occupé ». Et si, dans la même résolution, l'Assemblée « [e]xige d'Israël qu'il s'acquitte sans délai de toutes les obligations juridiques que lui impose le droit international, y compris celles qui sont énoncées par la Cour internationale de Justice », il serait assurément très regrettable que vous vous en teniez à une abstraite leçon de droit sans en tirer des conséquences concrètes. C'est, Mesdames et Messieurs les juges, de la survie de plusieurs millions d'êtres humains qu'il s'agit, de façon très imminente, plus de 2 millions de Gazaouis sont affectés depuis des mois par une insécurité alimentaire critique, déjà source de famine pure et simple pour nombre d'entre eux. Parmi bien d'autres sources dignes de foi, huit rapporteurs spéciaux des Nations Unies avaient lancé un cri d'alarme à cet égard³ dès le 16 janvier 2024, c'est-à-dire 100 jours après le déclenchement des hostilités.

² Voir notamment James Crawford, « The System of International Responsibility », in J. Crawford, A. Pellet et S. Olleson, *The Law of International Responsibility*, OUP, 2010, p. 17-25. Voir aussi Projet d'articles sur la responsabilité de l'État pour fait internationalement illicite, et commentaires y relatifs, *Annuaire de la Commission du droit international* (ci-après, « ACIDI »), 2001, vol. II, deuxième partie, p. 92, par. 2.

³ Voir le communiqué de presse signé conjointement par M. Michael Fakhri, rapporteur spécial sur le droit à l'alimentation ; M^{me} Farida Shaheed, rapporteuse spéciale sur le droit à l'éducation ; M^{me} Tlaleng Mofokeng, rapporteuse spéciale sur le droit qu'a toute personne de jouir du meilleur état de santé physique et mentale possible ; M. Balakrishnan Rajagopal, rapporteur spécial sur le droit à un logement convenable ; M^{me} Paula Gaviria Betancur, rapporteuse spéciale sur les droits humains des personnes déplacées dans leur propre pays ; M^{me} Francesca Albanese, rapporteuse spéciale sur la situation des droits de l'homme dans les territoires palestiniens occupés depuis 1967 ; M^{me} Reem Alsalem, rapporteuse

5. La situation n'a fait qu'empirer depuis lors — et de façon très dramatique — jusqu'à la brève accalmie qui a suivi le cessez-le-feu adopté le 15 janvier 2025 même si, durant celle-ci, des centaines de Gazaouis sont morts du fait des conditions de vie effroyables résultant du siège imposé par Israël pendant 15 mois, de l'insuffisance des aides qu'il a fugitivement autorisées en dépit de ses engagements et des offensives armées israéliennes jamais totalement interrompues⁴. En outre, cette trêve partielle n'a pas bénéficié aux Palestiniens de Cisjordanie, notamment à Jénine, Naplouse ou Tulkarem, villes dans lesquelles ils ont été victimes d'incursions militaires par les forces d'occupation israéliennes dans le cadre d'une opération intitulée « Mur de fer » — c'est un nom assez révélateur⁵.

6. Depuis le 18 mars 2025, les Gazaouis sont de nouveau soumis à un blocus implacable, aux bombardements israéliens — accompagnés d'une large réoccupation partielle, et à de nouveaux ordres de déplacements massifs⁶. Comme l'ont affirmé les plus hauts responsables de l'OCHA, de l'UNICEF, de l'UNOPS, de l'UNRWA, du PAM et de l'OMS le 7 avril dernier, « [p]lus de 2,1 millions de personnes sont à nouveau prises au piège, bombardées et meurent de faim, tandis que les vivres, les médicaments, le carburant et les abris s'accumulent aux points de passage, et des équipements vitaux sont bloqués »⁷. Paul Reichler l'a rappelé ce matin, le Secrétaire général des

spéciale sur la violence contre les femmes, ses causes et ses conséquences concernant la violence en ligne à l'égard des femmes et des filles du point de vue des droits de l'homme ; M. Pedro Arrojo Agudo, rapporteur spécial sur les droits à l'eau et à l'assainissement, « Over one hundred days into the war, Israel destroying Gaza's food system and weaponizing food, say UN human rights experts », 16 janvier 2024, accessible à l'adresse suivante : <https://www.ohchr.org/en/press-releases/2024/01/over-one-hundred-days-war-israel-destroying-gazas-food-system-and>. Voir aussi OCHA, « Hostilities in the Gaza Strip and Israel — reported impact / Day 160, 15 mars 2024 » (<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-160>) ; Integrated Food Security Phase Classification, « Gaza Strip : IPC Acute Food Insecurity Special Snapshot » | 1 May-30 September 2024 », 25 juin 2024 (https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Gaza_Strip_Acute_Food_Insecurity_MaySept2024_Special_Snapshot.pdf).

⁴ Voir OCHA, Humanitarian Situation Update #280 | Gaza Strip, 15 avril 2025, <https://www.ochaopt.org/content/humanitarian-situation-update-280-gaza-strip> ; N. Malik, « 'Ceasefire' is a hollow word for Palestinians — the killings, displacements and denial of aid continue », *The Guardian*, 10 mars 2025 (<https://www.theguardian.com/commentisfree/2025/mar/10/ceasefire-palestinians-gaza-israel-west-bank>).

⁵ OCHA, Humanitarian Situation Update #262 | West Bank [EN/AR], 6 février 2025 (<https://www.unocha.org/publications/report/occupied-palestinian-territory/humanitarian-situation-update-262-west-bank>) ; E. Fabian, « Katz says he instructed IDF to stay for year in West Bank refugee camps and not allow 40,000 residents home », *The Times of Israel*, 23 février 2025 (https://www.timesofisrael.com/liveblog_entry/katz-says-he-instructed-idf-to-stay-for-year-in-west-bank-refugee-camps-and-not-allow-40000-residents-home/).

⁶ Israël, ministère des affaires étrangères, « Prime Minister's Office Announcement — 18 March 2025 » ; G. Pomeroy, Netanyahu calls strikes on Gaza "only the beginning" as hundreds reported killed, *BBC*, 19 mars 2025 (<https://www.bbc.com/news/articles/cwyg28wd1k3o>) ; Associated Press, Strikes in Gaza kill 85 overnight, bringing the total since Israel broke ceasefire to nearly 600, 21 March 2025 (<https://apnews.com/article/israel-palestinians-hamas-war-news-ceasefire-hostages-03-20-2025-36c07d3dc7c03f66f86f44409d504d43>).

⁷ OMS, « Le monde doit agir d'urgence pour sauver les Palestiniens et les Palestiniennes de Gaza », déclaration des dirigeants de l'OCHA, de l'UNICEF, de l'UNOPS, de l'UNRWA, du PAM et de l'OMS, 7 avril 2025 (<https://www.who.int/fr/news/item/07-04-2025-world-must-act-with-urgency-to-save-palestinians-in-gaza>).

Nations Unies s'est quant à lui indigné : « *No food. No fuel. No medicine. No commercial supplies. As aid has dried up, the floodgates of horror have re-opened.* »⁸

7. En s'opposant à l'arrivée de toute aide humanitaire à Gaza et en la limitant considérablement dans le reste du Territoire palestinien occupé, Israël a violé un très grand nombre de normes impératives du droit international général — et quand les faits sont si graves, on en oublie les violations de règles, je dirais, « simplement obligatoires ». Je m'en tiendrai donc à celles enfreignant les obligations découlant de normes de *jus cogens* étant rappelé que, conformément à l'article 41, paragraphe 3, du projet de la CDI, les conséquences particulières qui s'attachent à ces violations sont sans préjudice de celles résultant de tout autre manquement au droit international.

8. D'abord, donc, les conséquences de droit commun. Telles qu'elles sont énoncées dans la deuxième partie des articles de la CDI, elles comportent :

- la cessation du fait internationalement illicite ;
- l'offre d'assurances et de garanties de non-répétition ; et
- l'obligation de réparer le préjudice causé par ce fait.

9. Conformément au principe codifié à l'article 30, alinéa *a*) du projet de 2001, Israël doit d'abord et avant tout mettre fin aux bombardements, à ses incursions, au blocus qu'il a réimposé à Gaza et à celui qu'il continue d'imposer largement dans les villages et les camps de réfugiés de Cisjordanie. Cela signifie qu'Israël doit mettre un point *réellement final* aux entraves à l'entrée et à la délivrance de l'aide humanitaire dans le Territoire palestinien occupé, y compris Jérusalem-Est, qu'il rouvre les points d'entrée par lesquels transite l'aide humanitaire à Gaza et, bien sûr, qu'il cesse de détruire les centres de distribution de l'aide humanitaire et qu'il retire ses forces d'occupation. Israël doit également renoncer à déplacer sans cesse les civils palestiniens, en particulier à Gaza où près de 500 000 (500 000, c'est le quart de la population de l'enclave) ont été obligés de fuir leurs habitats précaires entre la rupture du cessez-le-feu par Israël et la mi-avril⁹ ; depuis le mois

⁸ Nations Unies, « Gaza: Guterres calls on Israel to ensure life-saving aid reaches civilians », 8 avril 2025 (<https://news.un.org/en/story/2025/04/1161996>).

⁹ Voir D. Gritten, « Israeli troops will remain in Gaza “security zones” after war, minister says », *BBC*, 16 avril 2024 (<https://www.bbc.com/news/articles/c4g2775v853o>) ou E. Fabian, « IDF says it has captured Gaza's Morag Corridor, cutting off Rafah from Khan Younis », *The Times of Israel*, 12 avril 2025 (https://www.timesofisrael.com/liveblog_entry/idf-says-it-has-captured-gazas-morag-corridor-cutting-off-rafah-from-khan-younis/) ; E. Fabian, « IDF fully surrounds Rafah as Katz warns Gazans of “final moment to remove Hamas” », *The Times of Israel*, 12 avril 2025 (<https://www.timesofisrael.com/idf-fully-captures-gazas-morag-corridor-cutting-off-rafah-from-khan-younis/>).

d'octobre 2023, c'est 1 900 000 Palestiniens, soit environ 90 % de la population gazaouie, qui ont été déplacés — souvent de multiples fois¹⁰. L'État hébreu doit aussi cesser de morceler le territoire palestinien de Gaza en multipliant les corridors qui isolent les Palestiniens les uns des autres et leur rendent encore plus difficile l'accès à l'aide humanitaire — quand elle existe¹¹. Il a également l'obligation de ne pas renouveler les obstacles qu'il a mis à l'acheminement de l'aide durant la « trêve », y compris les centaines de points de contrôle et de barrages routiers qui empêchent l'accès des Palestiniens à l'aide internationale¹².

10. La CDI précise utilement dans son commentaire des articles de 2001 que « la cessation n'est pas soumise aux limitations imposées par le critère de la proportionnalité »¹³. Israël ne saurait donc invoquer de prétendues violations qu'auraient commises l'État de Palestine ou d'autres entités pour s'affranchir de son obligation de se conformer immédiatement à l'ensemble des obligations lui incombant et que violent les décisions et les actions (continues) que je viens d'évoquer.

11. Autre précision importante, qui est donnée dans l'article 29 du projet de la CDI : « Les conséquences juridiques d'un fait internationalement illicite ... n'affectent pas le maintien du devoir de l'État responsable d'exécuter l'obligation violée. »¹⁴

¹⁰ UNRWA, UNRWA Situation Report #168 on the Humanitarian Crisis in the Gaza Strip and the West Bank, including East Jerusalem, 23 avril 2025.

¹¹ OCHA, « Gaza humanitarian response update | 16-29 March 2025 » (<https://www.unocha.org/publications/report/occupied-palestinian-territory/gaza-humanitarian-response-update-16-29-march-2025>) ; OCHA, « Humanitarian response by the UN and humanitarian partners during phase one of the ceasefire (17 March 2025) » (<https://www.unocha.org/publications/report/occupied-palestinian-territory/humanitarian-response-un-and-humanitarian-partners-during-phase-one-ceasefire-17-march-2025>) ; OCHA, Today's top news: Occupied Palestinian Territory, Syria, Democratic Republic of the Congo, Sudan, Myanmar, Ukraine, Ecuador, 25 mars 2025 (<https://www.unocha.org/news/todays-top-news-occupied-palestinian-territory-syria-democratic-republic-congo-sudan-myanmar>) ; E. Fabian, « IDF says it has captured Gaza's Morag Corridor, cutting off Rafah from Khan Younis », *The Times of Israel*, 12 avril 2025 (https://www.timesofisrael.com/liveblog_entry/idf-says-it-has-captured-gazas-morag-corridor-cutting-off-rafah-from-khan-younis/). Pour une décision israélienne récente concernant le déplacement de la population de Khan Younès et le contrôle du corridor de Morag, voir *supra*, note 10.

¹² OCHA, « Gaza humanitarian response update | 16-29 March 2025 » (<https://www.unocha.org/publications/report/occupied-palestinian-territory/gaza-humanitarian-response-update-16-29-march-2025>) ; OCHA, « Humanitarian response by the UN and humanitarian partners during phase one of the ceasefire (17 March 2025) » (<https://www.unocha.org/publications/report/occupied-palestinian-territory/humanitarian-response-un-and-humanitarian-partners-during-phase-one-ceasefire-17-march-2025>) ; OCHA, « Today's top news: Occupied Palestinian Territory, Syria, Democratic Republic of the Congo, Sudan, Myanmar, Ukraine, Ecuador, 25 mars 2025 » (<https://www.unocha.org/news/todays-top-news-occupied-palestinian-territory-syria-democratic-republic-congo-sudan-myanmar>) ; E. Fabian, « IDF says it has captured Gaza's Morag Corridor, cutting off Rafah from Khan Younis », *The Times of Israel*, 12 avril 2025 (https://www.timesofisrael.com/liveblog_entry/idf-says-it-has-captured-gazas-morag-corridor-cutting-off-rafah-from-khan-younis/). Pour une décision israélienne récente concernant le déplacement de la population de Khan Younès et le contrôle du corridor de Morag, voir *supra*, note 10.

¹³ ACIDI, 2001, vol. II, deuxième partie, p. 235, par. 7.

¹⁴ Voir aussi *Immunités juridictionnelles de l'État (Allemagne c. Italie ; Grèce (intervenante))*, arrêt, C.I.J. Recueil 2012 (I), p. 153, par. 137 ou *Différend relatif à des droits de navigation et des droits connexes (Costa Rica c. Nicaragua)*, arrêt, C.I.J. Recueil 2009, p. 267, par. 148.

12. Ce devoir est clairement lié à l'obligation de cesser le comportement illicite que consacre l'article 30, al. a), la cessation étant « en quelque sorte l'aspect négatif de l'exécution future »¹⁵ ; l'une et l'autre présentent une importance toute particulière dans la situation qui fait l'objet de la demande d'avis.

13. Il en résulte en effet qu'Israël doit non seulement révoquer toutes les mesures d'interdiction ou de limitation d'acheminement de l'aide à la population palestinienne — qu'elle émane d'organisations internationales ou d'États —, mais aussi qu'il doit s'acquitter positivement de ses obligations humanitaires de puissance occupante. Celles-ci sont énoncées dans les articles 56 et 59 de la convention IV de Genève ; elles incluent « le devoir d'assurer et de maintenir avec le concours des autorités nationales et locales, les établissements et les services médicaux et hospitaliers, ainsi que la santé et l'hygiène publiques dans le territoire occupé ». Israël a, en outre, le devoir, non pas seulement d'accepter les actions de secours d'autres organisations internationales ou d'États tiers, mais aussi de les faciliter « dans toute la mesure de ses moyens ». C'est d'ailleurs très exactement ce qu'« [e]xige » l'Assemblée générale dans le deuxième paragraphe, que j'ai cité il y a quelques instants¹⁶, de la résolution 79/232 qui est à l'origine de la demande d'avis. Il semble particulièrement important que votre avis précise *expressément* qu'Israël doit non seulement rapporter toutes les lois faisant obstacle aux opérations de l'UNRWA et des autres acteurs de l'aide humanitaire dans le Territoire palestinien occupé, mais encore qu'il a le devoir de faciliter leur action irremplaçable et de garantir les immunités du personnel, des locaux et des biens des Nations Unies et des organisations internationales dispensant cette assistance.

14. Dans l'affaire du *Mur*, vous aviez déjà relevé que sa « construction entrav[ait] la liberté de circulation des habitants du territoire palestinien occupé [ainsi que] l'exercice par les intéressés des droits au travail, à la santé, à l'éducation et à un niveau de vie suffisant »¹⁷. Plus généralement, comme vous l'avez observé dans votre avis de l'an dernier, c'est « l'ensemble du régime de

¹⁵ *ACDI*, 2001, vol. II, deuxième partie, p. 233, paragraphe 1 du commentaire de l'article 30.

¹⁶ Voir *supra*, par. 5.

¹⁷ *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif, C.I.J. Recueil 2004 (I)*, p. 191-192, par. 134. Voir aussi *Conséquences juridiques découlant des politiques et pratiques d'Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est, avis consultatif du 19 juillet 2024*, p. 191-192, par. 206.

restrictions imposé à la liberté de circulation des Palestiniens dans le Territoire palestinien occupé [qui] a un effet discriminatoire sur leur jouissance de ces droits »¹⁸.

15. Dans cet esprit, Israël doit également, en application de la convention sur le génocide, s'acquitter de son obligation de « prendre sans délai des mesures effectives pour permettre la fourniture des services de base et de l'aide humanitaire requis de toute urgence afin de remédier aux difficiles conditions d'existence auxquelles sont soumis les Palestiniens de la bande de Gaza »¹⁹. C'est ce que vous avez décidé dans votre ordonnance en indication de mesures conservatoires du 26 janvier 2024, dont il n'est pas inutile de rappeler qu'elle est juridiquement obligatoire.

16. En outre, en application des mesures conservatoires supplémentaires, tout aussi obligatoires pour Israël, que vous avez décidées le 28 mars 2024, Israël doit, et je vous cite (la citation est un peu longue mais elle est vraiment totalement adéquate pour notre affaire),

« [p]rendre toutes les mesures nécessaires et effectives pour veiller sans délai, en étroite coopération avec l'Organisation des Nations Unies, à ce que soit assurée, sans restriction et à grande échelle, la fourniture par toutes les parties intéressées des services de base et de l'aide humanitaire requis de toute urgence, notamment la nourriture, l'eau, l'électricité, le combustible, les abris, les vêtements, les produits et installations d'hygiène et d'assainissement, ainsi que le matériel et les soins médicaux, aux Palestiniens de l'ensemble de la bande de Gaza, en particulier en accroissant la capacité et le nombre des points de passage terrestres et en maintenant ceux-ci ouverts aussi longtemps que nécessaire »²⁰.

17. Plusieurs résolutions du Conseil de sécurité vont dans le même sens. Dans la plus récente de ces résolutions, la résolution 2735 du 10 juin 2024, le Conseil de sécurité *demandait* — je le cite — le

« retrait des forces israéliennes des zones peuplées de Gaza, retour des civils palestiniens dans leurs foyers et leurs quartiers dans tous les secteurs de Gaza, y compris dans le nord, et distribution sûre et effective d'une aide humanitaire en quantité suffisante dans toute la bande de Gaza à tous les civils palestiniens qui en ont besoin, y compris d'unités de logement fournies par la communauté internationale ».

Et, auparavant, dans sa résolution 2728 du 25 mars 2024, rappelant les résolutions 2712 et 2720 de 2023, le Conseil avait

¹⁸ *Conséquences juridiques découlant des politiques et pratiques d'Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est, avis consultatif du 19 juillet 2024*, p. 59, par. 206. Voir aussi *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif, C.I.J. Recueil 2004 (I)*, p. 191-192, par. 134.

¹⁹ *Application de la convention pour la prévention et la répression du crime de génocide dans la bande de Gaza (Afrique du Sud c. Israël), mesures conservatoires, ordonnance du 26 janvier 2024*, p. 31, par. 86, point 4.

²⁰ *Ibid.*, *demande tendant à la modification de l'ordonnance du 26 janvier 2024 indiquant des mesures conservatoires*, 28 mars 2024, par. 51, point 2, al. a).

« *[i]nsist[é]* sur la nécessité urgente d'étendre l'acheminement de l'aide humanitaire aux civils et de renforcer la protection des civils dans l'ensemble de la bande de Gaza et *exig[é]* à nouveau la levée de toutes les entraves à la fourniture d'une aide humanitaire à grande échelle, conformément au droit international humanitaire ».

L'Assemblée générale a adopté de très nombreuses résolutions allant dans le même sens²¹.

18. Comme les décisions et avis de la Cour, ces résolutions sont restées sans aucun effet. Jamais — *jamaïs* — circonstances n'ont davantage exigé que l'auteur de faits internationalement illicites donne des « assurances et garanties appropriées » envisagées par l'alinéa *b*) de l'article 30 des articles de la CDI.

19. En l'espèce, il est tout à fait certain que de simples « engagements »²² qu'Israël viendrait à prendre — malheureusement de manière très hypothétique — d'assurer la mise en œuvre des mesures de réparation qui lui incombent ne suffiraient nullement à rassurer les victimes de ses agissements, qu'il s'agisse de la population palestinienne ou de l'État palestinien, non plus que de la communauté internationale qui a *aussi* un intérêt à leur cessation tant il y a de « raisons [en l'espèce] de penser que le simple retour à la situation préexistante ne protège[rait] pas [la population palestinienne] de manière satisfaisante »²³. On ne peut en effet qu'être grandement préoccupé :

- par la consistance avec laquelle Israël a fait fi des recommandations et des décisions des organes des Nations Unies, y compris du Conseil de sécurité ;
- par l'évident mépris d'Israël pour les décisions de la Cour ;
- par la légèreté avec laquelle il a, dans la violation la plus flagrante du principe de bonne foi, trahi ses promesses dans le passé, notamment en rompant unilatéralement, le 18 mars 2025, l'accord de cessez-le-feu conclu le 15 janvier précédent.

Il faut aussi garder à l'esprit qu'il est d'une importance proprement vitale qu'Israël cesse définitivement de violer continûment ses obligations à la fois de puissance occupante, de Membre des Nations Unies et, tout simplement, de membre de la communauté internationale des États dans son ensemble.

²¹ Assemblée générale, résolutions 79/81, intitulée « Règlement pacifique de la question de Palestine », 3 décembre 2024 ; 79/88, intitulée « Aide aux réfugiés de Palestine », 4 décembre 2024, et 79/141, intitulée « Assistance au peuple palestinien », 9 décembre 2024.

²² *LaGrand (Allemagne c. États-Unis d'Amérique)*, arrêt, C.I.J. Recueil 2001, p. 512, par. 124. Voir aussi *ibid.*, par. 127 et 128, point 6.

²³ Voir *ACDI*, 2001, vol. II, deuxième partie, p. 239, par. 9.

20. L'État de Palestine a indiqué, à titre d'exemples, dans le paragraphe 7.23 de ses observations écrites, la forme que pourraient revêtir les garanties de non-répétition qu'Israël devrait prendre pour rendre crédible le respect de ces obligations dans le champ couvert par la demande d'avis. Nous sommes convaincus que des orientations précises en ce sens dans votre avis seraient particulièrement opportunes.

21. Tournées vers l'avenir, « les assurances et garanties ... visent à empêcher d'autres violations potentielles. Elles sont axées sur la prévention plutôt que sur la réparation »²⁴. L'obligation de réparer constitue pour sa part la conséquence la plus fermement établie de tout fait internationalement illicite dès lors que celui-ci a causé un préjudice.

22. Il ne s'agit évidemment pas pour vous, Mesdames et Messieurs de la Cour, de vous prononcer sur l'étendue des dommages résultant de la violation par Israël de ses obligations internationales, pas davantage que sur les modalités ou le montant précis de la réparation dont il doit s'acquitter en conséquence. Il ne peut faire de doute que les premiers (les dommages) sont immenses ; la seconde (la réparation) doit l'être en proportion. Il n'est pas, je pense, utile que je m'attarde sur le justement fameux « principe de *Chorzów* », unanimement reconnu et repris dans l'article 31, paragraphe 1, des articles de la CDI, selon lequel « [l]'État responsable est tenu de réparer intégralement le préjudice causé par le fait internationalement illicite »²⁵. Il en résulte que « la réparation doit, autant que possible, effacer toutes les conséquences de l'acte illicite et rétablir l'état qui aurait vraisemblablement existé si ledit acte n'avait pas été commis »²⁶. Ces obligations s'imposent à Israël sous forme de restitution et, à défaut, d'indemnisation et de satisfaction « dans la mesure où [le préjudice] ne peut pas être réparé par la restitution »²⁷.

23. Il n'est pas davantage besoin, Monsieur le président, d'entrer dans le détail du droit applicable ; vous en avez subi le rappel à suffisance. En revanche, il ne me paraît pas inutile de m'arrêter brièvement sur les modalités particulières de réparation qu'appellent les circonstances de l'espèce.

²⁴ *ACDI*, 2001, vol. II, deuxième partie, p. 239, par. 9.

²⁵ Voir aussi *Usine de Chorzów, compétence, arrêt n° 8, 1927, C.P.J.I. série A n° 9*, p. 21.

²⁶ *Usine de Chorzów, fond, arrêt n° 13, 1928, C.P.J.I. série A n° 17*, p. 47.

²⁷ CDI, *Projet d'articles sur la responsabilité de l'État pour fait internationalement illicite*, art. 34-37.

24. Bien qu'il ne s'agisse pas ici de réparer l'ensemble des conséquences résultant de l'occupation et de la présence illicite d'Israël dans le territoire palestinien, les constatations que vous avez faites l'an dernier dans l'avis sur les *Conséquences juridiques découlant des politiques et pratiques d'Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est* sont en grande partie transposables dans la présente affaire. Ainsi, il ne saurait faire de doute qu'Israël a « l'obligation de réparer intégralement les dommages causés par ses faits internationalement illicites à toutes les personnes physiques ou morales concernées »²⁸ par les entraves illicites qu'il a imposées à la fourniture « d'articles de première nécessité essentiels à la survie de la population civile palestinienne, ainsi que de services de base et d'une aide humanitaire et d'une aide au développement »²⁹.

25. Ceci est conforme à la règle codifiée à l'article 33 du projet de la CDI selon lequel

« [L]es obligations de l'État responsable ... peuvent être dues à un autre État, à plusieurs États ou à la communauté internationale dans son ensemble, en fonction notamment de la nature et du contenu de l'obligation internationale violée et des circonstances de la violation ».

26. En l'espèce, les manquements d'Israël à ses obligations humanitaires se sont traduits par de terribles souffrances humaines largement irréparables par la restitution, à commencer par la mort de milliers de civils palestiniens, y compris des milliers d'enfants. La restitution, qui est la règle dès lors qu'elle n'est pas matériellement impossible, n'est pas exclue pour autant s'agissant d'autres dommages, par exemple en ce qui concerne la réparation ou la reconstruction des infrastructures publiques, des accès aux points d'eau et du réseau d'électricité, la reconstruction des habitations, des hôpitaux et des écoles ainsi que la restitution de matériels de soins ou d'enseignement par équivalence à ceux qui ont été détruits par les activités militaires israéliennes. Quant aux souffrances elles-mêmes, seule une indemnisation appropriée combinée avec les excuses des autorités israéliennes est de nature à en assurer réparation.

²⁸ *Conséquences juridiques découlant des politiques et pratiques d'Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est, avis consultatif du 19 juillet 2024*, p. 73, par. 269 ; voir aussi *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif, C.I.J. Recueil 2004 (I)*, p. 198, par. 152.

²⁹ Nations Unies, Assemblée générale, résolution 29/232, intitulée « Demande d'avis consultatif de la Cour internationale de Justice sur les obligations d'Israël en ce qui concerne la présence et les activités de l'Organisation des Nations Unies, d'autres organisations internationales et d'États tiers », 19 décembre 2024, par. 10.

27. L'État de Palestine a, lui aussi, droit à réparation pour les nombreux dommages que la politique et les actions d'Israël, grossièrement contraires au droit international, lui ont fait subir et que mes collègues ont détaillés dans leurs interventions de ce matin. Il en va ainsi, en particulier, des préjudices collectifs subis par la population palestinienne du fait, notamment, des déplacements incessants imposés par Israël à la population de Gaza et des expulsions auxquelles il a procédé en Cisjordanie y compris Jérusalem-Est. Il en va de même de l'isolement des villages palestiniens rendus inaccessibles à l'aide humanitaire des États tiers ou des organisations internationales. C'est le cas également de l'atteinte en résultant portée au droit du peuple palestinien à disposer de lui-même. Ces dommages peuvent difficilement être réparés intégralement par la restitution ou par une indemnisation ; ici des satisfactions appropriées sont dues, et nous pensons qu'il serait fort utile que la Cour en donne des exemples.

28. Il vous appartient aussi, Mesdames et Messieurs les juges, de préciser qu'Israël doit réparation aux Nations Unies — y compris à l'UNRWA — et aux très nombreuses autres organisations internationales et aux États impliqués dans l'aide humanitaire à Gaza et dans le reste du Territoire palestinien occupé³⁰ pour les destructions causées à leurs propriétés ; et il incombe aussi à Israël d'indemniser leur personnel ou leurs ayants droit victimes de ses exactions.

29. Monsieur le président, comme je l'ai dit en commençant, les violations des obligations incombant à Israël visées par la question qui vous est posée relèvent de ce que les articles 40 et 41 du projet de la CDI décrivent comme des violations graves par un État d'obligations découlant de normes impératives du droit international général — celles que la Commission avait considérées dans la première version de son projet comme des « crimes internationaux de l'État ». Je ne veux pas raviver cette querelle terminologique, mais il faut bien dire que l'expression avait le mérite de mettre l'accent sur la gravité des violations en cause. Dans sa rédaction actuelle, qui n'est d'ailleurs guère différente de celle retenue dans la première version du projet d'articles³¹, l'article 41 tire de ces violations des conséquences dirigées surtout vers les obligations corrélatives de l'ensemble des États de la communauté internationale — et, en particulier, celle de coopérer pour mettre fin, par des moyens licites, à toute violation grave d'obligations découlant de normes impératives et celle de ne

³⁰ Voir les observations écrites du Secrétaire général des Nations Unies.

³¹ Voir le projet d'article 53, *ACDI*, 1996, vol. II, deuxième partie, p. 68.

pas reconnaître comme licite une situation créée par une telle violation, ni de prêter aide ou assistance au maintien de cette situation. Dans ses observations écrites, l'État de Palestine a analysé en certains détails ces obligations incombant aux tiers, qu'il s'agisse d'États ou d'organisations internationales³². Je me permets de vous y renvoyer³³.

30. Il s'en déduit qu'Israël doit répondre de ses manquements à l'égard de la communauté internationale dans son ensemble et, plus particulièrement, des États et des organisations internationales dont il a empêché ou entravé, et continue d'entraver, l'action humanitaire dans l'ensemble du Territoire palestinien occupé et tout spécialement à Gaza, contribuant ainsi à aggraver les souffrances du peuple palestinien privé de son droit fondamental à disposer de lui-même.

31. En outre, le paragraphe 3 de l'article 41 précise que celui-ci « est sans préjudice des autres conséquences prévues dans la présente partie [la partie II du projet d'articles consacrée au contenu de la responsabilité internationale de l'État] et de toute conséquence supplémentaire que peut entraîner, d'après le droit international, une violation à laquelle s'applique le présent chapitre » (celui qui est consacré aux violations graves).

32. Dans les circonstances qui ont donné lieu à la présente demande d'avis, l'une de ces conséquences particulières tient à l'obligation d'Israël (comme de tous les autres États parties) de rechercher, en vertu de l'article 146 de la quatrième convention de Genève, « les personnes prévenues d'avoir commis, ou d'avoir ordonné de commettre, l'une ou l'autre de[s] infractions graves [définies à l'article suivant], et [de] les déférer à ses propres tribunaux, quelle que soit leur nationalité » — donc y compris s'ils ont la nationalité israélienne —, ou de « les remettre pour jugement à une autre Partie contractante intéressée à la poursuite ».

33. Parmi les infractions graves visées à l'article 147, on peut relever « les traitements inhumains, ... le fait de causer intentionnellement de grandes souffrances ou de porter des atteintes graves à l'intégrité physique ou à la santé, la déportation ou le transfert illégaux » — autant d'actes indiscutablement commis en exécution des décisions israéliennes, visant, pour reprendre les termes de la résolution 79/232, à entraver la fourniture

³² Voir l'article 42 des articles de la CDI de 2011 sur la responsabilité des organisations internationales pour fait internationalement illicite.

³³ Voir les paragraphes 7.45-7.72 et la conclusion 4 des observations écrites.

« d'articles de première nécessité essentiels à la survie de la population civile palestinienne, ainsi que de services de base et d'une aide humanitaire et d'une aide au développement, dans l'intérêt de la population civile palestinienne et à l'appui du droit du peuple palestinien à l'autodétermination ».

34. En outre, conformément à l'article 148, Israël ne peut s'exonérer lui-même, « ni exonérer une autre Partie contractante, des responsabilités encourues par [lui]-même ou par une autre Partie contractante en raison » de ces infractions³⁴.

35. Les États doivent enquêter sur les crimes de guerre commis par leurs ressortissants ou par leurs forces armées, ou sur leur territoire, et, le cas échéant, poursuivre les suspects. Ils doivent aussi enquêter sur les autres crimes de guerre relevant de leur compétence. Cette obligation figure également dans de nombreux instruments, notamment l'article VI de la convention sur le génocide de 1948, l'article 7 de la convention de 1973 sur la protection des personnes jouissant d'une protection internationale, ou l'article 7 de la convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants de 1984. Ainsi que le précise le CICR³⁵, toutes ces obligations, violées par Israël, ont également un caractère coutumier. Dans son arrêt du 9 février 2022, la Cour a

« fait observer que, en vertu de l'article 146 de la quatrième convention de Genève relative à la protection des populations civiles en temps de guerre ..., [l'État concerné] avait l'obligation d'enquêter, de poursuivre et de réprimer les personnes responsables de telles violations »³⁶.

La même obligation pèse sur Israël s'agissant de la poursuite, du jugement et de la punition des responsables des violations de ses obligations en vertu de ces mêmes dispositions.

36. Monsieur le président, je sais à quel point le rôle de la Cour est chargé, mais la célérité avec laquelle vous-même et vos collègues avez répondu à l'appel de l'Assemblée générale vous demandant de vous prononcer « à titre prioritaire et de toute urgence » montre que vous êtes conscients de l'enjeu : vous devez alerter le monde, avec l'autorité juridique qui est la vôtre et votre légitimité d'organe judiciaire principal des Nations Unies, sur cette urgence absolue de mettre fin durablement à l'horreur que créent les actions d'Israël dans le Territoire palestinien occupé et tout

³⁴ Voir aussi le paragraphe 4 de la déclaration de la conférence de hautes parties contractantes à la quatrième convention de Genève du 5 décembre 2001.

³⁵ CICR, base de données, règles de droit international coutumier, règle 158 (<https://ihl-databases.icrc.org/fr/customary-ihl/v1/rule158>) ; voir aussi la règle 157 (<https://ihl-databases.icrc.org/fr/customary-ihl/v1/rule157>).

³⁶ *Activités armées sur le territoire du Congo (République démocratique du Congo c. Ouganda)*, réparations, arrêt, C.I.J. Recueil 2022 (I), p. 132-133, par. 390.

spécialement — mais pas seulement — à Gaza. Votre avis aura une valeur d’alerte d’autant plus irremplaçable que vous vous prononcerez en droit, de manière précise et détaillée, non seulement sur les conséquences des violations graves commises par Israël, mais aussi sur celles qui s’imposent à la communauté internationale dans son ensemble. Les manquements d’Israël ont directement porté atteinte aux droits de nombre d’entre elles et d’entre eux — de ces organisations et de ces États —, empêchés de fournir à la population palestinienne l’aide humanitaire indispensable. En outre, vous ne manquerez pas de rappeler que le caractère impératif des obligations violées leur impose également des devoirs.

37. Mesdames et Messieurs de la Cour, tous les professeurs de droit international ont essuyé le feu nourri de questions dubitatives de leurs étudiants sur la nature « réellement juridique » du droit international et, dans le contexte géopolitique actuel, l’interrogation pénètre l’opinion publique mondiale dans son ensemble. On ne peut pas demander au droit plus qu’il ne peut donner ; par essence, il est normatif et prescriptif ; mais c’est une vision erronée des choses que de soutenir pour autant qu’« il ne sert à rien » : il sert, et c’est déjà beaucoup, à montrer le chemin, à dire, au-delà des « vérités alternatives », quels sont les principes et les règles qui doivent guider l’action des États et des autres sujets de droit pour assurer la promotion de la paix et la justice dans le monde — où elles sont aujourd’hui si dramatiquement menacées. Pour cela, vous avez un rôle éminent à jouer. J’ai été interviewé récemment par un grand journal français, dans lequel j’ai dit que votre avis de juillet dernier avait « sauvé l’honneur du droit international »³⁷. Nous avons la conviction que le nouvel avis que vous rendrez à la demande urgente de l’Assemblée générale justifiera la même appréciation.

38. Je vous remercie très vivement de votre attention et je vous prie, Monsieur le président, de bien vouloir donner la parole à Son Excellence Monsieur Ryad Mansour, pour quelques propos conclusifs.

Le PRÉSIDENT : Je remercie Professeur Pellet. I now give the floor to His Excellency Dr Riyad Mansour. You have the floor, Sir.

³⁷ *Le Monde*, 30 juillet 2024.

Mr MANSOUR:

6. CLOSING STATEMENT

1. Mr President, honourable judges, it is an honour to address you, and a heavy burden to speak on behalf of a people as it is being decimated. We are proud of being Palestinians. But being Palestinian comes with its share of pain. And it has never been more painful to be Palestinian than today.

2. Why does Israel destroy homes and hospitals? Why does it destroy vital infrastructure and humanitarian projects? Why does Israel hinder or block assistance to the Palestinian people including aid indispensable to the survival of the population or to meet their most basic needs? Why does it attack humanitarians, killing those trying to save lives?

3. The answer is deeply linked to this Court's 2024 Opinion: to entrench its unlawful presence. To deny us our right to self-determination. To dispossess, displace and destroy our people. To colonize and annex our land.

4. Israel is openly confessing to these goals.

5. The Israeli Prime Minister has openly instructed his occupation army to seize Palestinian land in Gaza.

6. His Government considers that all of the West Bank is theirs to claim.

7. Israel has admitted to voluntarily blocking aid and to the use of aid as a weapon.

8. Israeli officials have been clear that they consider nobody in Gaza to be innocent.

9. They are seeking to end our presence in the land as a nation.

10. Netanyahu has said unambiguously that he will not allow the exercise by the Palestinian people of their right to self-determination, including their right to their independent State.

11. The Israeli Knesset adopted laws to entrench this denial of our rights and of our existence as a nation.

12. The Israeli courts shielded those committing all these crimes.

13. It is thus no coincidence that most of the humanitarian and development projects destroyed by Israel in the West Bank over decades were the ones intended for communities in East Jerusalem and in the so-called Area C, the areas that constitute priority targets of Israel's annexation efforts. By

denying these communities a place to live, to study, to heal, by denying these their access to electricity and water as many of my colleagues have stated in their statements, by denying them international protection from violence, Israel pursues their erasure.

14. It is no coincidence that Israel destroyed in Gaza all the requirements for our people's lives and for their very survival, including hospitals and schools, shelters and bakeries, farmlands, and water and sanitation facilities.

15. It is no coincidence that Israel bombs and kills the humanitarians who are trying to assist an entire civilian population to survive, killing, maiming, detaining and torturing UN personnel, humanitarians and doctors, attacking the convoys of international volunteers, and killing Palestine Red Crescent, civil defence and rescue teams.

16. It is to deprive the population of any assistance so it had no means to survive the devastation, death and destruction imposed on it by Israel's relentless bombardments, its levelling of homes and roads and infrastructure, and its inhumane siege.

17. Now, after having killed and maimed hundreds of thousands of Palestinians, Netanyahu calls for the "voluntary" migration of the survivors. Is it voluntary migration when to destroy a people you leave them trapped between death and displacement? Is it?

18. We want life and liberty and dignity in our land and in our children's lifetime.

19. Instead, our children are being killed, orphaned, amputated, traumatized, displaced, humiliated, witnessing and enduring what no child should witness or endure. Those who survive will never fully recover from this nightmare.

20. At the heart of the UN Charter, there is a pledge, the ultimate goal behind the creation of this organization: to save successive generations from the scourge of war.

21. Well, successive Palestinian generations were left to endure wars and occupation. And this Palestinian generation is being killed and its genocide is livestreamed for all to see. And it continues with no end in sight.

22. Pope Francis, may he rest in peace, rightfully said, "this is not war, this is cruelty".

23. What makes this even more outrageous is the fact people fleeing bombardments and displaced time and time again, coping with terrible loss, are denied aid that is almost within grasp.

24. They are starving while food rots at the border.

25. They are dying of wounds that could be healed.

26. They are succumbing to diseases that could be prevented.

27. The UN Office of the High Commissioner for Human Rights stated a few days ago:

“Extremely high civilian casualties over 18 months do not appear to have prompted any changes in Israeli targeting practices and policies, a pattern indicating at the very least a complete disregard for the lives of civilians in Gaza. Matched with Israel’s policy of deliberately blocking life-saving assistance from entering the Gaza Strip, these policies appear to be aimed at punishing the civilian population of Gaza and inflicting on them conditions of life increasingly incompatible with their continued existence as a group in Gaza.”³⁸

28. Why did humanity enact rules if those who are entitled to their protection are left in harm’s way and those who should be held responsible for their breach are shielded?

29. Among the rules considered the most sacred in the international order are: the prohibition of aggression, and its corollary is the inadmissibility of the acquisition of territory by force; the prohibition of genocide; the prohibition of crimes against humanity; the prohibition of racial discrimination and apartheid; the prohibition of torture; as well as respect for the basic rules of international humanitarian law, and the right of self-determination.

30. There can be no justification for such indiscriminate, widespread and systematic breach of these fundamental rules that lie at the heart of the international law-based order, no justification whatsoever for abandoning an entire nation to the most horrific fate.

31. Denying humanitarian and development assistance to the Palestinian people is an integral part of the breach by Israel of the rights of the Palestinian people guaranteed by these fundamental norms.

32. It is paramount that the Court, while determining Israel’s obligations in relation to these norms, also remind all States, and the international community as a whole, of their obligation to bring those breaches to an end.

33. Ensuring accountability to end these breaches is the assistance we most desperately need. We need your help. That is the path towards upholding our right to self-determination, to

³⁸ UN Human Rights Office, “OPT: Deteriorating human rights and humanitarian situation in the Occupied Palestinian Territory”, 25 April 2025 (<https://reliefweb.int/report/occupied-palestinian-territory/un-human-rights-office-opt-deteriorating-human-rights-and-humanitarian-situation-occupied-palestinian-territory>).

development and even to life. That would allow all other assistance to reach us, or better still, ensure that we will no longer be in need of such assistance.

34. Which begs the question: why do the Palestinian people need assistance to begin with?

35. We do not lack the resources and we certainly do not lack the human capital, as long as our people stop being killed and displaced.

36. Israel annexes our land.

37. It kills, dispossesses and displaces to destroy our people.

38. It steals our resources and revenues.

39. It fragments our territory.

40. It severely restricts our movement and access.

41. From the 18-year blockade over Gaza, to the nearly one thousand military checkpoints and obstacles to access and movement in the West Bank, to the attempts to sever East Jerusalem from its Palestinian environment.

42. Israel systematically created our dependency on aid and then deliberately deprived us of this aid.

43. Kill and displace. Destroy to replace.

44. Get rid of Palestinian demography to seize Palestinian geography.

45. The methods are illegal and inhumane, the real objectives pursued are unlawful and the means deployed are criminal.

46. A UN Member State openly shredding the UN Charter in the General Assembly, attacking the United Nations, killing UN personnel, bombing facilities and inciting against the Organization. That Member State, its Foreign Minister, today, wants you to put to trial the Secretary-General of the United Nations and the Commissioner-General of the United Nations, Mr Lazzarini. You see how he is standing on his head instead of standing on his feet.

47. A Member State breaching resolutions of the Security Council and the General Assembly and the Human Rights Council and smearing them for adopting these resolutions grounded in international law.

48. A UN Member State attacking the principal judicial organ of the United Nations and mocking the most elementary and fundamental rules of our international law-based order.

49. A UN Member State openly aiming to destroy an entire UN agency, UNRWA, protesting its continued existence while it is Israel's expulsion of Palestinians and denial of the right of return of Palestine refugees that has led to the creation of this Agency and required its continued existence for over seven decades.

50. UNRWA is the shining example of the success of multilateralism at the United Nations. It is a remarkable organization. This is what we should be proud of as an Organization — in a selfless way, catering to the needs of six million Palestine refugees and giving almost 300 individuals in the process of providing humanitarian assistance to the Palestinian people in Gaza. It is something that all of us at the United Nations should be so proud of that it has been in business for almost 75 years. It is an organization that should be protected and defended, not to be attacked.

51. A UN Member State openly destroying an entire people.

52. Until when can this situation be tolerated? Until no Palestinian survives? Until no Palestinian child is spared?

53. There is an alternative vision, one where the law is upheld, where no civilian is harmed, whether Palestinian or Israeli, where there are no prisoners and no hostages, no occupation and no wars, where families are reunited in life rather than death, where our people are finally free and where two States live side by side in peace and security. Where all recognize our shared humanity and that all peoples are endowed with rights, and that every life is sacred. Every life of everyone from all peoples in the region and beyond is sacred. Not the life of some and to deny the sacredness of the life of others. We are equal. We should be equal. We are all the children of God and God does not discriminate among his children or against his children.

54. Where you do not need to ask what is the nationality, or religion, or race, of a child killed to know if you should be outraged or find excuses. Where parents do not live in fear. Where children do not discover death before they had a chance to experience life.

55. That alternative vision is why humanity enacted rules and established courts. To bend the arc of the moral universe towards justice. Justice, not vengeance. Justice, not double standards. Justice, not cruelty. We are here because the General Assembly needs your guidance to advance justice. We are here as millions of Palestinians, in particular two million plus in Gaza, half of them children, pay the ultimate price for our collective inability to end the injustice. Help us deliver justice.

Help us to move in that direction and to have justice for the Palestinian people. I thank you very much, Mr President.

The PRESIDENT: I thank the representatives of Palestine for their presentation. Before I invite the next delegation to take the floor, the Court will observe a coffee break of 15 minutes. The hearing is suspended.

The Court adjourned from 4 p.m. to 4.15 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now invite the next participating delegation, Egypt, to address the Court and I call His Excellency Mr Hatem Kamaleldin Abdelkader to the podium. You have the floor, Sir.

Mr ABDELKADER:

1. Thank you, Mr President. It is my honour and privilege to represent the Arab Republic of Egypt in these advisory proceedings, taking place through an urgent request of the General Assembly less than one year since the Court issued its Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*.

2. Mr President, since 2 March, Israel has deliberately and arbitrarily closed the crossings into Gaza, preventing the entry of food, safe drinking water, fuel, medical and other essential supplies. This brutal siege imposed on civilians is the most recent chapter in Israel's systematic weaponization of humanitarian assistance. It comes amidst Israel's resumption of its vicious assault on Gaza that has killed 52,000 innocent civilians since October 2023, the majority of whom are women and children.

3. Israel continues to deliberately target civilians and the infrastructure essential to the survival of the Palestinian population and has scaled up attacks against medical and humanitarian workers. This blatant disregard for international law has left Gaza in the throes of a humanitarian catastrophe.

4. There is no doubt that these practices are part of a widespread, systematic and comprehensive State policy to depopulate the Occupied Palestinian Territory and effect its *de facto* annexation. This policy is evident not only in a series of public statements by senior Israeli officials

and in Knesset enactments, but equally in Israel's sustained efforts to undermine and defund UNRWA with the aim of obstructing the Palestinian people's inalienable right to return, a distinct pillar of their right to self-determination.

5. Simultaneously, Israel's repeated forced evictions and relocations under the guise of so-called "evacuation orders" have forcibly transferred Palestinians to areas no more secure than the places they left. With no access to life-saving supplies and services, Israel is intentionally creating conditions intended to make Gaza uninhabitable.

6. Mr President, further embodiments of Israel's strategy include the creation of an agency charged with encouraging and managing the deportation of Palestinians from Gaza.

7. Taken together, these practices demonstrate a clear and unified State policy aimed at de-Palestinianizing the OPT in grave violation of international law.

8. Mr President, although this Court has established that "the continued presence of Israel in the Occupied Palestinian Territory is illegal"³⁹, until such time as the occupation ends, Israel remains bound by its obligations under international humanitarian law and international human rights law⁴⁰. Egypt's participation in the current proceedings stems from our strong belief in the role of this august Court and international law and its institutions in protecting the Palestinian people, until such time as they can achieve their sovereign, independent State, based on the June 1967 lines, within the framework of the two-State solution.

9. Egypt's statement will focus on *three* main points, namely:

- (1) Israel's obligations as a Member of the United Nations under the United Nations Charter and the General Convention on Privileges and Immunities in relation to the presence and activities of UNRWA, other United Nations entities and third States;
- (2) Israel's obligations as an occupying Power to ensure and facilitate the unhindered provision of urgently needed supplies and humanitarian and development assistance under international humanitarian law and international human rights law; and
- (3) finally, the legal consequences and a summary of Egypt's submissions.

³⁹ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 266.

⁴⁰ *Ibid.*, paras. 264, 272.

**I. THE QUESTION OF ISRAEL’S OBLIGATIONS 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 EAST JERUSALEM**

10. Distinguished Members of the Court, there is no doubting the United Nation’s role, together with its agencies, and other humanitarian organizations, in alleviating the humanitarian suffering of the Palestinian people, a situation entirely of Israel’s own creation.

11. Of all the international organizations operating in the Occupied Palestinian Territory, the role of UNRWA — established under United Nations General Assembly resolution 302 of 8 December 1949 — is particularly indispensable.

12. Not only does UNRWA provide life-saving humanitarian assistance and relief, it has filled the gap resulting from Israel’s denial of the Palestinian people’s sovereignty over their land, and its constant suppression of the Palestinian Authority’s ability to fully assume its governmental functions throughout the OPT. This mandate includes providing basic needs and public services, including healthcare, education, social assistance, livelihoods and infrastructure.

13. Mr President, the General Assembly has underscored that “no organization can replace or substitute the Agency’s capacity and mandate to serve Palestine refugees and civilians in urgent need of life-saving humanitarian assistance”⁴¹.

14. Since its inception, UNRWA was conceived to provide humanitarian and developmental assistance *until Palestinian refugees were able to exercise their inalienable right of return*⁴². This is reflected in numerous General Assembly resolutions, which note with regret that the right of return has not been effected, and affirm the necessity for continuation of UNRWA’s work and unimpeded operations pending a just resolution of the Palestine refugee question⁴³.

⁴¹ General Assembly resolution E/S-10/25 of 11 December 2024.

⁴² The following are illustrative examples of general assembly resolutions that have reaffirmed paragraph 11 of resolution 194 (III): General Assembly resolution 78/74; General Assembly resolution 77/123; General Assembly resolution 76/77; General Assembly resolution 75/93; General Assembly resolution 74/83; General Assembly resolution 73/92; General Assembly resolution 72/80; General Assembly resolution 71/91; General Assembly resolution 70/83; General Assembly resolution 69/86; General Assembly resolution 68/76; General Assembly resolution 67/114; General Assembly resolution 66/72; General Assembly resolution 65/98; General Assembly resolution 64/87; General Assembly resolution 63/91; General Assembly resolution 62/102; General Assembly resolution 61/112.

⁴³ General Assembly resolution 79/88 — Assistance to Palestine Refugees.

15. Distinguished Members of the Court, in blatant disregard for international law, on 28 October 2024, Israel's Knesset enacted two laws related to UNRWA. The first of these, the Law to Cease UNRWA Operations⁴⁴, unilaterally terminated the Exchange of Letters concluded between Israel and UNRWA on 14 June 1967, and prohibited Israeli government authorities from establishing any contact with UNRWA. This effectively prevents UNRWA from continuing its essential work in the OPT, including East Jerusalem, as mandated by the General Assembly.

16. The law also allows for criminal proceedings against UNRWA employees⁴⁵, in violation of their immunities.

17. Israel simultaneously enacted the Law to Cease UNRWA Operations in the Territory of the State of Israel which prevents UNRWA operations through any representative office, services or activities, directly or indirectly, "within the sovereign territory of the State of Israel"⁴⁶. Under this law, Israel requested UNRWA to "cease its operations in Jerusalem, and evacuate all premises in which it operates in the city" including the premises in East Jerusalem⁴⁷.

18. These grave violations are only the latest in a series of measures intended to impede UNRWA's operations, including attacks against UNRWA personnel and premises, forced entry and incursions into UNRWA facilities, restrictions on the access and movement of UNRWA personnel, and preventing UNRWA from transporting humanitarian relief into the OPT. These practices are part of a broader policy aimed at undermining and disbanding UNRWA altogether, obstructing its humanitarian mandate, the right of return, and driving Palestinian displacement and dispossession in violation of the principle of self-determination.

19. Mr President, Israel's measures against UNRWA and other United Nations organizations violate a number of distinct legal régimes that exist and operate simultaneously and concurrently. These include:

(1) the *jus ad bellum* and the peremptory prohibition of the acquisition of territory through force,

⁴⁴ For an unofficial translation of these laws, see: Secretary-General Identical letters dated 9 December 2024 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, A/79/684 - S/2024/892, 9 December 2024.

⁴⁵ Identical Letters of the United Nations Secretary-General addressed to the President of the General Assembly and President of the Security Council, 9 December 2024; UN Doc. A/79/684, UN Doc. S/2024/892.

⁴⁶ *Ibid.*

⁴⁷ Letter from the Permanent Representative of Israel to the United Nations to the Secretary-General of the United Nations on 24 January 2025.

- (2) the Palestinian people's inalienable right to self-determination,
- (3) Israel's obligations arising under the Charter of the United Nations,
- (4) Israel's obligations under the rules of international law relating to the privileges and immunities of UNRWA as a subsidiary organ of the United Nations, which principally arise from the 1946 Convention on Privileges and Immunities of the United Nations,
- (5) the principles of international humanitarian law and international human rights law.

1. The *jus ad bellum*

20. First, with respect to the *jus ad bellum*, Israel's enactment of these laws, and any measures taken pursuant to them in the OPT, amounts to a purported exercise of Israel's sovereign powers in occupied East Jerusalem, in violation of international law including the Palestinian people's right to self-determination. Consequently, Israel is under an obligation to repeal these laws, which are null and void, and not to engage in any legislative or other measures to advance their implementation.

2. The Palestinian people's inalienable right to self-determination

21. Second, with the respect to the Palestinian people's inalienable right to self-determination, the Court has already stated that "in cases of foreign occupation, such as the present case, the right to self-determination constitutes a peremptory norm of international law"⁴⁸. The Palestinian people's right to self-determination thus cannot be achieved until Israel ends its unlawful presence in the Occupied Palestinian Territory.

22. Preserving and effecting the right of return is essential to enabling the Palestinian people to exercise their right to self-determination. The right of return is embodied in paragraph 11 of General Assembly resolution 194 (III), which states:

“*Resolves* that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible”.

⁴⁸ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 233.

The UN General Assembly has stated that the right to return is indispensable for a just settlement of the refugee problem and “the exercise by the people of Palestine of its right to self-determination”⁴⁹.

23. UNRWA’s mandate is intricately linked to the right of return. The international community has repeatedly recognized that as long as the right of return is not achieved, UNRWA would continue to discharge its mandate. By implication, UNRWA’s continued existence, and the General Assembly’s regular renewal of its mandate without prejudice to paragraph 11 of resolution 194, became synonymous with preserving the right of return for Palestinian refugees.

24. There can be no substitute for UNRWA until such time as the right of return is achieved in accordance with resolution 194 and a sovereign Palestinian State with functioning and effective State institutions is capable of assuming UNRWA’s functions. The Palestinian Authority has entered into undertakings that express its consent to UNRWA’s presence and activities in the OPT and demonstrate its commitment to the privileges and immunities enjoyed by UNRWA as a subsidiary organ of the United Nations⁵⁰.

25. Accordingly, Egypt submits that Israel is under an obligation not to prevent, impede or otherwise restrict the presence and activities of UNRWA in the OPT, including East Jerusalem, or to prevent it from executing its mandate. Any such measures constitute a violation of the right of return of Palestinian refugees and the right of the Palestinian people to self-determination and is integral to Israel’s attempts to expel, displace, transfer or deport the Palestinian people from the OPT, in stark violation of international law.

3. Israel’s obligations arising under the Charter of the United Nations

26. Third, with respect to Israel’s obligations arising under the Charter of the United Nations, Mr President, there is no other State in the international community that has disregarded the United Nations Charter with such impunity.

⁴⁹ General Assembly resolution 3089 D (XXVIII), 7 December 1973 — United Nations Relief and Works Agency for Palestine Refugees in the Near East.

⁵⁰ See Agreement between the United Nations Relief and Works Agency for Palestine Refugees in the Near East and the Palestinian Authority Regarding the Location of UNRWA Headquarters in the West Bank and Gaza Strip Area, 5 July 1996; Exchange of letters dated 24 June 1994 between the Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the Chairman of the Palestine Liberation Organization for the purpose of facilitating UNRWA to continue to provide its assistance to the Palestinian population in the Gaza Strip and the Jericho Area and in the remainder of the West Bank.

27. As a member of the United Nations, Israel is bound to respect Article 2 (5) of the Charter, which establishes a “general obligation to collaborate with the organization in the fulfilment of its actions”⁵¹. As a subsidiary organ of the United Nations, the activities of UNRWA in the Occupied Palestinian Territory are an “action” taken by the United Nations “in accordance with the present Charter” within the meaning of Article 2 (5). There is nothing in the letter or spirit of the Charter that suggests that the term “actions” is limited only to enforcement action under Chapter VII.

28. This august Court already established that a State’s membership in an international organization entails certain mutual obligations of co-operation and good faith⁵². The Court further stressed the importance “of the duty to render to the Organization ‘every assistance’ which is accepted by the Members in Article 2, paragraph 5, of the Charter”⁵³.

29. Article 105 of the Charter further provides for the Member States’ respect for privileges and immunities necessary for the fulfilment of its purposes, while Articles 100 and 104 protect what the Court has called “the independent action of the Organization itself”⁵⁴.

30. Together, these articles embody Israel’s obligation to actively facilitate and not to prevent, impede, or otherwise restrict the presence and activities of UNRWA and other United Nations agencies and bodies operating in the OPT, including East Jerusalem.

4. Israel’s obligations under the principles of international law relating to the privileges and immunities of UNRWA

31. Fourth, with respect to Israel’s obligations under the principles of international law relating to the privileges and immunities of UNRWA, Egypt submits that Israel is under an obligation to respect the privileges and immunities of UNRWA and other United Nations agencies and bodies, which arise from the United Nations Charter and the 1946 General Convention on Privileges and Immunities of the United Nations.

⁵¹ Pierre d’Argent, Nadine Susani, United Nations, Purposes and Principles, Max Planck Encyclopedia of Public International Law.

⁵² *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, p. 73.

⁵³ *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949*, p. 183.

⁵⁴ *Ibid.*

32. The General Assembly has confirmed Israel's obligation, as a party to the General Convention, to accord the privileges and immunities set out in the Convention to the United Nations and its subsidiary organs. General Assembly resolution ES-10/25 of 11 December 2024 demanded that "Israel respect the mandate of the Agency and its privileges and immunities and act forthwith to enable its operations to proceed without impediment or restriction in the Gaza Strip and the West Bank, including East Jerusalem"⁵⁵.

33. The General Convention states in section 34 that when a State accedes to the Convention it will be in a position under its own law to give effect to its terms. Any Israeli measures relating to UNRWA must, therefore, be consistent with Israel's obligation under the Convention, including:

- immunity of UNRWA and other United Nations entities and their officials from every form of legal process, including legislative and enforcement jurisdiction;
- the absolute and mandatory inviolability of UNRWA premises, property, and assets, including health centres, warehouses, and headquarters;
- providing access to and free movement of UNRWA.

34. Mr President, Israel has consistently, and deliberately, violated these obligations. While Israel's conduct in relation to UNRWA long predates the armed conflict that began in Gaza on 7 October 2023, its attacks against UNRWA during the war remain unprecedented. Israel has attacked and destroyed UNRWA premises, property, facilities, and has targeted, detained and ruthlessly killed UNRWA personnel.

35. On 13 October 2023, Israel issued an order for UNRWA to evacuate its headquarters in northern Gaza, and imposed access restrictions on humanitarian operations from the new premises in Rafah on security grounds. This has resulted in numerous denials of UNRWA humanitarian missions.

36. Mr President, there can be no security-related justification to these violations. The General Convention does not admit to any derogation from its positions. It applies fully in all circumstances and contains no limitations for requirements of military expediency or security.

⁵⁵ Para. 12.

37. Israel has also sought to justify its action on the grounds of allegations of UNRWA's purported lack of neutrality. These allegations have been disproven by the Independent Review Group appointed by the United Nations Secretary-General, which confirmed UNRWA's long-standing commitment to neutrality, while proposing measures to further advance such neutrality, taking into consideration the challenging operational environment.

38. The Agency has held that Israel is capable — and indeed responsible — for alerting UNRWA to any security-related concerns regarding personnel, which should be addressed in co-operation with the Agency, in a manner consistent with UNRWA's status and immunities.

39. Honourable Members of the Court, I thank you for your kind attention, and now I would like to ask you, Mr President, to call upon Counsellor Dr Jasmine Moussa to take the floor. Thank you.

The PRESIDENT: I thank Mr Abdelkader. I now give the floor to Ms Jasmine Moussa. You have the floor, Madam.

Ms MOUSSA:

1. Thank you, Mr President. Distinguished Members of the Court, it is a privilege to appear before you once again and an honour to be representing the Arab Republic of Egypt.

**II. ISRAEL'S OBLIGATIONS AS AN OCCUPYING POWER TO ENSURE AND FACILITATE
THE UNHINDERED PROVISION OF URGENTLY NEEDED SUPPLIES AS WELL AS
HUMANITARIAN AND DEVELOPMENT ASSISTANCE**

2. Allow me turn to the second part of Egypt's submission, namely, Israel's obligations as an occupying Power to ensure and facilitate the unhindered provision of urgently needed supplies as well as humanitarian and development assistance.

3. For decades, the Palestinians in Gaza have endured Israel's land, sea and air blockades, its border closures, its restrictions on the movement of people and goods, in what has been described as the largest open-air prison in the world. These measures have been found — by the UN Special

Rapporteur on the situation of human rights in the OPT — to constitute a form of collective punishment⁵⁶.

4. As the current siege of Gaza — and the worst yet — enters its eighth consecutive week, Palestinian civilians are facing soaring levels of need. Over two million people have been plunged into a man-made famine engineered through the Israeli blockade. With Israel's resumption of its indiscriminate hostilities, no place in Gaza is safe; reports bring chilling accounts of the deliberate targeting and killing of civilians, whether in so-called humanitarian zones, in refugee camps, in hospitals, in their homes, and while they are waiting for aid. This cruel and callous disregard for human life and dignity is ongoing, even as we stand here in this Great Hall of Justice.

5. Israel's weaponization of humanitarian aid has created a humanitarian catastrophe of epic proportions. The United Nations has called Gaza a "humanitarian nightmare" where "aid is being used as a bargaining chip and a weapon of war". The Independent International Commission of Inquiry on the OPT reported that explicit public statements by Israeli officials indicate an "intention to instrumentalize and weaponize the provision of necessities in order to hold the population of Gaza hostage to achieve political and military objectives, including the forced displacement of civilians"⁵⁷.

6. Since December 2023, the UN Secretary-General has warned of the risk of "total collapse of the humanitarian support system" and consequently the "breakdown of public order and increased pressure for mass displacement into Egypt"⁵⁸. The beleaguered people of Gaza are once again caught between a rock and a hard place: to either stay and endure death, destruction, hunger and disease or to leave behind their lawful homeland.

7. Israel's total war is a means to achieve a far more insidious end, the removal of Palestinians from their land and their extermination under the fog of war. This is undeniably Israel's war aim, embedded in its systematic policies to deprive the Palestinians of food and decimate their hospitals, to deny access to and discredit international independent humanitarian actors, to seize and fragment

⁵⁶ *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, A/HRC/44/60, 15 July 2020, can be accessed through: <https://www.un.org/unispal/document/report-of-the-special-rapporteur-on-the-situation-of-human-rights-in-the-palestinian-territories-occupied-since-1967-report-a-hrc-44-60-advance-unedited-version/>.

⁵⁷ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel A/HRC/56/26, p. 10, para 50, available at: <https://docs.un.org/en/A/HRC/56/26>.

⁵⁸ *Ibid.*

massive areas of land under the pretext of so-called “security zones” and to expand colonial settlement activity in the West Bank, eroding the basis for the two-State solution.

8. Distinguished Members of the Court, I will focus my statement on four main points: (1) the applicability of occupation law to the entire Occupied Palestinian Territory, including the West Bank, including East Jerusalem and Gaza, (2) Israel’s obligations under *jus in bello* (specifically occupation law) not to hinder or obstruct humanitarian assistance; (3) Israel’s obligation under international human rights law not to hinder or obstruct humanitarian and development assistance, and to facilitate early recovery and reconstruction while the Palestinian people remain in their land, and (4) finally, I will conclude with the legal consequences and a summary of Egypt’s submissions.

1. The applicability of occupation law to the entire OPT, including Gaza

9. Mr President, Egypt respectfully submits that the obligations of Israel, the occupying Power, apply in the entirety of the Palestinian territory occupied in the 5 June 1967 war, namely the West Bank, including East Jerusalem and the Gaza Strip, which constitute a single territorial unit⁵⁹.

10. In determining whether a territory remains occupied, this Court has observed that “the decisive criterion is not whether the occupying Power retains its physical military presence . . . but rather whether its authority ‘has been established and can be exercised’”⁶⁰. Based on this, the Court concluded that after its so-called “Disengagement”, Israel “remained capable of exercising, and continued to exercise, certain key elements of authority” over Gaza and consequently to have obligations under the law of occupation “commensurate with the degree of its effective control”⁶¹.

11. It is undeniable that Israel continued to retain control over Gaza, including its airspace, its territorial waters, its civilian infrastructure, and by assuming key governmental functions. Through the Coordinator of Government Activities in the Territories (COGAT), Israel exercises control over the entry and exit of goods and people into and out of Gaza.

⁵⁹ See General Assembly resolution 77/247, para. 12; General Assembly resolution ES-10/20 (2018) preambular para. 16; Security Council resolution 1860 (2009) preambular para. 2, See e.g. Security Council resolution 2720, S/RES/2720, 22 December 2023, preambular para. 4, can be accessed through: <https://documents.un.org/doc/undoc/gen/n23/424/87/pdf/n2342487.pdf?token=9TdbySYwsgjUC5vKh&fe=true>.

⁶⁰ See *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 92.

⁶¹ *Ibid*, para. 94.

12. Such control has only been further consolidated since Israel's brutal offensive against Gaza, launched on 7 October 2023.

13. Mr President, there is nothing in the *jus in bello* to preclude the continued application of occupation law while hostilities persist or where local authorities continue to exercise their functions, contrary to what some States have argued during these proceedings. In fact, many provisions of GC IV presuppose the existence of hostile acts against the occupying Power or expressly require co-operation with local and national authorities, for instance in the area of healthcare and education.

14. It flows from this that Israel is obliged, as an occupying Power, to comply with the range of obligations embodied in GC IV in the Gaza Strip, as well as the entire OPT, including East Jerusalem.

2. Israel's obligations under *jus in bello* to ensure and facilitate the unhindered provision of urgently needed supplies and humanitarian assistance

15. Distinguished Members of the Court, I now turn to Israel's obligations under *jus in bello* to ensure and facilitate the unhindered provision of urgently needed supplies and humanitarian assistance.

16. From the beginning of the Gaza crisis, Israel has choked the flow of humanitarian aid, despite numerous Security Council and General Assembly resolutions, as well as Orders of this Court demanding protection of civilians and the unhindered provision at scale of urgently needed basic services, humanitarian necessities, medical supplies and medical care, including by increasing the capacity and number of crossings.

17. Egypt, for its part, has been steadfast in its commitment to facilitate the entry of aid through its territory. Since the onset of the crisis, Egypt received 903 airlifted consignments and 557 sea shipments of aid. It facilitated the entry of more than 35,000 trucks carrying 534 thousand tonnes of aid. Egypt also facilitated almost 700 fuel trucks, 176 ambulances and received thousands of wounded Palestinians and their families. The Security Council *welcomed Egypt's* efforts to facilitate the use by UN humanitarian agencies of the crossing at Rafah, once the lifeline of humanitarian aid into Gaza.

18. Time and again, Egypt's efforts have come up against ongoing Israeli impediments:

- (1) Israel denied humanitarian access altogether by closing all its crossings into Gaza, bombarding the Rafah crossing on the Palestinian side, and blocking the flow of aid. After immense efforts from Egypt and the international community, the Rafah crossing was reopened on the Palestinian side on 21 October 2023 and the Karm Abu Salem crossing on 16 December. However, Israel continued to impose measures to significantly restrict the flow of goods and aid entering Gaza.
- (2) Israel's creation of legal, administrative and other hurdles through decreeing that all humanitarian aid trucks passing through Rafah were to be inspected at the Israeli crossing in Nitzana, some 47 km away, severely and purposely delaying and hampering the entry of trucks, and blocking life-saving humanitarian items due to multiple rejections.
- (3) Israel's direct attacks on humanitarian infrastructure, including the crossing itself. On 7 May 2024 Israel launched its military offensive against Rafah, a refuge for more than one million Palestinians, and the hub for humanitarian assistance to Gaza, severely impacting humanitarian operations. Israel attacked the Rafah crossing, a decidedly civilian object, rendering it inoperable. Humanitarian agencies were forced to withdraw, all the time while the crossing remained open on the Egyptian side. As the flow of assistance through the Rafah crossing was blocked, Egypt continued to facilitate humanitarian assistance through the Karm Abu Salem crossing.
- (4) Israel failed to prevent the looting of humanitarian aid consignments and attacks by Israeli settlers.

19. Israel has deliberately targeted aid convoys and aid seekers in mass killings of an unprecedented scale, as well as wilfully targeting and destroying Gaza's health infrastructure.

20. In the latest escalation, Israel closed off all crossings into Gaza and resumed active hostilities, in breach of the ceasefire brokered by Egypt, Qatar and the United States. No humanitarian supplies have entered Gaza since 2 March, piling up at crossing points and cutting off more than two million civilians from their means of subsistence, effectively killing them slowly.

21. Mr President, Israel's policy of wilfully impeding relief supplies and obstructing the work of humanitarian actors, including UNRWA and other UN agencies, violates a number of international obligations, including:

- The customary international law principle of respecting and protecting humanitarian workers and the prohibition of attacking, destroying or rendering useless objects indispensable for the survival of the civilian population.
- The obligation, under Article 55 of GC IV, to ensure the food and medical supplies of the population if the resources of the occupied territory are inadequate.
- The obligation to take all measures to ensure “public order and safety” and maintain the legal order of the occupied territory.
- The obligation under Article 59 to agree to relief schemes, if whole or part of the population is inadequately supplied, and to facilitate such schemes by all means at its disposal⁶².
- The obligation under Article 61 to facilitate the rapid distribution of relief consignments with the co-operation and under the supervision of the protecting Power, or a delegated neutral party, such as the ICRC or other impartial humanitarian organizations.
- And finally, the prohibition of starvation of the civilian population.

The PRESIDENT: Madam, I am sorry to interrupt you, but could you speak more slowly to facilitate the work of the interpreters? Thank you.

Ms MOUSSA:

22. Thank you, Mr President. To justify these egregious violations, Israeli officials have invoked security concerns and claims of aid diversion, while conditioning the flow of aid on the terms of the ceasefire.

23. There can be no possible moral or legal justification for the prolonged siege and starvation of more than two million civilians. By its indiscriminate nature, it simply cannot conceivably constitute a legitimate military objective. In addition, the occupier’s obligations under Article 55 *to ensure and bring in the necessary food and medical supplies* is unqualified.

24. The occupier *must* also agree to and facilitate relief schemes by impartial humanitarian organizations, including ICRC and third States.

⁶² Commentary of 1958, p. 320.

25. Distinguished Members of the Court, what purpose could IHL possibly serve if it can be overridden by the whims of the occupying Power? Security and military necessity are already considered in the formulation of the discussed provisions of GC IV, which do not envision an exception for military necessity. Israel's denial of humanitarian aid to civilians in need is thus indefensible and clearly indicates an intention to starve the civilian population rather than to achieve any purportedly military objective.

26. Not only has Israel completely defied its obligations under GC IV, it has made a mockery of international law by seeking to replace impartial UN and other humanitarian organizations with its own so-called "civilian" relief mechanisms. This completely defies the purpose of IHL, which seeks to direct relief to the needy population and not the occupying Power, and to insulate humanitarian relief from political, military or other objectives.

27. Replacing international humanitarian actors with an Israeli mechanism cannot but serve to further Israel's agenda, to expel the Palestinians from their land and change the demographic composition of the OPT.

28. As already confirmed by this Court, any change in the demographic composition of the OPT violates Article 49 of GC IV, which prohibits individual or mass forcible transfer. The Court has concluded that transfer may be "forcible" not only when achieved through physical force per se, but when the people concerned "have no choice but to leave"⁶³.

29. Egypt strongly denounces all policies intended to effect the expulsion, displacement, transfer or deportation of Palestinian civilians, whether inside the OPT or to other countries.

3. Israel's obligations under international human rights law

30. Mr President, I now turn to Israel's obligations under international human rights law, which — as confirmed by this Court — is applicable to the OPT.

31. Not only is Israel's deliberate obstruction of humanitarian relief a breach of a slew of fundamental human rights, but its obligations also extend to rebuilding Gaza.

⁶³ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 145.

32. Israel has wrought death, destruction and suffering upon Gaza on a massive scale. The people of Gaza have no homes to return to, no infrastructure, no basic services. An immediate return to the ceasefire is critical if Gaza is to have any hope for recovery.

33. Israel is also bound to facilitate and not impede regional and international reconstruction efforts in Gaza while the Palestinian people remain in their own territory in accordance with their right to self-determination.

34. Israel must also refrain from obstructing the consolidation of Palestinian State institutions, and enable the Palestinian Authority to reassume responsibilities in Gaza and consolidate a viable and contiguous Palestinian State on the pre-1967 lines, with East Jerusalem as its capital.

4. Legal consequences and a summary of Egypt's submissions

35. Mr President, I will conclude with the legal consequences and a summary of Egypt's submissions.

36. Egypt respectfully submits that the Court should advise the General Assembly that:

- (1) Israel's prolonged occupation remains a continuing violation of international law, and — until such time as the occupation ends — Israel is bound to respect its obligations as an occupying Power, throughout the entire OPT.
- (2) Israel — as the wrongdoing State — is obliged to make full reparation through restitution, compensation and satisfaction, either singly or in combination⁶⁴, by ceasing immediately and unconditionally its unlawful conduct, including:
 - lifting the siege imposed on civilians in Gaza and ensuring the essential supplies of the civilian population;
 - refraining from indiscriminately targeting civilians, humanitarian and medical personnel;
 - implementing Security Council resolution 2735 without delay and the ceasefire agreement brokered by Egypt, Qatar and the United States;
 - fully withdrawing from the Gaza Strip and enabling the Palestinian Authority to resume responsibilities in Gaza, including border control;

⁶⁴ Draft Articles on State Responsibility, *op. cit.*, Article 34.

- agreeing on relief schemes on behalf of the Palestinian civilian population and facilitating them by all means at its disposal;
- allowing unrestricted, unobstructed and safe humanitarian access, at scale and in a timely manner through all entry points;
- refraining from any measures and practices to expel, deport, displace or transfer Palestinians from the territory occupied in 1967;
- refraining from obstructing the presence and activities of the United Nations and its agencies, including UNRWA, as well as third States providing humanitarian assistance;
- and repealing the unlawful laws related to UNRWA, as well as upholding the agencies' privileges and immunities.

Egypt respectfully calls on the Court to declare that the Palestinian people's right to self-determination entails their right to remain on their territory and to pursue their economic, social and cultural development *on that territory*, the territory occupied unlawfully by Israel in 1967, namely the Gaza Strip and the West Bank, including East Jerusalem. This includes the right to receive development assistance for early recovery and reconstruction without being displaced or expelled from their land.

37. Mr President, the credibility of international law, indeed the credibility of the international system itself, is at stake. Egypt respectfully requests the Court to assert its authority and pronounce itself on the General Assembly's urgent request, in the interest of peace and justice for the Palestinian people and the entire Middle East.

38. I hereby conclude Egypt's submission. Thank you.

The PRESIDENT: I thank the representatives of Egypt for their presentation. I now invite the next participating delegation, Malaysia, to address the Court and I call upon Her Excellency Dato' Sri Azalina Othman Said to take the floor. You have the floor, Madam.

Ms OTHMAN SAID:

1. Mr President, distinguished Members of the Court, it is an honour for Malaysia to appear again before the Court in these advisory proceedings — yet it is a sombre honour. We come not merely as a Member of the United Nations, but as a voice echoing the pain of a people whose rights,

homes and future are being dismantled before the eyes of the world. The question before the Court is a grave one: what are the obligations of an occupying Power, and of a Member of the United Nations that continues, without regard for international law or human decency, to obstruct, undermine and dismantle the very systems built to preserve human life and dignity in the Occupied Palestinian Territory (OPT)?

2. A little over a year ago Malaysia was addressing the Court on the policies and practices of Israel in the OPT. Unfortunately, the situation in the OPT has deteriorated even further since that day in February 2024. What was then widespread devastation has now evolved into openly declared, brutally enforced and tragically ignored outright displacement and destruction. In the last few weeks, we have witnessed not only a renewed offensive against the Palestinian population in the Gaza Strip and the West Bank, but also statements by senior Israeli officials that leave no doubt: Israel's intention is to bring about the ultimate denial of the Palestinian people's right to self-determination through their eventual displacement and elimination.

3. Just in these last few weeks, Israeli Defence Minister Katz has on two occasions admitted openly that the target of the Israeli operations is the civilian population of Gaza.

The PRESIDENT: I am sorry to interrupt you, but could you please speak more slowly?

Ms OTHMAN SAID: Yes, of course.

The PRESIDENT: It is to facilitate the interpretation.

Ms OTHMAN SAID: I will try, Mr President. On 19 March, Katz addressed a "final warning" to the "*residents of Gaza*"⁶⁵: "The Air Force strikes against Hamas", he said, "were just the first step. It will become much more difficult and *you* [the residents of Gaza] *will pay the full price*."⁶⁶ Katz continued: "Return the hostages and remove Hamas, and other options will open for you, including leaving for other places in the world for those who want to. *The alternative is absolute destruction*."⁶⁷

⁶⁵ Emanuel Fabian, "In 'Final Warning' to Gazans, Katz Says Evacuations from Combat Zones Will Start Soon", *Times of Israel*, 19 March 2025, <https://www.timesofisrael.com/liveblog_entry/in-final-warning-to-gazans-katz-says-evacuations-from-combat-zones-will-start-soon/> (emphasis added).

⁶⁶ *Ibid.* (emphasis added).

⁶⁷ *Ibid.* (emphasis added).

Again on 2 April, Katz posted on Twitter (X): “The goal of operation ‘Strength and Sword’ is first and foremost to *increase pressure* for the release of all the hostages”⁶⁸. But the goal is not to increase the pressure just on Hamas, Mr President. According to Minister Katz, the goal is to “increase the pressure . . . *also on the population in Gaza*”⁶⁹. Katz finished his post by calling on the “*residents of Gaza* to act now to remove Hamas and return all the hostages. This is the only way to end the war”⁷⁰.

4. Threatening the civilian population of Gaza with destruction unless they “remove Hamas and return the hostages” — an objective that even Israel with all its military might has not even come close to achieving in over a year and a half of merciless killing and maiming — demonstrates Israel’s intentions in no uncertain terms. Israel’s allies themselves confirmed this before Israel’s violation of the ceasefire, when they stated in February that Gaza is “hell”⁷¹, “a pure demolition site” and not “a place for people to be living”⁷². According to such Israeli allies, Palestinians have “experienced nothing but death and destruction”, and their return to Gaza is a “guarantee that they’re going to end up dying”⁷³. What more is there to be said as to the objective that Israel is pursuing?

5. Mr President, even before it shattered the ceasefire and renewed its offensive on 18 March, Israel imposed a total blockade on humanitarian relief destined for Gaza, closing all border crossings and completely cutting off the electricity supply into the Strip⁷⁴. The stated aim of these unlawful and inhumane measures was to exert pressure on Hamas to accept changes to the already agreed upon ceasefire⁷⁵. This demonstrates Israel’s control as an occupying Power over life and death in the Strip. It also brings the subject-matter of the request for an advisory opinion currently before your Court

⁶⁸ <https://x.com/Israel_katz/status/1907311237261615320> (emphasis added).

⁶⁹ *Ibid.* (emphasis added).

⁷⁰ *Ibid.* (emphasis added).

⁷¹ Andy Hayes and Claire Gilbody Dickerson, “Trump Says US Will Take Over Gaza and All Palestinians Should Relocate”, *Sky News*, 5 February 2025, <<https://news.sky.com/story/donald-trump-says-gaza-residents-should-be-resettled-or-they-will-end-up-dying-13303161>>.

⁷² Andrew Roth, “Trump Says Palestinians Have ‘No Alternative’ But to Leave Gaza — President in Effect Endorses Ethnic Cleansing of Territory before Hosting Meeting with Benjamin Netanyahu”, *The Guardian*, 4 February 2025, <<https://www.theguardian.com/world/2025/feb/04/trump-netanyahu-gaza>>.

⁷³ Hayes and Gilbody Dickerson (fn. 71).

⁷⁴ See “Israel Cuts Off Aid to Gaza as it Seeks to Change Ceasefire Deal with Hamas”, *Al Jazeera*, 2 March 2025, <<https://www.aljazeera.com/news/2025/3/2/israel-reneges-on-ceasefire-deal-warns-hamas-of-consequences>>; Jon Donnison and Lucy Clarke-Billings, “Israel Cuts Off Electricity Supply to Gaza, Minister Says”, *BBC News*, 9 March 2025, <<https://www.bbc.co.uk/news/articles/c1w0l3q4zd0o>>.

⁷⁵ See references in fn. 74 and Jason Burke, “Israel to Cut Off Electricity in Gaza in Apparent Effort to Force Hand of Hamas”, *The Guardian*, 9 March 2025, <<https://www.theguardian.com/world/2025/mar/09/israel-cut-off-electricity-gaza-hamas-ceasefire-negotiations>>.

into sharp relief. These Israeli measures have been taken following Israel's passage of legislation purporting to ban the operation of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) both in Israel and in the Occupied Palestinian Territory⁷⁶.

6. Malaysia is saddened, but unfortunately not surprised, to add that all this has been happening in the face of provisional measures Orders handed down by the Court in the case brought by South Africa against Israel, and in the face of the Advisory Opinion of 19 July 2024. It is typical of Israel to ignore its international obligations and the decisions of this Court, the principal judicial organ of the United Nations. And yet, we are here to try and get some clarity on the obligations of Israel as an occupying Power and as a Member of the United Nations as these relate to the OPT. The authoritative statement of these obligations by the Court will greatly assist the General Assembly in its efforts to bring to an end, in accordance with the Court's Advisory Opinion as mentioned⁷⁷, Israel's unlawful occupation of the OPT.

7. Malaysia's submission today is straightforward. It builds upon its submission and the Court's Advisory Opinion of 2024. It can be essentially distilled into the following arguments: first, the obligations of Israel as an occupying Power, as they have been detailed in Malaysia's written statement and as they will be summarized in our presentation today, are established to accord protection to a people under foreign occupation. Second, the obligations of Israel as a Member of the United Nations are established in pursuit of the Organization's purpose "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination"⁷⁸. Third, the recent policies and practices of Israel, especially with respect to UNRWA, do not only constitute violations of its obligations as an occupying Power and as a Member of the United Nations. Rather, taken together, they are also in serious breach of each of the four aspects of the right to self-determination of the Palestinian people, as these were detailed by the Court in its Advisory Opinion of 19 July 2024⁷⁹.

⁷⁶ As reported in UN doc. A/79/684-S/2024/892.

⁷⁷ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 281 (hereinafter "*Policies and Practices, Advisory Opinion*").

⁷⁸ Article 1 (2) United Nations Charter.

⁷⁹ *Policies and Practices, Advisory Opinion*, paras. 236 ff.

8. In this presentation, we will first deal briefly with the Court's jurisdiction and its discretion to respond to the request of the General Assembly. In the second and third parts of our presentation we will summarize what Malaysia submits are the obligations of Israel as the occupying Power and a Member of the United Nations in, and in relation to, the OPT, especially with respect to the operation of UNRWA. In the final part of our presentation, we will demonstrate how the policies and practices of Israel in this respect not only violate the obligations that we have summarized, but constitute a grave breach of the right of the Palestinian people to self-determination.

I. JURISDICTION AND DISCRETION

9. Mr President, Members of the Court, allow me to be brief when it comes to your jurisdiction and the exercise of your discretion in the present request for an Advisory Opinion. With respect to jurisdiction, it appears obvious to Malaysia that the General Assembly is competent to submit this request, and that the request is for the Court to give its opinion on a legal question. In particular, the question is for the Court to set out the obligations of a State under international law in a particular context. It is thus a question "framed in terms of law and rais[ing] problems of international law", thereby being "by [its] very nature susceptible of a reply based on law"⁸⁰.

10. As regards the Court's discretion, it is Malaysia's submission that there are no "compelling reasons"⁸¹ for the Court to decline the exercise of its jurisdiction in the instance. There are no such reasons any more than there were in the *Wall* Opinion, or indeed in the Opinion of 19 July 2024, of which this request can be seen as an extension. What led to this request is indeed the adoption of Israeli policies and practices in the OPT as these relate to the United Nations, other international organizations and third States⁸². What is more, the purportedly "compelling reasons" invoked by some States in their written statements, such as the *Eastern Carelia* principle⁸³, the alleged insufficiency of factual information before the Court, and the complexity of the situation in the

⁸⁰ *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 18, para. 15; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, para. 13 (hereinafter "*Nuclear Weapons, Advisory Opinion*").

⁸¹ *Policies and Practices, Advisory Opinion*, para. 31; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, para. 65; *Accordance with international Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, para. 30; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, para. 44 (hereinafter "*Wall, Advisory Opinion*").

⁸² United Nations General Assembly resolution 79/232 of 19 December 2024, UN doc. A/RES/79/232, preamble.

⁸³ *Status of Eastern Carelia, Advisory Opinion, 1923, P.C.I.J., Series B, No. 5*, pp. 27-29.

Middle East, have been pleaded before this Court time and time again in similar circumstances and have been consistently rejected. Malaysia respectfully submits that there is no reason for the Court to diverge from this constant jurisprudence.

II. OBLIGATIONS OF ISRAEL AS AN OCCUPYING POWER

11. Mr President, Members of the Court, the Court has already found that “the Occupied Palestinian Territory constitutes a single territorial unit”⁸⁴, and that Israel has obligations as an occupying Power of that whole territorial unit; obligations which are “commensurate with the degree of its effective control over [it]”⁸⁵. This effective control is, today, complete, including over the Gaza Strip — as our introductory references to Israel’s total cutting off of humanitarian aid and electricity in Gaza have demonstrated.

12. As the occupying Power over the whole of the OPT, Israel is under a matrix of obligations which emanate from international humanitarian law and international human rights law. The latter remains applicable even during armed conflict, as the Court has consistently found⁸⁶. Malaysia will not go through these obligations here — we respectfully refer the Court to Malaysia’s written statement which sets out these obligations in some detail⁸⁷. Malaysia will however provide a general structure of the matrix of obligations incumbent upon Israel as the occupying Power.

13. The matrix is constructed by the relevant provisions of the Hague Regulations of 1907, the Fourth Geneva Convention of 1949, and the First Additional Protocol of 1977. These reflect not just international customary law, but “intransgressible principles of international customary law”⁸⁸, Malaysia submits. They are supplemented by obligations under international human rights law. Taken together, these obligations establish that Israel, as the occupying Power, must administer the OPT “for the benefit of the local population”⁸⁹. Israel is under a set of positive obligations to ensure that the civilian population in the OPT is adequately provided with food, water, shelter, clothing, fuel, energy and generally all the necessities of life, along with educational and health services. In

⁸⁴ *Policies and Practices, Advisory Opinion*, para. 78.

⁸⁵ *Ibid.*, para. 94.

⁸⁶ *Wall, Advisory Opinion*, para. 106; *Policies and Practices, Advisory Opinion*, paras. 99-101.

⁸⁷ See Malaysia’s written statement, sections IV.B.-C.

⁸⁸ *Nuclear Weapons, Advisory Opinion*, p. 257, para. 79.

⁸⁹ *Policies and Practices, Advisory Opinion*, para. 105.

parallel, Israel is under a set of negative obligations not to hinder or interfere with the operation of health and educational services, or with the operations of humanitarian organizations, in the OPT.

14. If the civilian population is inadequately supplied — which in our case there is no question that it is⁹⁰ — then the matrix of obligations incumbent upon Israel requires it to agree to and to facilitate relief schemes, including by impartial humanitarian organizations, to facilitate distribution of relief consignments, and to guarantee the protection of such relief and of the relevant humanitarian personnel engaged in its transport and distribution.

15. It is Malaysia's submission, Mr President, that Israel is in clear breach of this whole matrix of obligations of an occupying Power. Israel has not only kept the OPT chronically undersupplied; adding insult to injury, it has been consistently draining it of its resources⁹¹, such as they are, or it has been wantonly destroying them, along with facilities dedicated to education and health⁹². Most recently, Israel has legislated to ban the operation of UNRWA in the OPT⁹³, essentially stopping the only humanitarian organization that has assumed comprehensive responsibility for the provision of the civilian population; and it has now completely blocked any humanitarian aid and electricity into Gaza as well, as we have already reported.

16. But Malaysia has one further submission to make in this connection, Mr President. That is UNRWA functions as a humanitarian substitute of the protecting Power under international humanitarian law. As Additional Protocol I reminds us, the system of protecting powers is “compulsory”⁹⁴ — it is not merely an option. In the absence of a protecting power or an official substitute, Israel as the occupying Power is under an unconditional obligation to accept the offer of a humanitarian organization to function as a humanitarian substitute⁹⁵.

⁹⁰ See *Policies and Practices, Advisory Opinion*, para. 100; *Wall, Advisory Opinion*, para. 112.

⁹¹ *Policies and Practices, Advisory Opinion*, paras. 124-133.

⁹² *Wall, Advisory Opinion*, para. 133; Report of the United Nations High Commissioner for Human Rights, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, UN doc. A/HRC/52/76 (15 March 2023), paras. 25-26.

⁹³ See the “Law to Cease UNRWA Operations” and the “Law to Cease UNRWA Operations in the Territory of the State of Israel” reported in UN doc. A/79/684-S/2024/892.

⁹⁴ Article 5 Additional Protocol I; see also ICRC, *Commentary to Additional Protocol I* (1987) at p. 78, para. 179.

⁹⁵ Article 11 (3) Fourth Geneva Convention. See further ICRC, *Commentary to Fourth Geneva Convention* (1958) at p. 109. See also ICRC, *Commentary to Additional Protocol I* (1987) at p. 825, paras. 2836-2838.

17. It is the United Nations, acting through UNRWA, that has been operating as a humanitarian substitute of a protecting Power in the OPT since inception, and certainly since the Exchange of Letters of 14 June 1967 with respect to Israel⁹⁶. Israel had “no latitude”⁹⁷ to refuse the offer of UNRWA to undertake the humanitarian functions provided for in the Fourth Geneva Convention with respect to the OPT. And Israel cannot validly withdraw its consent with respect to UNRWA’s humanitarian operations, as it purports to do through its “Law to Cease UNRWA Operations”⁹⁸, unless it requests or accepts the offer of another humanitarian organization within the two-month time-limit understood to be prescribed by the Fourth Geneva Convention⁹⁹ for that purpose.

III. OBLIGATIONS OF ISRAEL AS A MEMBER OF THE UNITED NATIONS

18. Mr President, Members of the Court, Israel has been a Member of the United Nations since May 1949¹⁰⁰. It bears a set of obligations under the UN Charter, as well as under the 1946 Convention on United Nations Privileges and Immunities¹⁰¹. A number of these obligations relate to the presence and activities of the United Nations, including UNRWA as a subsidiary organ of the General Assembly, in and in relation to the OPT. With your permission, we will provide an overview of the content of these obligations, which, as with the obligations of Israel as an occupying Power, have been set out in some detail in Malaysia’s written statement¹⁰².

19. As a Member of the United Nations, Israel is under an obligation to accord the Organization, which self-evidently can only operate through its organs, the necessary legal capacity in its territory so as to enable the exercise of UN functions and the achievement of UN purposes. It is also under an obligation to respect the Organization’s (and its officials’) privileges and immunities,

⁹⁶ Agreement between UNRWA and the Government of Israel Embodied in an Exchange of Letters dated 14 June 1967 for the purpose of enabling UNRWA to continue to provide services to refugees in areas under the control of the Government of Israel: Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 1 July 1966-30 June 1967, UN doc. A/6713 at p. 99, Annex III (hereinafter “Exchange of Letters”).

⁹⁷ Cf. Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict (Commissioned by the United Nations Office for the Coordination of Humanitarian Affairs) (2016) at p. 18, para. 32.

⁹⁸ See UN doc. A/79/684-S/2024/892. See also Letter from the Permanent Representative of Israel to the United Nations to the Secretary-General of the United Nations of 24 January 2025, reproduced in Documents Received by the Secretariat of the United Nations, Part II (F) at pp. 89-91.

⁹⁹ See ICRC, Commentary to Fourth Geneva Convention (1958) at pp. 109-110.

¹⁰⁰ United Nations General Assembly resolution 273 (III) of 11 May 1949, UN doc. A/RES/273(III).

¹⁰¹ Israel acceded to the 1946 Convention on 21 September 1949.

¹⁰² See Malaysia’s Written Statement, section V.

and these are set out in the 1946 Convention. In particular, the obligation covers the premises, property, assets, and archives of the United Nations — and the protection granted is absolute. Further, any alleged violation on the part of the United Nations of its own obligations cannot lead to a loss or withdrawal of such protection, but only to the invocation of the responsibility of the United Nations in accordance with international law. UN officials, including all UNRWA staff, except locally recruited staff that is assigned to hourly rates, also enjoy the protection of Article 105 of the Charter and of the relevant provisions of the 1946 Convention. Finally, the combination of the provisions of Article 1 (3), Article 2 (2), Article 2 (5), 55 and 56 of the Charter clearly establishes an obligation for Israel to co-operate with the Organization in good faith in striving for economic, social, health, cultural, educational, and humanitarian development. Israel must co-operate with the United Nations to ultimately achieve respect for human rights, as well as equal rights and the self-determination of peoples.

20. It is clear to Malaysia, Mr President, that Israel’s adoption and implementation of the “Law to Cease UNRWA Operations” and of the “Law to Cease UNRWA Operations in the Territory of the State of Israel”¹⁰³ put it in direct breach of these obligations. These pieces of legislation essentially aim to deprive UNRWA, and through it, the United Nations, of its legal capacity in territory that Israel controls; they prohibit the operation of UN offices in breach of the privileges and immunities of the United Nations; they have led to the non-renewal of work visas for UNRWA international staff that were forced to leave the OPT in January 2025¹⁰⁴ and to threats of criminal proceedings against UN officials in breach of their privileges and immunities; and ultimately they egregiously violate Israel’s obligation to co-operate with the Organization in good faith. This is on top of all various other policies, practices and conduct of Israel in breach of these obligations, ranging from the destruction of UN property and premises, including UNRWA schools, health clinics, and

¹⁰³ See UN doc. A/79/684-S/2024/892.

¹⁰⁴ See UNRWA, Situation Report #158 of 7 February 2025, available at <<https://www.unrwa.org/resources/reports/unrwa-situation-report-158-situation-gaza-strip-and-west-bank-including-east-jerusalem>>.

vehicles¹⁰⁵, to measures taken against the United Nations Secretary-General¹⁰⁶, to the wilful and persistent disregard of the decisions of this Court.

21. In concluding this section of Malaysia's presentation, Mr President, we would like to make one more point. It is Malaysia's submission that Israel cannot validly terminate the 1967 Exchange of Letters unilaterally. This is because, under its own terms, the agreement between Israel and the United Nations remains in force until "replaced or cancelled". Replacement or cancellation must take place by mutual consent. As this Court has found in its Advisory Opinion on the *Agreement between the WHO and Egypt*, any modification to, or termination of, such an agreement needs to be negotiated in good faith between the parties¹⁰⁷.

IV. THE EFFECT ON THE RIGHT TO SELF-DETERMINATION

22. Mr President, Members of the Court, the obligations we have set out are ultimately meant to support and entrench the right to self-determination. The rules of international humanitarian law do so by according protection to a people under foreign occupation. The rules of the UN Charter and the 1946 Convention do so by according protection to the United Nations in its pursuit of its purpose of developing friendly relations among nations based on respect for the principle of self-determination.

23. Ultimately, Mr President, Malaysia's argument boils down to this: the recent policies and practices of Israel towards the United Nations, and in particular UNRWA, taken together, constitute violations not only of the obligations we have sketched out already, but also of each of the four aspects of the right to self-determination that the Court identified in its Advisory Opinion of 19 July 2024.

24. First, with respect to the right of territorial integrity as a corollary of the right to self-determination¹⁰⁸, the laws purporting to cease the operations of UNRWA, along with the administrative measures pursued against UNRWA premises, are a further step in the entrenchment

¹⁰⁵ See generally the reports documenting such destruction and damage in the documents received by the Secretariat of the United Nations, Part II (F).

¹⁰⁶ "Israel Bars UN Secretary-General from Entering Country", *Reuters*, 2 October 2024, available at <<https://www.reuters.com/world/middle-east/israel-bars-un-secretary-general-entering-country-2024-10-02/>>.

¹⁰⁷ *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, paras. 43–44.

¹⁰⁸ *Policies and Practices, Advisory Opinion*, para. 237.

of the ongoing annexation of the Occupied Palestinian Territory. The attempt by the Israel Land Authority to seize UNRWA premises, reportedly in order to construct 1,440 housing units¹⁰⁹, is typical of Israeli conduct found to constitute annexation by the Court in its Advisory Opinion of 19 July 2024¹¹⁰.

25. Second, with respect to the right of a people to its integrity¹¹¹, the cessation of the operation of UNRWA, which provides education through a large network of schools, primary healthcare through a large network of health clinics, and vital supplies through an extensive distribution network, is calculated to force the departure of Palestinian populations from the affected areas, which essentially include all of the Occupied Palestinian Territory. This is evident now more than ever, and especially in Gaza.

26. Third, with respect to the right of permanent sovereignty over natural resources¹¹², the expulsion of UNRWA is calculated to cause a humanitarian catastrophe, given that Israel has been exploiting the natural resources of the Occupied Palestinian Territory for its own benefit and for the benefit of illegal settlements for decades. The natural resources of the West Bank have been depleted, and the Gaza Strip has been reduced to rubble. Removing the “lifeline”¹¹³ of UNRWA will signal the ultimate collapse of the OPT’s ability to sustain itself. The Palestinian Authority has already made it clear that it does not have the financial resources or capacity to compensate for the loss of the UNRWA services¹¹⁴.

27. Fourth, with respect to the right of the people freely to determine its political status and to pursue its economic, social, and cultural development¹¹⁵, the expulsion of UNRWA, with the concomitant cessation of operation of its schools, its clinics, humanitarian relief, development

¹⁰⁹ Shirit Avitan Cohen, “UNRWA headquarters in Jerusalem to be seized: The entire UNRWA area in Ma’alot Dafna, Jerusalem, is set to be expropriated and turned into 1,440 housing units”, Israel Hayom, 11 October 2024, available at <<https://www.israelhayom.com/2024/10/11/unrwa-headquarters-in-jerusalem-to-be-seized/>>. These would essentially constitute illegal settlements: see the statement by UNRWA Commissioner-General Philippe Lazzarini in UN doc. S/PV.9852 of 28 January 2025 at p. 3.

¹¹⁰ *Policies and Practices, Advisory Opinion*, para. 163.

¹¹¹ *Ibid.*, para. 239.

¹¹² *Ibid.*, para. 240.

¹¹³ For the term see for example UN doc. S/PV.9852 of 28 January 2025 at p. 8 (Algeria); p. 13 (Russian Federation); p. 18 (Denmark); p. 22 (Slovenia); pp. 24–25 (Somalia); p. 33 (Jordan).

¹¹⁴ See UN doc. S/PV.9852 of 28 January 2025 at p. 3.

¹¹⁵ *Policies and Practices, Advisory Opinion*, para. 241.

assistance, micro-finance and micro-enterprise schemes, and other programmes, will lead to further deterioration of the Palestinian people's ability to enjoy even basic human rights, to educate themselves, and to hope to build a future in their own sovereign State.

28. States undertake obligations not as rhetorical gestures, but with a view to achieving certain ends. Malaysia submits that the obligations assumed by occupying Powers, and by Members of the United Nations, have as their ultimate end the protection of peoples from extinction, and the safeguard of their right to self-determination.

29. Mr President, this concludes Malaysia's submissions today. Malaysia thanks the Court for its kind attention. We also thank the Secretariat and the interpreters for their diligent work, and I do apologise if I was running very fast. Before I sit down, Mr President, let me end with a quote from Plato: "The worst form of injustice is pretended justice." Thank you so much.

The PRESIDENT: I thank the representative of Malaysia for her presentation. This concludes this afternoon's sitting. The oral proceedings will resume tomorrow at 10 a.m., in order for South Africa, Algeria, Saudi Arabia, Belgium and Colombia to be heard on the question submitted to the Court. The sitting is closed.

The Court rose at 5.25 p.m.
