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ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



**VIOLATIONS OF INTERNATIONAL LAW IN PALESTINE AND OTHER
OCCUPIED TERRITORIES BY ISRAEL AND OTHER INTERNATIONAL
LEGAL ISSUES RELATED TO THE QUESTION OF PALESTINE**

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CONTENTS

I.	Introduction	1
II.	Deliberations at the Sixty-First Annual Session of AALCO [Bali, the Republic of Indonesia, 16 October- 20 October 2023]	5
III.	Issues for focused deliberation at the Sixty-Second Annual Session of AALCO, 2024	7
	A. Report of the Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967 submitted to the Human Rights Council Assembly at its Fifty-Fifth session (2024)	7
	B. Annual Report of the UN High Commissioner for Human Rights on the Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice submitted to the Human Rights Council Assembly at its Fifty-Fifth session (2024)	15
	C. Orders delivered by the ICJ in the case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)	22
	D. Advisory Opinion delivered by the ICJ on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem	35
IV.	Comments and Observations of the AALCO Secretariat	48
	ANNEX: Draft Resolution prepared by the Secretariat	50

I. Introduction

1. The item “Deportation of Palestinians in Violation of International Law particularly the Fourth Geneva Convention of 1949 and the Massive Immigration and Settlement of Jews in Occupied Territories” was introduced at the Twenty-Seventh Annual Session of AALCO, held in Singapore (1988), at the recommendation of the Government of the Islamic Republic of Iran. After a preliminary exchange of views, the Government of the Islamic Republic of Iran submitted to the AALCO Secretariat a Memorandum requesting the Secretariat to study the legal consequences of the deportation of Palestinians from the Occupied Territories.

2. At the Thirty-Fourth Session held in Doha (1995) the Organization, *inter alia*, decided that this item be considered along with the question of the Status and Treatment of Refugees. Further at the Thirty-Fifth Session in Manila (1996) deliberations were held on the topic and the Secretariat was directed to continue its work on the topic to monitor the developments in the occupied territories from perspective of the key violations of international law.

3. At the subsequent Sessions, the scope of the item was widened, *inter-alia*, to include, at the Thirty-Seventh Session held in New Delhi (1998), “Deportation of Palestinians and other Israeli Practices”, and the item “Deportation of Palestinians and other Israeli Practices among them the Massive Immigration and Settlement of Jews in the Occupied Territories in Violation of International Law Particularly the Fourth Geneva Convention of 1949” was placed on the agenda of the Thirty-Eighth Session held in Accra (1999).

4. At the Thirty-Ninth Session held in Cairo (2000), it was decided to further enlarge the scope of the item and the Secretariat was directed to monitor the developments in (all) the occupied territories from the viewpoint of relevant legal aspects. The item has since been seriously discussed at the successive Sessions of the Organization as part of its Work Programme and the Organization has examined the violations of international law committed by the occupying power against the Palestinian People.

5. The issue relating to the Statehood of Palestine once again gained international momentum in 2012. The Fifty-First Annual Session held in Abuja (2012) mandated the Secretariat, vide resolution RES/51/S 4 adopted on 22 June 2012, to *inter alia* conduct a study to examine and establish the legal requirements and principles that would determine the status of Palestine as a State, taking into consideration requirements of international law and existing international norms and standards, and to submit the outcome of the study for further consideration of the Member States. In compliance with this mandate, the AALCO Secretariat had brought out the study entitled “The Statehood of Palestine under International Law”.

6. In light of the grave violations of international law by the State of Israel in Gaza, the issue was once again deliberated at the Fifty-Fourth Annual Session held in Beijing (2015) and AALCO/RES/54/S 4 was passed which changed the title of the agenda item to “Violations of International Law in Palestine and Other Occupied Territories by Israel and other International Legal Issues related to the Question of Palestine.”

7. In 2017, the AALCO Secretariat prepared another “Special Study” titled “The Legality of Israel’s Prolonged Occupation of Palestinian Territories and its Colonial Practices Therein”, in pursuance of the mandate given to it at the Fifty-Fifth Annual Session held in New Delhi (2016).

8. At the Fifty-Seventh Annual Session held in Tokyo (2018), the deliberations focused on the relocation of its Embassy by the United States of America to Jerusalem in contravention of various UN Security Council (UNSC) and UN General Assembly (UNGA) resolutions. The discussions also focused upon the continuous violations of international human rights law and the international humanitarian law in the Gaza Strip as well as the West Bank and other parts of the Occupied Palestinian Territories (OPT). Further, a mandate was also provided to the AALCO Secretariat to prepare a “Special Study” on the recent US action recognizing Jerusalem as the capital of Israel and the illegality of the shifting of the Embassy to Jerusalem in light of the recent application submitted by the State of Palestine against the United States of America to the International Court of Justice (ICJ) for violations of the Vienna Convention on Diplomatic Relations, 1961.

9. In 2019, the AALCO Secretariat presented the Special Study titled ‘The Status of Jerusalem in International Law: A Legal Enquiry into the recent attempts to disrupt the status quo’ which focused on the legal analysis of the relocation of the embassies in Israel to Jerusalem. The statements delivered by the Member States on the agenda item of Palestine focused upon the violations of IHL in general and the law of occupation in the OPT. In addition, the violation of the right of the refugees to return and compensation was also the subject of deliberation. Member States also overwhelmingly condemned the relocation of certain embassies in Israel to Jerusalem as a violation of the Vienna Convention on Diplomatic Relations, 1961 as well as the customary international law relating to recognition.

10. At the Fifty-Ninth Annual Session held in Hong Kong (SAR), the People’s Republic of China (2021), the Session focussed on the recent crucial international developments with respect to the OPT including East Jerusalem. Member States condemned the expansionist policies of the occupying power, and called for the implementation of the various resolutions adopted by the UNSC and the UNGA and other UN specialized agencies and institutions.

11. At the Sixtieth Annual Session held in New Delhi (Headquarters), the Republic of India (2022) the deliberations centred on the escalation in the violation of the rights of the Palestinian population. Some of the actions that were deplored by the Member States were the expansion of illegal settlements, wide-scale settler violence, illegal application of racist and discriminatory legislation and executive orders, large scale violations of international human rights law and international humanitarian law particularly obligations concerning occupation in the Occupied Palestinian Territories and the Golan Heights. Member States generally expressed their full support for the Palestinian people in the quest for the realization of their right to self-determination and national aspirations, while some States emphasized their consistent position on the need for negotiation towards the Two-State solution.

12. Most recently, at the previous Sixty-First Annual Session held in Bali, the Republic of Indonesia, (2023) Several Member States expressed their solidarity with the State of Palestine and supported the just cause of the Palestinian people in their struggle for realization of basic and fundamental human rights. The Member States expressed severe condemnation of the recent

escalation of the armed conflict in Gaza and disregard for the fundamental norm of distinction between military and civilian targets in the conflict. Many delegations reiterated their call for the implementation of the Two-State solution and a viable sovereign State of Palestine respecting the legitimate rights of the people of Palestine to self-determination. Some Member States also expressed that they would strongly press their legal position in the proceedings of the International Court of Justice on the Advisory Opinion. An overwhelming majority of Member States expressed their sympathies for the families of the victims of the on-going conflict in the region, calling for a ceasefire and immediate access of the civilians to humanitarian relief.

II. Deliberations at the Sixty-First Annual Session of AALCO [Bali, the Republic of Indonesia, 16 October- 20 October 2023)]

13. At the Sixty-First Annual Session held in Bali, the Republic of Indonesia, the Agenda Item titled “Violations of International Law in Palestine and Other Occupied Territories by Israel and other International Legal Issues Related to the Question of Palestine” was discussed at the fourth general meeting on 18 October 2023.

14. **The Deputy Secretary-General of AALCO**, in his introductory statement highlighted AALCO’s long-standing engagement with the topic, to which AALCO has steadily committed itself to over the years. While referring to the Secretariat Report prepared on the topic, which presents the reports submitted to the UN bodies and request for an advisory opinion to the International Court of Justice, it was underscored that concerns in the Occupied Palestinian Territories have only become more alarming with the recent escalation of tensions in Gaza.

15. Thereafter, the delegates of the **State of Palestine**, the **Republic of India**, the **Islamic Republic of Iran**, **Malaysia**, the **Republic of Indonesia**, the **People’s Republic of Bangladesh**, the **Arab Republic of Egypt**, the **People’s Republic of China**, the **Republic of Türkiye**, the **Islamic Republic of Pakistan**, the **United Republic of Tanzania**, the **Socialist Republic of Viet Nam**, **Japan**, and the **Kingdom of Bahrain** as well as the Observer delegate of the **Russian Federation** delivered statements.

16. The delegation of the **State of Palestine** delivered a detailed report of the brazen and grave crimes committed by the occupying power during the previous year. The topics covered in the report included issues concerning the commission of serious violations of international humanitarian law and human rights in Gaza by Israel, commission of war crimes, crimes against humanity, practices of collective punishment, and the policy of demolition, the policy of forced displacement, violation of property rights, the illegitimate use of the right of self-defence as an excuse. On the basis of these observations the delegate of the State of Palestine placed before the meeting certain recommendations to the AALCO Member States to achieve their desired goals

and find effective solutions. The recommendations have been recorded and form an integral part of the Verbatim Record of the Sixty-First Annual Session of AALCO.¹

17. Delegations of Member States that delivered statements after the State of Palestine expressed their solidarity with the State of Palestine and supported the just cause of the Palestinian people in their struggle for realization of basic and fundamental human rights. All delegations that delivered statements on the topic unequivocally condemned the violence targeted against civilians especially against women and children and other vulnerable members of society. The Member States expressed severe condemnation of the disregard for the fundamental norm of distinction between military and civilian targets in the conflict. The delegations reiterated their call for the implementation of the Two-State solution and a viable sovereign State of Palestine respecting the legitimate rights of the people of Palestine to self-determination. Some Member States also expressed that they would strongly press their legal position in the proceedings of the International Court of Justice on the Advisory Opinion. An overwhelming majority of Member States expressed their sympathies for the families of the victims of the ongoing conflict in the region, calling for a ceasefire and immediate access of the civilians to humanitarian relief.

¹ AALCO Secretariat, *Verbatim Record of Discussions of the Sixty-First Annual Session, 16-20 October 2023 (2023)* <<https://www.aalco.int/Final%20Verbatim%2061st%20AS%202023%20as%20on%2016.04.2024.pdf>> accessed 26 July 2024

III. Issues for focused deliberations at the Sixty-Second Annual Session of AALCO, 2024

18. At the present Annual Session, this brief focusses on the report presented by the UN Special Rapporteur on ‘the situation of Human Rights in the Palestinian territories occupied since 1967’ to the United Nations Human Rights Council at its fifty-fifth session relating to the crime of genocide as perpetrated by the State of Israel (Israel) in the Occupied Territories in Palestine since 1967, specifically in the Gaza Strip, since 7 October 2023. The brief also examines and notes the conclusions of the Annual Report of the UN High Commissioner for Human Rights on ‘Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice’ submitted to the Human Rights Council Assembly at its Fifty-Fifth session. It provides an overview of the implementation of the resolution and developments relevant to the human rights situation in the Occupied Palestinian Territory and the obligation to ensure accountability and justice.

19. Further, the brief reports on the key recent developments in the International Court of Justice relating to Occupied Territories in Palestine, i.e. Orders on provisional measures delivered on 26 January 2024 and 24 May 2024 by ICJ in the case concerning *the Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (South Africa v. Israel) and the Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* delivered by the International Court of Justice on 19 July 2024

A. Report of the Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967 submitted to the Human Rights Council Assembly at its Fifty-Fifth session (2024)

20. In this report,² Ms. Francesca Albanese, the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 (OPT), addresses the crime of genocide as

² UN Human Rights Council, ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’ UN Doc. A/HRC/55/73 (25 March 2024) accessed 20 July 2024

perpetrated by the State of Israel (Israel) in the OPT, specifically in the Gaza Strip, since 7 October 2023.

21. The Special Rapporteur has taken into consideration the various acts, and patterns of violence perpetrated by Israel and Israel's policies in its onslaught on Gaza and analysed them within the legal definition of Genocide as defined in the Genocide Convention.³ The report concludes that there are reasonable grounds to believe that **the threshold indicating Israel's commission of genocide is met**. One of the key findings is that Israel's executive and military leadership and soldiers have intentionally distorted *jus in bello* principles, subverting their protective functions, in an attempt to legitimize genocidal violence against the Palestinian people.

22. At the outset the report specifies that as Israel prohibits the Special Rapporteur's visits, this report is based on data from organisations on the ground, international jurisprudence, investigative reports and consultations with affected individuals, authorities, civil society and experts.

23. The report contextualizes genocide committed by Israel as inherent to settler-colonialism. Settler-colonialism is an ongoing, systemic process characterized by actions intended to displace and eradicate Indigenous populations, with genocidal extermination representing its most extreme form. In Palestine, displacing and erasing the Indigenous Arab presence and mass ethnic cleansing of Palestine's non-Jewish population has been an inevitable part of the forming of Israel as a 'Jewish state'. The report confirms that Israel has continued its settler-colonial project through military occupation, leading to segregation, land confiscation, house demolitions, and deportation of Palestinians. The Palestinians have been labelled as a 'security threat' to justify their oppression and loss of civilian status.

24. The Special Rapporteur analyses the legal framework of the crime of Genocide. It states that the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the Convention) codifies genocide as an international crime, the prohibition of which is a non-derogable peremptory norm (*jus cogens*). The *erga omnes* obligation to prevent and punish

³ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 09 December 1948, entered into force 12 January 1951) 78 UNTS 277

genocide binds all states under both the Convention and customary international law and requires them all to prevent and prosecute genocidal acts. Genocide cannot be justified under any circumstances, including purported self-defence. Complicity is expressly prohibited, giving rise to obligations for third states.

25. The Special Rapporteur analyses the Constitutive elements of genocide in details and explains that both the *actus reus* [the commission of any one or more specific acts against a protected group] and *mens rea* [(i) a general intention to carry out the criminal acts (*dolus generalis*), and (ii) a specific intention to destroy the target group as such (*dolus specialis*)] must be satisfied for conduct to legally constitute genocide. The report further explains that the crime of genocide gives rise to both individual and State responsibility.

26. In the next section, the Special Rapporteur produces evidences to prove that Israel has conducted acts which fall within the legal definition of the crime of genocide. These evidences have been categorised as under:

1. Genocidal Acts in Gaza

1.1. “Killing Members of the Group”

27. The Special Rapporteur explains that this act encompasses deaths resulting from direct actions or arising from neglect, including those caused by deliberate starvation, disease or other survival-threatening conditions imposed on the group. The report states that since 7 October 2023, Israel has killed over 30,000 Palestinians in Gaza and by the end of February 2024, a further 12,000 Palestinians were reported missing, presumed dead under the rubble. Israel used unguided munitions (dumb bombs) and 2000-pound “bunker buster” bombs on densely populated areas and “safe zones”. Seventy percent of recorded deaths have consistently been women and children. The report also states that Israel’s heightened blockade of Gaza has caused death by starvation by impeding access to vital supplies. Further, a quarter of Gaza’s population could die from preventable health conditions within a year due to poor hygiene.

1.2. “Causing serious bodily or mental harm to members of the group”

28. The Special Rapporteur explains that this act must involve “a grave and long-term disadvantage to a person’s ability to lead a normal and constructive life”. The report states that since 7 October 2023, Palestinians have suffered relentless physical and psychological harm. Israeli forces have detained thousands of Palestinians of which many have been severely mistreated, including through torture at times leading to death. Israel’s lethal weapons and methods have injured seventy-thousand Palestinians, many with agonizing injuries, in some cases leading to long-term impairment or death. The survivors will carry an indelible trauma, having witnessed so much death, and experienced destruction, homelessness, emotional and material loss, endless humiliation and fear.

1.3. “Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part”

29. The Special Rapporteur notes that this act involves conduct that does not directly kill members of the group, but is capable of leading, through various means, to its physical destruction. These may include starving, dehydrating, forcibly displacing the protected group, destroying objects indispensable for their survival, reducing essential medical services to below the minimum requirement, depriving of housing, clothes, education, employment and hygiene. Israel’s assault has decimated Gaza’s already fragile healthcare system. Hospitals, also sheltering displaced Palestinians, have been overwhelmed. Ground invasion and aerial bombardment have destroyed agricultural land, farms, crops, animals and fishing assets, gravely undermining people’s livelihoods, the environment and agricultural system. The supply of water, fuel and food has been severely affected.

2. Genocidal Intent

30. The Special Rapporteur states that the definition of genocide requires the commission of any of the listed acts with a specific intent. It must be established that the perpetrator, by committing one or more of the prohibited acts, seeks to achieve the total or partial destruction of a national, ethnical, racial or religious group, as such. This intent must be established either through direct or indirect evidence.

31. The Special Rapporteur asserts that in the latest Gaza assault, **direct evidence of genocidal intent is uniquely present.** High-ranking Israeli officials with command authority have issued harrowing public statements evincing genocidal intent. The Special Rapporteur declares that there is cogent evidence that these statements have been internalized and acted upon by troops on the ground.

32. In her analysis, the Special Rapporteur further finds that Israel has intensified its de-civilianization of Palestinians. The report notes that Israel has employed International Humanitarian Law (IHL) terminology to legitimize its systematic lethal violence against Palestinian civilians and the widespread destruction of essential infrastructure. It has manipulated IHL concepts such as human shields, collateral damage, safe zones, evacuations, and medical protection in a way that strips these terms of their normative meaning, undermines their protective intent, and blurs the line between civilians and combatants in Israeli operations in Gaza. Israel has accused Palestinian armed groups of deliberately using civilians as human shields and used it to justify high civilian casualties. Israeli authorities have characterized churches, mosques, schools, UN facilities, as connected with Hamas to reinforce the perception of a population characterized as broadly ‘complicit’ and therefore killable.

33. The Report further notes that Israel has militarized civilian objects and whatever surrounds them, justifying their indiscriminate destruction. Israel has thus *de facto* abolished the distinction between civilian objects and military objectives. The Special Rapporteur concludes that justifying systematic attacks on civilian objects and the mass killing of civilians has become a military

strategy that, while presented as adhering to International Humanitarian Law (IHL), is based on likely war crimes. This strategy reasonably and solely suggests a genocidal policy.

34. The report further notes that Israel has also sought to provide legal cover for indiscriminate attacks by misusing the notion of ‘collateral damage’, unlimitedly expanding what can be considered ‘incidental civilian harm’. Examples of indiscriminate attacks include attacks that by any methods or means strike multiple lawful targets at once in areas with high concentrations of civilians or civilian objects. To justify killing members of the protected group, Israel has defended such actions as causing only incidental harm to civilians, proportionate to concrete and direct military advantages anticipated.

35. The Special Rapporteur further points that the pattern of killings of civilians who evacuated, in combination with statements of some senior Israelis declaring an intent to forcibly displace Palestinians outside Gaza and replace them with Israeli settlers, leads to reasonably infer that evacuation orders and safe zones have been used as genocidal tools to achieve ethnic cleansing.

36. A final aspect of Israel's "humanitarian camouflage" involves its attempts to legally justify systematic attacks on medical facilities and personnel, leading to the gradual collapse of Gaza's healthcare sector. Israel has previously used the tactic of targeting medical facilities while accusing the enemy of using them as shields, a strategy of "medical lawfare." In the current assault, Israel has employed this legal strategy to justify genocide through the total destruction of essential infrastructure.

37. Before concluding the report offers the following concluding observations and recommendations:

3. Concluding observations:

38. The overwhelming nature and scale of Israel's assault on Gaza and the destructive conditions of life it has inflicted reveal an intent to physically destroy Palestinians as a group. This

report finds that there are reasonable grounds to believe that the threshold indicating the commission of the following acts of genocide against Palestinians in Gaza has been met: killing members of the group; causing serious bodily or mental harm to groups' members; and deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part. Genocidal acts were approved and given effect following statements of genocidal intent issued by senior military and government officials.

39. Israel has sought to conceal its eliminationist conduct of hostilities sanctioning the commission of international crimes as IHL-abiding. Distorting IHL customary rules, including distinction, proportionality and precautions, Israel has *de facto* treated an entire protected group and its life-sustaining infrastructure as 'terrorist' or 'terrorist-supporting', thus transforming everything and everyone into either a target or collateral damage, hence killable or destroyable. In this way, no Palestinian in Gaza is safe by definition. This has had devastating, intentional effects, costing the lives of tens of thousands of Palestinians, destroying the fabric of life in Gaza and causing irreparable harm to its entire population.

40. Israel's genocide on the Palestinians in Gaza is an escalatory stage of a longstanding settler colonial process of erasure. For over seven decades this process has suffocated the Palestinian people as a group – demographically, culturally, economically and politically –, seeking to displace it and expropriate and control its land and resources. The ongoing *Nakba* must be stopped and remedied once and for all. This is an imperative owed to the victims of this highly preventable tragedy, and to future generations in that land.

4. Recommendations:

41. The Special Rapporteur urges Member States to enforce the prohibition of genocide in accordance with their non-derogable obligations. Israel and those states that have been complicit in what can be reasonably concluded to constitute genocide must be held accountable and deliver reparations commensurate with the destruction, death and harm inflicted on the Palestinian people.

42. The Special Rapporteur recommends that Member States:

(a) Immediately implement an arms embargo on Israel, as it appears to have failed to comply with the binding measures ordered by the ICJ on 26 January 2024, as well as other economic and political measures necessary to ensure an immediate and lasting ceasefire and to restore respect for international law, including sanctions;

(b) Support South Africa having resort to the UNSC under article 94(2) of the UN Charter following Israel's non-compliance with the above-mentioned ICJ measures;

(c) Act to ensure a thorough, independent and transparent investigation of all violations of international law committed by all actors, including those amounting to war crimes, crimes against humanity and the crime of genocide, including:

(i) co-operating with international independent fact-finding/ investigative and accountability mechanisms;

(ii) referring the situation in Palestine to the ICC immediately, in support of its ongoing investigation;

(iii) discharging their obligations under the principles of universal jurisdiction, ensuring genuine investigations and prosecutions of individuals who are suspected of having committed, or aided or abetted, in the commission of international crimes, including genocide, starting with their own nationals;

(d) Ensure that Israel, as well as States who have been complicit in the Gaza genocide, acknowledge the colossal harm done, commit to non-repetition, with measures for prevention, full reparations, including the full cost of the reconstruction of Gaza, for which the establishment of a register of damage with an accompanying verification and mass claims process is recommended;

(e) Within the General Assembly, develop a plan to end the unlawful and unsustainable status quo constituting the root cause of the latest escalation, which ultimately culminated in the Gaza genocide, including through the reconstitution of the UN Special Committee against Apartheid to comprehensively address the situation in Palestine, and stand ready to implement diplomatic, economic and political measures provided under the United Nations Charter in case of non-compliance by Israel;

(f) In the short term and as a temporary measure, in consultation with the State of Palestine, deploy an international protective presence to constrain the violence routinely used against Palestinians in the occupied Palestinian territory;

(g) Ensure that the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) is properly funded to enable it to meet the increased needs of Palestinians in Gaza.

43. The Special Rapporteur calls on the Office of the High Commissioner for Human Rights to enhance its efforts to end the current atrocities in Gaza, including by promoting and accurately applying International Law, notably the Genocide Convention, in the context of the Occupied Territories in Palestine as a whole.

B. Annual Report of the UN High Commissioner for Human Rights on the Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice submitted to the Human Rights Council Assembly at its Fifty-Fifth session (2024)

44. The present report,⁴ is submitted pursuant to Human Rights Council resolution 52/3, and covers the period from 1 November 2022 to 31 October 2023. It draws on human rights monitoring conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Occupied Palestinian Territory, and information from governmental sources, other United Nations entities and non-governmental organizations. The report states at the outset that almost all the international staff of OHCHR continued to remain outside the Occupied Palestinian Territory during the reporting period due to the failure by Israel to grant entry visas.

45. The report gives a background of the issue by mentioning that for more than 56 years, the Occupied Palestinian Territory – the West Bank, including East Jerusalem, and Gaza – has

⁴ UN Human Rights Council, ‘Report of the United Nations High Commissioner for Human Rights on Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice’ UN Doc. A/HRC/55/28 (23 February 2024) accessed 20 July 2024

remained under occupation by Israel, affecting all rights of Palestinians, including the right to self-determination. It also states that the human rights situation in the Occupied Palestinian Territory drastically worsened during the reporting period. There was an escalation of the use of lethal force in the West Bank, including East Jerusalem, and, in May 2023, there was an escalation of hostilities in Gaza.

46. The report notes that during the reporting period, Israel launched intensive strikes from the air, land and sea across Gaza. The escalation continued beyond the reporting period, with massive human suffering and an immense impact on civilians, especially women and children. The report states that Israeli security forces killed 338 Palestinians in the West Bank, including East Jerusalem, in the context of law enforcement. Between 7 and 31 October 2023, according to the Gaza Ministry of Health, at least 8,525 Palestinians were killed in Gaza.

47. The report further states that Between 8 and 21 October 2023, Israel completely closed all crossings into Gaza and prevented the entry of humanitarian aid, commercial goods, food, fuel and electricity, while at the same time only allowing a small supply of water to enter. After that date, only a miniscule amount of aid was allowed in. The severe deprivation of the rights of Gazans to water, food, health and other basic necessities, compounded by attacks against essential civilian infrastructure, such as hospitals, bakeries and water wells, resulted in a preventable, man-made and unprecedented humanitarian crisis in Gaza.

48. The report mentions that the restrictions imposed during the reporting period laid the ground for a serious deterioration in the human rights and humanitarian situation in the ensuing months, raising the menaces of famine, dehydration and the spread of disease.

49. The report notes that the widespread damage in northern Gaza raises serious concerns about the compliance by Israel with international humanitarian law, including the principles of distinction, proportionality and precaution in attack. OHCHR received reports of numerous incidents raising concerns about compliance with international humanitarian law.

50. The report states that Gaza witnessed an unprecedented number and scale of attacks striking hospitals, religious and cultural sites and schools. The report states that as of 31 October 2023, the United Nations estimated that more than 62 per cent of the population of Gaza had been displaced, forcing approximately 1.4 million persons into overcrowded, unsanitary conditions without adequate access to the essential services that Israel, as the occupying Power, is legally obligated to provide or, at the very least in relation to areas not under its full control, not to raise obstacles to access. Those conditions continued to deteriorate significantly after the reporting period.

51. The report states that Israeli practices in the West Bank, including East Jerusalem, that may amount to collective punishment increased in number and diversified in kind. Numerous actions taken by Israeli security forces after 7 October 2023 in the West Bank, including East Jerusalem, including mass arrests, ill-treatment and disproportionate restrictions on movement, appear arbitrary and often punitive in nature.

52. It is further stated in the report that Israel escalated the use of lethal force against Palestinians across the West Bank, including East Jerusalem, often in situations in which its use constituted arbitrary deprivation of life. Israeli security forces failed to take steps to de-escalate situations of confrontation or to apply graduated use of force. It is further stated that throughout the period, and escalating after 7 October 2023, Israeli security forces used unnecessary or disproportionate lethal force killing several Palestinians, in possible wilful killings.

53. The report concludes that in the vast majority of cases monitored by OHCHR, use of force by Israeli security forces did not comply with the requirements of legality, necessity and proportionality. The intentional killing of protected persons or the use of firearms causing the death of persons not posing an imminent threat to life or a threat to cause serious injury constitute arbitrary deprivation of life and may also amount to wilful killing, a war crime in the context of occupation.

54. The report further states that restrictions by Israel on the rights to freedom of expression, peaceful assembly and association intensified, with an escalation in its attempts to silence

advocates for Palestinian rights, particularly after 7 October 2023. Journalists were killed in record numbers during hostilities in Gaza, marking a deterioration in an already lethal environment. Israel had already failed to hold anyone accountable for the killing of 20 Palestinian and foreign journalists since 2001.

55. The report also mentions about the commission of gender based violence. Arrests carried out by Israeli security forces after 7 October 2023 were often accompanied by beatings, ill-treatment and humiliation of Palestinian women and men, including acts of sexual assault, such as kicking genitals, and threats of rape. Testimonies from victims and eyewitnesses were corroborated by videos posted by Israeli soldiers on social media showing ill-treatment of Palestinians, including male detainees photographed or recorded on video being stripped naked or half-naked, blindfolded, handcuffed, physically abused and humiliated by Israeli soldiers.

56. The report further describes about the arbitrary detentions, torture and ill-treatment. Israeli security forces conducted thousands of mass, reportedly pre-emptive, detentions of Palestinians, including political figures, community leaders, activists, such as women's human rights defenders, journalists, students and family members of wanted persons. Arrests were often brutal, accompanied by beatings, humiliation and inhuman and degrading treatment, in some cases amounting to torture.

57. The report mentions about the lack of steps taken during the reporting period by Israel to ensure accountability for actual or potential violations of international humanitarian law. This is resulting in persistent impunity for unlawful use of lethal force by Israeli security forces against Palestinians, leading in turn to further Palestinian casualties.

58. Before concluding the report offers the following concluding observations and recommendations:

1. Concluding observations:

59. The situation in the Occupied Palestinian Territory was already dire prior to 7 October 2023, given a 56-year occupation, a 16-year blockade of Gaza, increasing State and settler-violence against Palestinians in the West Bank, as well as long-standing discriminatory systems of control over Palestinians.

60. The means and methods of warfare chosen by Israel have led to massive suffering of Palestinians, including through the killing of civilians on a wide scale, extensive repeated displacement, destruction of homes and the denial of sufficient food and other essentials. Clear violations of international humanitarian law, including possible war crimes, have been committed. Further investigations would be needed to establish whether other crimes under international law have been committed.

2. Recommendations:

61. The High Commissioner calls upon all parties to the conflict to implement a ceasefire on human rights and humanitarian grounds, to ensure full respect for international law, including international humanitarian law and international human rights law, and to ensure accountability for violations and abuses.

62. The High Commissioner in particular calls upon Israel:

(a) To immediately end all practices of collective punishment, including lifting its blockade and closures – and the “complete siege” – of Gaza, and urgently ensure immediate access to humanitarian and commercial goods throughout Gaza, commensurate with the immense humanitarian needs;

(b) To ensure that Israeli security forces immediately take steps to comply with international humanitarian law in the conduct of hostilities, including through the application of targeting rules and policies that fully comply with the principles of distinction, proportionality and precaution in

attack, cessation of the use of explosive weapons with wide-area effects in populated areas, and protection for hospitals and other civilian infrastructure essential for the survival of the civilian population;

(c) To repress and punish all violations of international law, including international humanitarian law, ensure prompt, thorough, independent, impartial and effective investigations into all incidents carried out by Israeli forces that have led to serious violations of international law, including after 7 October 2023, and ensure that perpetrators are held accountable and that victims are provided with redress;

(d) To ensure that all Palestinians forcibly displaced from Gaza are allowed to return to their homes by creating safe conditions and fulfil its responsibilities as an occupying Power in this regard;

(e) To ensure that the rules of engagement of its security forces and their application are fully consistent with international human rights law, including use of firearms in law enforcement activities only in cases of imminent threat of death or serious injury as a measure of last resort, and plan and implement law enforcement operations to minimize the threat to life and serious injury of the protected population;

(f) To conduct prompt, thorough, independent, impartial and effective investigations into all incidents of use of force by Israeli security forces in the West Bank, including East Jerusalem, that have led to the death or injury of Palestinians and ensure that perpetrators are held accountable and victims provided with redress;

(g) To immediately end administrative detention and other forms of detention that amount to arbitrary detention and ensure that all detainees are released unless promptly charged and fairly tried applying non-discriminatory laws; and ensure that detention conditions strictly conform with international norms and standards and end all practices that may amount to torture or other ill-treatment;

(h) To urgently revoke the designations of Palestinian human rights and humanitarian organizations as “terrorist” or “unlawful” organizations;

(i) To end the 56-year occupation of the Occupied Palestinian Territory, including East Jerusalem, as part of a broader process towards achieving equality, justice, democracy, non-discrimination and the fulfilment of all human rights for all Palestinians.

63. The High Commissioner also calls upon Palestinian authorities to protect the rights of all Palestinians without discrimination, including discrimination based on gender, sexual orientation or gender identity, and address effectively all cases of gender-based violence.

64. The High Commissioner calls upon all duty bearers:

(a) To immediately end all practices that may amount to torture or ill-treatment, including sexual violence;

(b) To take immediate steps to prevent, or otherwise repress and punish, hate speech and all incitement to hatred and violence;

(c) To put an end to impunity and conduct prompt, independent, impartial, thorough, effective and transparent investigations into all alleged violations of international human rights law and international humanitarian law committed on 7 October 2023 and subsequently, including into allegations of crimes under international law; ensure cooperation with international and transnational mechanisms for accountability, including the International Criminal Court; and ensure that all victims and their families have access to effective remedies, gender-responsive reparation and truth, as well as psychological support to victims of sexual violence;

(d) To take measures to prevent and redress all forms of gender-based violence, including in the domestic sphere, and ensure that the perpetrators of sexual and gender-based violence are prosecuted and appropriately sentenced;

(e) To ensure that the rights to freedom of expression and association are respected and protected and that civil society actors, including women human rights defenders, can conduct their legitimate activities safely, freely and without harassment.

65. The High Commissioner calls upon all States and international organizations:

(a) To exert their influence to stop violations of international humanitarian law by all parties to the conflict and prevent their further commission, and not to enable such violations;

(b) To support and ensure sufficient funding for civil society to enable it to respond to the grave humanitarian and human rights situation;

(c) To encourage Israel to cooperate with OHCHR and to issue visas to its international staff, ensuring OHCHR has access throughout Israel and the Occupied Palestinian Territory to monitor and document all violations of international human rights and international humanitarian law

C. Orders delivered by the ICJ in the case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)

1. Order on the request for the indication of provisional measures delivered by the ICJ on 26 January 2024⁵

66. On 29 December 2023, the Republic of South Africa (hereinafter “South Africa”) filed in the Registry of the Court an Application instituting proceedings against the State of Israel hereinafter “Israel”) concerning alleged violations in the Gaza Strip of obligations under the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the “Genocide Convention” or the “Convention”).

⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (South Africa v. Israel), Order on provisional measures dated 26 January 2024 <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>> accessed 26 July 2024

67. In its application South Africa requested the Court to adjudge and declare that:

“(1) that the Republic of South Africa and the State of Israel each have a duty to act in accordance with their obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the members of the Palestinian group, to take all reasonable measures within their power to prevent genocide; and

(2) that the State of Israel:

(a) has breached and continues to breach its obligations under the Genocide Convention, in particular the obligations provided under Article I, read in conjunction with Article II, and Articles III (a), III (b), III (c), III (d), III (e), IV, V and VI;

(b) must cease forthwith any acts and measures in breach of those obligations, including such acts or measures which would be capable of killing or continuing to kill Palestinians, or causing or continuing to cause serious bodily or mental harm to Palestinians or deliberately inflicting on their group, or continuing to inflict on their group, conditions of life calculated to bring about its physical destruction in whole or in part, and fully respect its obligations under the Genocide Convention, in particular the obligations provided under Articles I, III (a), III (b), III (c), III (d), III (e), IV, V and VI;

(c) must ensure that persons committing genocide, conspiring to commit genocide, directly and publicly inciting genocide, attempting to commit genocide and complicit in genocide contrary to Articles I, III (a), III (b), III (c), III (d) and III (e) are punished by a competent national or international tribunal, as required by Articles I, IV, V and VI;

(d) to that end and in furtherance of those obligations arising under Articles I, IV, V and VI, must collect and conserve evidence and ensure, allow and/or not inhibit directly or indirectly the collection and conservation of evidence of genocidal acts committed against Palestinians in Gaza, including such members of the group displaced from Gaza;

(e) must perform the obligations of reparation in the interest of Palestinian victims, including but not limited to allowing the safe and dignified return of forcibly displaced and/or abducted Palestinians to their homes, respect for their full human rights and protection against further discrimination, persecution, and other related acts, and provide for the reconstruction of what it has destroyed in Gaza, consistent with the obligation to prevent genocide under Article I; and

(f) must offer assurances and guarantees of non-repetition of violations of the Genocide Convention, in particular the obligations provided under Articles I, III (a), III (b), III (c), III (d), III (e), IV, V and VI.”⁶

68. In addition, with a view to preserve the rights of the parties in light of the grave situation in Gaza, application preferred by South Africa also contained a Request for the indication of provisional measures. South African asked the Court indicate the following provisional measures:

“(1) The State of Israel shall immediately suspend its military operations in and against Gaza.

(2) The State of Israel shall ensure that any military or irregular armed units which may be directed, supported or influenced by it, as well as any organisations and persons which may be subject to its control, direction or influence, take no steps in furtherance of the military operations referred to [in] point (1) above.

(3) The Republic of South Africa and the State of Israel shall each, in accordance with their obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the Palestinian people, take all reasonable measures within their power to prevent genocide.

(4) The State of Israel shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the Palestinian people as a group protected by the Convention on the Prevention and Punishment of the Crime of Genocide,

⁶ Application instituting proceedings and request for the indication of provisional measures (29 December 2023) <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf>> accessed 26 July 2024

desist from the commission of any and all acts within the scope of Article II of the Convention, in particular:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to the members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and
- (d) imposing measures intended to prevent births within the group.

(5) The State of Israel shall, pursuant to point (4) (c) above, in relation to Palestinians, desist from, and take all measures within its power including the rescinding of relevant orders, of restrictions and/or of prohibitions to prevent:

- (a) the expulsion and forced displacement from their homes;
- (b) the deprivation of:
 - (i) access to adequate food and water;
 - (ii) access to humanitarian assistance, including access to adequate fuel, shelter, clothes, hygiene and sanitation;
 - (iii) medical supplies and assistance; and
- (c) the destruction of Palestinian life in Gaza.

(6) The State of Israel shall, in relation to Palestinians, ensure that its military, as well as any irregular armed units or individuals which may be directed, supported or otherwise influenced by it and any organizations and persons which may be subject to its control, direction or influence, do not commit any acts described in (4) and (5) above, or engage in direct and public incitement to commit genocide, conspiracy to commit genocide, attempt to commit genocide, or complicity in genocide, and insofar as they do engage therein, that steps are taken towards their punishment pursuant to Articles I, II, III and IV of the Convention on the Prevention and Punishment of the Crime of Genocide.

(7) The State of Israel shall take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide; to that end, the State of

Israel shall not act to deny or otherwise restrict access by fact-finding missions, international mandates and other bodies to Gaza to assist in ensuring the preservation and retention of said evidence.

(8) The State of Israel shall submit a report to the Court on all measures taken to give effect to this Order within one week, as from the date of this Order, and thereafter at such regular intervals as the Court shall order, until a final decision on the case is rendered by the Court.

(9) The State of Israel shall refrain from any action and shall ensure that no action is taken which might aggravate or extend the dispute before the Court or make it more difficult to resolve.”⁷

69. Accordingly, oral proceedings on the request for the indication of provisional measures were held on 11 and 12 January 2024, and the first order granting provisional measures was delivered on 26 January 2024.

70. In its order on provisional measures, the Court provided a brief sketch of the facts relating to the case and recognized the grave situation existing in Gaza. It categorically stated that “The Court is acutely aware of the extent of the human tragedy that is unfolding in the region and is deeply concerned about the continuing loss of life and human suffering.”

71. As is in the case in proceedings concerning provisional measures, in accordance well-established principles in its case-law for an assessment of an application requesting for the indication of provisional measures, the court conducted an assessment of the following points.

72. As preliminary matter, it ascertained *prima facie* jurisdiction over the dispute by recognizing that there existed a “disagreement on a point of law or fact, conflict of legal views of interest”⁸ between parties on the interpretation, application or fulfilment of the Genocide Convention. In this regard it is important to note that the Court rejected Israel’s argument that no

⁷ Ibid

⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (South Africa v. Israel), Order on provisional measures dated 26 January 2024 <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>> accessed 26 July 2024, para 23

dispute existed between the parties because it had not been given a reasonable opportunity to respond to the allegations made by South Africa. Further, the Court also confirmed standing of South Africa to bring the case, relying upon and confirming its well-established jurisprudence that “any State party to the Genocide Convention may invoke the responsibility of another State party, including through the institution of proceedings before the Court, with a view to determining the alleged failure to comply with its obligations *erga omnes partes* under the Convention and to bringing that failure to an end.”⁹

73. Thereafter, Court conducted an enquiry as required by precedent, whether there existed a link between the rights whose protection is sought and measures requested in the provisional measure. The Court in this regard recalled that at the stage of provisional measures it needed only to decide whether the rights claimed by South Africa under the Genocide Convention are plausible and that there existed a link between them and the measures sought in the application. Which it did decide in favour of South Africa, based on an appraisal of the facts as recorded in the statements of the UN Under-Secretary General for Humanitarian Affairs and Emergency Relief Coordinator, the World Health Organization (WHO), and the Commissioner-General of the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). In the Court’s view the facts and circumstances were sufficient to conclude that at least some of the rights claimed by South Africa were plausible, and that they were aimed at protecting Palestinians from acts of genocide and related prohibited acts enumerated in Article III of the Genocide Convention.

74. As mandated by the procedure of the Court provided for in Article 41 of the Statute of the ICJ, Court is empowered to grant provisional measures when irreparable prejudice could be caused to rights that are the subject of the proceedings. Further, the Court also noted that power to indicate provisional measures also require a situation of urgency, and that the acts complained of were susceptible of causing irreparable injury at any point of time before the judgment in the case. Gleaning from the statements made by the Secretary-General of the UN, the Commissioner-General of the UNRWA and the WTO, and noting the fundamental values sought to be protected by the Genocide Convention the court decided that it considered the catastrophic humanitarian

⁹ Ibid, para 33

situation in the Gaza strip at serious risk of further deterioration before the Court rendered its final judgment.

75. Having complied with the well-established requirements for the indication of provisional measures, the Court granted the following provisional measures as recorded in the *operatif* in its order dated 26 January 2024:

“(1) By fifteen votes to two,

The State of Israel shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to Palestinians in Gaza, take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention, in particular:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and
- (d) imposing measures intended to prevent births within the group;

IN FAVOUR: President Donoghue; Vice-President Gevorgian; Judges Tomka, Abraham, Bennouna, Yusuf, Xue, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant; Judge ad hoc Moseneke;

AGAINST: Judge Sebutinde; Judge ad hoc Barak;

(2) By fifteen votes to two,

The State of Israel shall ensure with immediate effect that its military does not commit any acts described in point 1 above;

IN FAVOUR: President Donoghue; Vice-President Gevorgian; Judges Tomka, Abraham, Bennouna, Yusuf, Xue, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant; Judge ad hoc Moseneke;

AGAINST: Judge Sebutinde; Judge ad hoc Barak;

(3) By sixteen votes to one,

The State of Israel shall take all measures within its power to prevent and punish the direct and public incitement to commit genocide in relation to members of the Palestinian group in the Gaza Strip;

IN FAVOUR: President Donoghue; Vice-President Gevorgian; Judges Tomka, Abraham, Bennouna, Yusuf, Xue, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant; Judges ad hoc Barak, Moseneke;

AGAINST: Judge Sebutinde;

(4) By sixteen votes to one,

The State of Israel shall take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip;

IN FAVOUR: President Donoghue; Vice-President Gevorgian; Judges Tomka, Abraham, Bennouna, Yusuf, Xue, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant; Judges ad hoc Barak, Moseneke;

AGAINST: Judge Sebutinde;”¹⁰

76. Judge Xue, Bhandari, and Nolte appended declarations to the order, Judge Barak delivered a Separate Opinion while Judge Sebutinde delivered a dissenting opinion.

77. Further in light of the worsening situation in Gaza and the developing circumstances in Rafah, by a communication dated 12 February 2024, South Africa, called upon the Court urgently to indicate additional provisional measures. However, vide letter dated 16 February, the Registrar of the Court informed the parties of the Court’s decision that the provisional measures indicated in its order dated 26 January 2024 which were in force in the whole of Gaza including Rafa did not demand the indication of additional provisional measures.

¹⁰ Ibid 24

78. On 6 March 2024, South Africa submitted another application for additional provisional measures and requested the Court to indicate further provisional measures and/or to modify its provisional measures indicated on 26 January 2024 to which Israel provided its written observation on 15 March 2024.

79. By an Order of 28 March 2024, the Court reaffirmed the provisional measures indicated in its Order of 26 January 2024 and based on the developments in grave circumstances in Gaza indicated the following provisional measures:

“The State of Israel shall, in conformity with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, and in view of the worsening conditions of life faced by Palestinians in Gaza, in particular the spread of famine and starvation:

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

(b) Ensure with immediate effect that its military does not commit acts which constitute a violation of any of the rights of the Palestinians in Gaza as a protected group under the Convention on the Prevention and Punishment of the Crime of Genocide, including by preventing, through any action, the delivery of urgently needed humanitarian assistance.”¹¹

80. The Court also directed Israel to submit a report to the Court on all measures taken to give effect to that Order, within one month as from the date thereof.

¹¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (South Africa v. Israel), Order on provisional measures dated 28 March 2024 < <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240328-ord-01-00-en.pdf> > accessed 26 July 2024

2. Order on the request for the indication of provisional measures delivered by the ICJ on 24 May 2024¹²

81. On 10 May 2024 South Africa preferred an application requesting the Court to indicate further provisional measures and/or modify its provisional indicated on 26 January 2024. Israel was immediately invited to present written observations on that request by 15 May 2024 in reply to which Israel submitted a letter dated 13 May 2024, requesting the Court to postpone the hearings to the following week. After having ascertained the views of the South Africa who opposed this request, the Court, in light of the circumstances, decided not to postpone the hearings. The Parties were informed of the Court's decision by letters dated 14 May 2024, and oral hearings were held as scheduled on 16 and 17 May 2024.

82. In its application South Africa requested the Court to indicate the following provisional measures:

“1. The State of Israel shall immediately withdraw and cease its military offensive in the Rafah Governorate.

2. The State of Israel shall immediately take all effective measures to ensure and facilitate the unimpeded access to Gaza of United Nations and other officials engaged in the provision of humanitarian aid and assistance to the population of Gaza, as well as fact-finding missions, internationally mandated bodies or officials, investigators, and journalists, in order to assess and record conditions on the ground in Gaza and enable the effective preservation and retention of evidence, and shall ensure that its military does not act to prevent such access, provision, preservation or retention.

3. The State of Israel shall submit an open report to the Court: (a) on all measures taken to give effect to these provisional measures within one week as from the date of this Order; and (b) on all

¹² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (South Africa v. Israel), Order on provisional measures dated 24 May 2024 <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240524-ord-01-00-en.pdf>> accessed 26 July 2024

measures taken to give effect to all previous provisional measures indicated by the Court within one month as from the date of this Order.”¹³

83. As matter which required the attention of the Court foremost before it could modify its provisional measure, the had to satisfy itself that the circumstances as required by Article 76 paragraph 1 of the Rules of Court, 1976 of the ICJ existed. That paragraph reads as follows:

“At the request of a party or *proprio motu*, the Court may, at any time before the final judgment in the case, revoke or modify any decision concerning provisional measures if, in its opinion, some change in the situation justifies such revocation or modification.”

84. In this regard, the Court most poignantly noted that the catastrophic humanitarian situation in the Gaza Strip which, as stated in its first order on provisional measures of 26 January 2024 was at serious risk of deteriorating, had deteriorated, and had done so even further since the Court adopted its second order indicating further provisional measures delivered on 28 March 2024. The Court also noted the factual assertion in the UN Report that nearly 800,000 people had been displaced from Rafah as on 18 May 2024. Having made these observations, the Court ruled that it considered the situation was exceptionally grave, in particular the military offensive in Rafah, and it did constitute a change in the situation within the meaning of Article 76 of the Rules of Court, 1978.

85. Thereafter, the Court recalled its observations in its first order on provisional measures regarding the conditions required to be satisfied for the indication of provisional as provided for in its long standing practice namely that of *prima facie* jurisdiction, irreparable prejudice and urgency of the requested measures. The court also expressed that it was not convinced by the measures taken by Israel to make sure that its offensive did not infringe on the security of civilians, and placed reliance on the reports and statement of agencies such as the Office for the Coordination

¹³ Request by South Africa for the indication of provisional measures and modification of the Court's previous provisional measures <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240510-wri-01-00-en.pdf>> accessed 26 July 2024

of Humanitarian Affairs (OCHA), the United Nations Children’s Fund (UNICEF) and the UNRWA.

86. After consideration of the facts corroborated by various agencies, the court concluded that in conformity with its obligations under the Genocide Convention and the prevailing catastrophic situation confirmed the need for the immediate and effective implementation of the provisional measures in its previous orders as well as additional provisional measures.

87. The *operatif* of the order granting the provisional measures reads as follows:

“The Court,

(1) By thirteen votes to two,

Reaffirms the provisional measures indicated in its Orders of 26 January 2024 and 28 March 2024, which should be immediately and effectively implemented;

IN FAVOUR: *President* Salam; *Judges* Abraham, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judge ad hoc* Barak;

(2) *Indicates* the following provisional measures:

The State of Israel shall, in conformity with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, and in view of the worsening conditions of life faced by civilians in the Rafah Governorate:

(a) By thirteen votes to two,

Immediately halt its military offensive, and any other action in the Rafah Governorate, which may inflict on the Palestinian group in Gaza conditions of life that could bring about its physical destruction in whole or in part;

IN FAVOUR: *President* Salam; *Judges* Abraham, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judge ad hoc* Barak;

(b) By thirteen votes to two,

Maintain open the Rafah crossing for unhindered provision at scale of urgently needed basic services and humanitarian assistance;

IN FAVOUR: *President* Salam; *Judges* Abraham, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judge ad hoc* Barak;

(c) By thirteen votes to two,

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

IN FAVOUR: *President* Salam; *Judges* Abraham, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judge ad hoc* Barak;

(3) By thirteen votes to two,

Decides that the State of Israel shall submit a report to the Court on all measures taken to give effect to this Order, within one month as from the date of this Order.

IN FAVOUR: *President* Salam; *Judges* Abraham, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judge ad hoc* Barak.”¹⁴

¹⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (South Africa v. Israel), Order on provisional measures dated 24 May 2024, 14 <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240524-ord-01-00-en.pdf>> accessed 26 July 2024

D. Advisory Opinion delivered by the ICJ on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem

88. On 30 December 2022, at its fifty-sixth plenary meeting, the UN General Assembly adopted resolution 77/37 entitled “Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem”¹⁵ and decided in accordance with Article 96 of the Charter of the UN to request the ICJ to render an advisory opinion pursuant to Article 65 of the Statute of the ICJ. It framed the question as follows;

“(a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?

(b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?”¹⁶

89. By an Order dated 3 February 2023,¹⁷ the Court decided, in accordance with Article 66, paragraph 2, of its Statute, that the United Nations and its Member States, as well as the observer State of Palestine, were considered likely to be able to furnish information on the questions submitted to it for an advisory opinion.

90. The following States submitted written observations and comments: Türkiye, Namibia, Luxembourg, Canada, Bangladesh, Jordan, Chile, Liechtenstein, Lebanon, Norway, Israel,

¹⁵ UNGA, ‘Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem’ UN Doc. A/77/400 (30 December 2022)

¹⁶ Ibid

¹⁷ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Order of 3 February 2023) <<https://www.icj-cij.org/sites/default/files/case-related/186/186-20230203-ord-01-00-en.pdf>> accessed 26 July 2024

Algeria, the Syrian Arab Republic, Palestine, Egypt, Guyana, Japan, Saudi Arabia, Qatar, Switzerland, Spain, the Russian Federation, Italy, Yemen, Maldives, the United Arab Emirates, Oman, Pakistan, South Africa, the United Kingdom of Great Britain and Northern Ireland, Hungary, Brazil, France, Kuwait, the United States of America, China, The Gambia, Ireland, Belize, Bolivia, Cuba, Mauritius, Morocco, Czechia, Malaysia, Colombia, Indonesia, Guatemala, Nauru, Djibouti, Togo, Fiji, Senegal, Zambia. The following international organizations submitted written statements, the Organisation of Islamic Cooperation, the African Union, the League of Arab States. Further some non-governmental organizations had also submitted written statements to the ICJ on their own accord. Further the Court also received two dossiers from the UN Secretary-General containing documents that documents were likely to throw light upon the questions formulated by the General Assembly in its resolution. 18 Member States of AALCO submitted written observations or comments.

91. Oral proceedings were held by the Court on the 19th to the 23th and on 26 February 2024, the following States and International Organizations made oral presentations, represented by their respective agents, co-agents, counsel and legal experts: Palestine, South Africa, Algeria, Saudi Arabia, the Netherlands, Bangladesh, Belgium, Belize, Bolivia, Brazil, Chile, Colombia, Cuba, Egypt, United Arab Emirates, United States of America, the Russian Federation, France, The Gambia, Guyana, China, Iran, Iraq, Ireland, Japan, Jordan, Kuwait, Lebanon, Libya, Luxembourg, Malaysia, Mauritius, Namibia, Norway, Oman, Pakistan, Indonesia, Qatar, United Kingdom, Slovenia, Sudan, Switzerland, Syria, Tunisia, Türkiye, Zambia, the League of Arab States, the Organisation of Islamic Cooperation, the African Union, Spain, Fiji, Maldives.

92. The Court's detailed advisory opinion on is divided into 8 parts, (1) Jurisdiction and Discretion (2) General Context (3) Scope and Meaning of the Questions posed (4) Applicable Law (5) Israel's policies and practices in the Occupied Palestinian Territory (6) Effects of Israel's Policies and Practices on the legal status of the occupation (7) Legal Consequences arising from Israel's Policies and Practices and from the illegality of Israel's continued presence in the Occupied Palestinian Territory and concludes with an operative part relating to the question posed by the General Assembly. In all there appended to the advisory opinion 6 declarations, 1 joint opinion of

3 judges, 1 joint declaration of 2 judges, 5 separate opinions, and 1 dissenting opinion. The operative clause has reads as follows:

“THE COURT,

(1) Unanimously,

Finds that it has jurisdiction to give the advisory opinion requested;

(2) By fourteen votes to one,

Decides to comply with the request for an advisory opinion;

IN FAVOUR: *President* Salam; *Judges* Tomka, Abraham, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Vice-President* Sebutinde;

(3) By eleven votes to four,

Is of the opinion that the State of Israel’s continued presence in the Occupied Palestinian Territory is unlawful;

IN FAVOUR: *President* Salam; *Judges* Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judges* Tomka, Abraham, Aurescu;

(4) By eleven votes to four,

Is of the opinion that the State of Israel is under an obligation to bring to an end its unlawful presence in the Occupied Palestinian Territory as rapidly as possible;

IN FAVOUR: *President* Salam; *Judges* Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judges* Tomka, Abraham, Aurescu;

(5) By fourteen votes to one,

Is of the opinion that the State of Israel is under an obligation to cease immediately all new settlement activities, and to evacuate all settlers from the Occupied Palestinian Territory;

IN FAVOUR: *President* Salam; *Judges* Tomka, Abraham, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Vice-President* Sebutinde;

(6) By fourteen votes to one,

Is of the opinion that the State of Israel has the obligation to make reparation for the damage caused to all the natural or legal persons concerned in the Occupied Palestinian Territory;

IN FAVOUR: *President* Salam; *Judges* Tomka, Abraham, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Vice-President* Sebutinde;

(7) By twelve votes to three,

Is of the opinion that all States are under an obligation not to recognize as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory and not to render aid or assistance in maintaining the situation created by the continued presence of the State of Israel in the Occupied Palestinian Territory;

IN FAVOUR: *President* Salam; *Judges* Tomka, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judges* Abraham, Aurescu;

(8) By twelve votes to three,

Is of the opinion that international organizations, including the United Nations, are under an obligation not to recognize as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory;

IN FAVOUR: *President* Salam; *Judges* Tomka, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judges* Abraham, Aurescu;

(9) By twelve votes to three,

Is of the opinion that the United Nations, and especially the General Assembly, which requested this opinion, and the Security Council, should consider the precise modalities and further action

required to bring to an end as rapidly as possible the unlawful presence of the State of Israel in the Occupied Palestinian Territory.

IN FAVOUR: *President* Salam; *Judges* Tomka, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judges* Abraham, Aurescu.”¹⁸

1. Jurisdiction and discretion

93. Before the Court could provide a legal opinion on the questions posed by the international organization competent to ask for such an opinion, the Court recalled that it must ascertain whether it has jurisdiction and whether it should exercise its jurisdiction in the case, as is well established in its case-law. By reference to the plenary powers of the General Assembly the scope of the questions posed by it, the Court concluded that the legal questions was posed in compliance with the provisions of the UN Charter and the Statute of the ICJ, and therefore possess jurisdiction in the case.

94. On the other hand, in considering whether the Court should exercise its discretion to not answer, the Court considered a number of questions. Some of salient questions that the Court gave consideration in its opinion were: Whether the request relates to a dispute between two parties, one of which has not consented to the jurisdiction of the Court? Whether the Court’s opinion would assist the General Assembly in the performance of its functions? Whether the Court’s opinion may undermine the negotiation process between Israel and Palestine? Whether an advisory opinion would be detrimental to the work of the Security Council? Whether the Court has sufficient information to enable it to give an advisory opinion? Whether the questions are formulated in a biased manner?

95. The Court after due consideration of the arguments raised regarding the exercise of its discretion, could not find compelling reason for it to decline exercising its jurisdiction.

¹⁸ Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, (19 July 2024), 78 <<https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf>> accessed 26 July 2024

2. General context

96. Once, the Court had provided reasons to conclude that it had jurisdiction to provide the advisory opinion it sought to lay down the general context of the resolution, recalling the developments from the period of the end of the First World War. The Court recalled the various resolutions passed by the UN General Assembly and Security Council including General Assembly Resolution 181 (II) on the future government of Palestine that proposed a partition plan, the Oslo Accords, and the most recent 10 June 2024, the Security Council Resolution 2735 (2024) among other factual components of the historical matrix of the situation in Palestine.

3. Scope and meaning of the questions posed by the General Assembly

97. At the outset, the court notes that the questions define the material, territorial and temporal scope of the enquiry of the Court. As regards, in the material scope of the first questions the court identifies three types of conduct i.e. violation of the right to self-determination, prolonged occupation and annexation, and adopt of discriminatory legislation and measures, whereas in the second questions it designates as the “practices and policies of Israel.”

98. As regards the territorial scope, the first question refers to “the Palestinian territory occupied since 1967”, which encompasses the West Bank, East Jerusalem and the Gaza Strip. The Court noted that the various United Nations organs and bodies frequently make specific reference to the different parts of the Occupied Palestinian Territory. However, the Court confirms that, from a legal standpoint, the Occupied Palestinian Territory constitutes a single territorial unit including the Holy City of Jerusalem in East Jerusalem, the unity, contiguity and integrity of which is to be preserved and respected.

99. As regards, the temporal scope of the questions, the Courts note that the question posed by the General Assembly in the resolution employed the the term “ongoing” and was adopted on 30 December 2023 and as such did not include the conduct of Israel since 7 October 2023.

100. Further as regards the second question the Court states that it calls upon the Court to ascertain the manner in which Israel's policies and practices affect the legal status of the occupation, and thereby the legality of the continued presence of Israel, as an occupying Power, in the Occupied Palestinian Territory. Further, the Court states that the questions calls upon the Court to ascertain what are the legal consequences of its findings for the United Nations and other States.

4. Applicable Law

101. As regards, the applicable law, the Court by large confirms its reasoning followed in the Wall Opinion, in which stated that the rules of international law applicable in the territory were international humanitarian law, including the law of occupation; international human rights law found in the human rights covenants as well as the Convention on the Elimination of Racial Discrimination. Most notably, the Court confirmed its reasoning followed in the Wall Opinion, whereby it ruled in favour of the application of international human rights laws in time of armed conflict. Further, it was also notable that the Court ruled although Israel had withdrawn its military presence from Gaza it has not been entirely released from its obligations under the law of war and bore obligations under the Convention on the Elimination of Racial Description as it continued to have the capability to exercise jurisdiction on territory and persons.

5. Israel's Policies and Practices in the Occupied Palestinian Territory

102. The Court then assesses the conformity of Israel's policies and practices in the Occupied Palestinian Territory, as identified in question (a), with its obligations under international law. In particular, the Court's analysis examines, the questions of the prolonged occupation, Israel's policy of settlement, the annexation of the Palestinian territory occupied since 1967, and its adoption of related legislation and measures that are allegedly discriminatory. The Court appraises whether and, if so, how Israel's policies and practices affect the right of the Palestinian people to self-determination after those other questions are considered.

5.1. Prolonged Occupation

103. As regards, the prolonged occupation the Court observes that the prolongation of an occupation does change its legal character under the law and instead its legality must be assessed in light of other rules such as the prohibition on the use of force and the right to self-determination. It categorically rules that international humanitarian law and the obligations incumbent upon an occupying power under customary international law continue to exist even after a prolongation of an occupation.

104. Further the court also recalls instances of the rules of the law of occupation that continue to bind the Occupying power for the duration of the occupation. The Court notes that under Article 64 of the Fourth Geneva Convention and the rule enshrined in Article 43 of the Hague Regulations, for example, the occupying Power is obliged to respect, in principle, the laws of the occupied territory in force. Similarly, it further notes that under the fifth paragraph of Article 50 of the Fourth Geneva Convention, the occupying Power may not hinder the application of a series of preferential measures adopted prior to the occupation; and, under the first paragraph of Article 54, it may not alter the status of public officials or judges in the occupied territory. Furthermore, it notes, Article 55 of the Hague Regulations that confers on the occupying Power only the status of administrator and usufructuary of public buildings, real estate, forests and agricultural estates in the occupied territory. On the basis of an appraisal of the provisions the court rules that the provisions emphasize that occupation is conceived of as a temporary state of affairs, during which the exercise by the occupying Power of authority over foreign territory is tolerated for the benefit of the local population.

105. The Court also applies the same assumption same assumption to the temporal dimension of the powers and duties vested in the occupying Power under the law of occupation particularly the third paragraph of Article 6 of the Fourth Geneva Convention sets a temporal limit to the obligations of a State in its capacity as an occupying Power. In this regard relying on the preparatory work of the Geneva Conventions clarifies that the temporal limit mentioned to the application of some of the provisions of the Fourth Geneva Convention was not aimed at releasing States from their obligations under the Convention in situations of prolonged occupation.

5.2. Settlement Policy

106. As regards the settlement policy followed by Israel in the Occupied Territory takes note of the forms in which it is implemented leading to a violation of a number of international obligations. Some of acts as part of the settlement policy identified by the Court were: transfer of civilian population, confiscation or requisition of land, exploitation of natural resources, extension of Israeli law, forced displacement of Palestinian population, and violence against the Palestinians. In light of these consideration the Court reaffirmed the dictum of the Wall Opinion, that the Israeli settlement in the West Bank and East Jerusalem and the regime associated with it, were being maintained in violation of a number of rules of international law.

5.3. The annexation of the Palestinian territory occupied since 1967

107. As regards, the annexation of the Palestinian territory, the Court recalled the various rules of international law that prohibit annexation, which it defined as the assertion of permanent control over territory in the context the various acts taken by Israel to achieve the same. In particular the Court reaffirmed the seminal principle of the prohibition of the acquisition of territory by force and found that Israel's policies and practices in this regard amount to annexation of large parts of the Occupied Palestinian Territory.

108. At the outset the Court noted the meaning and content of the term "annexation." It stated that in the present context, it understood to term to mean the forcible acquisition by the occupying Power of the territory that it occupies, namely its integration into the territory of the occupying Power. Annexation, then, presupposes the intent of the occupying Power to exercise permanent control over the occupied territory.

109. In this regard the Court further recalled that, under the law of occupation, the control of the occupied territory by the occupying Power must be temporary in character and categorically declared that the law is based on the principle that the occupying Power shall preserve the *status quo ante* in the occupied territory. It further went on state that it was evidenced, *inter alia*, by the limited range of powers vested in the occupying Power under the law of occupation, and the fact

of the occupation alone cannot confer sovereign title to the occupying Power. Therefore it concluded that conduct by the occupying Power that displayed an intent to exercise permanent control over the occupied territory may indicate an act of annexation.

110. The Court further concluded that the acts conducted by the occupying that amounted annexation in the Courts view were the policies and practices of Israel included the maintenance and expansion of settlements, the construction of associated infrastructure, including the wall, the exploitation of natural resources, the proclamation of Jerusalem as Israel's capital, the comprehensive application of Israeli domestic law in East Jerusalem and its extensive application in the West Bank, entrench Israel's control of the Occupied Palestinian Territory, notably of East Jerusalem and of Area C of the West Bank.

6. The question of discriminatory legislation and measures

111. The Court concluded from the evidence presented to it and on the basis of its analysis that a broad array of legislation adopted and measures taken by Israel in its capacity as an occupying Power treat Palestinians differently on grounds such as specified by international law. The Court noted that this differentiation of treatment could not be justified with reference to reasonable and objective criteria nor to a legitimate public aim. Accordingly, the Court took the view that the régime of comprehensive restrictions imposed by Israel on Palestinians in the Occupied Palestinian Territory constitutes systemic discrimination based on, *inter alia*, race, religion or ethnic origin, in violation of Articles 2, paragraph 1, and 26 of the ICCPR, Article 2, paragraph 2, of the ICESCR, and Article 2 of CERD.

112. The Court also took note of the report of United Nations Office for the Coordination of Humanitarian Affairs, which has been compiling data on the practice of property demolition in the West Bank and East Jerusalem since 2009, according to its reports almost 11,000 Palestinian structures have been demolished since then. Properties demolished included more than 4,500 residential and livelihood structures, over 3,000 agricultural structures and almost 1,000 water, sanitation and hygiene structures. The observed that Israel's practice of house demolitions had

taken two main forms: demolition of property as a punitive sanction for a criminal offence; and demolition of property for lack of a building permit.

7. Self-determination

113. Turning to the question of the right to self-determination the recalled it considerable jurisprudence on the subject which has affirmed its position as inalienable right accorded to Palestinian people. Most notably, the Court stated that it considered that in cases of foreign occupation, the right to self-determination constitute a peremptory norm of international law. Further, the Court laid down the following elements of the right to self-determination: (a) Firstly, that the right to self-determination is corollary of the right to self-determination (b) Secondly, the right to self-determination protects against acts aimed at dispersing the population and undermining its integrity as a people (c) Thirdly, the court identified the right to the exercise of permanent sovereignty over natural resources as an integral element of the right to self-determination (d) Fourthly, the court noted that a key element of the right to self-determination is the right of people to freely determine its political status. The Court concludes by stating that on the basis of the evidence presented and analyses of the situation it was of the view that Israel's policies and practices were in breach of Israel's obligation to respect the right to self-determination of the Palestinian people.

8. Effects of Israel's Policies and Practices on the legal status of the occupation

114. As regards, the effects of the Israel's practices and policies the Court recalls that they violate the obligation to respect the right to self-determination of the Palestinian people and fall foul of the principles of non-acquisition of territory by the use of force. Further it also re-affirmed that the obligations under the law of occupation continue to bind the Occupying power and that the prolongation of the occupation does not release it from any obligations.

9. Legal Consequences arising from Israel's Policies and Practices and from the illegality of Israel's continued presence in the Occupied Palestinian Territory

115. Having established and provided reason to conclude the illegality of Israeli policies and practices in the Occupied Palestinian territory the Court laid down the following legal consequences:

116. For the State of Israel, it ruled that it had an obligation to put an end to the unlawful acts and provide full reparation for the damage caused. In this regard the Court relied on its well established precedent of the *Factory at Chorzów*¹⁹ and recalled that the essential principle was that “reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed”. It further elaborated that Reparation included restitution, compensation and/or satisfaction.

117. With respect to restitution the Court concluded that it included Israel's obligation to return the land and other immovable property, as well as all assets seized from any natural or legal person since its occupation started in 1967, and all cultural property and assets taken from Palestinians and Palestinian institutions, including archives and documents. The Court further stated that restitution also required the evacuation of all settlers from existing settlements and the dismantling of the parts of the wall constructed by Israel that are situated in the Occupied Palestinian Territory, as well as allowing all Palestinians displaced during the occupation to return to their original place of residence. Further the court ruled that in the event that such restitution should prove to be materially impossible, Israel had an obligation to pay compensation.

118. Further it emphasized that the obligations flowing from Israel's internationally wrongful acts did not release it from continuing to perform the primary obligations for which it was held in breach of particularly obligation to respect the right of the Palestinian people to self-determination and its obligations under international humanitarian law and international human rights law.

¹⁹ *Case concerning the Factory At Chorzów*, Germany v Poland, Judgment, Claim for Indemnity, Merits, Judgment No 13, (1928) PCIJ Series A No 17

119. For other States and international organizations, the Court ruled that all States were under an obligation to withhold recognition, and not render aid or assistance in the maintenance of the illegal situation. Further it ruled that in light of the fundamental obligations violated namely, respect for the right to self-determination, non-acquisition of territory by the use of force and gross violations of international humanitarian and human rights law were of *erga omnes* character all States and international organizations had an interest in their compliance by Israel.

120. With respect to the right to self-determination the Court stated that it considered that, while it was for the General Assembly and the Security Council to pronounce on the modalities required to ensure an end to Israel's illegal presence in the Occupied Palestinian Territory and the full realization of the right of the Palestinian people to self-determination, all States must co-operate with the United Nations to put those modalities into effect.

121. As regards the prohibition of the acquisition of territory by force, the Court reaffirmed the resolution 465 (1980) of the Security Council in relation to the Occupied Palestinian Territory, the inadmissibility of the acquisition of territory by force that determined that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof had no legal validity.

122. For the UN particularly, the advisory opinion makes it incumbent particularly on the General Assembly to consider precise modalities and further actions required to bring an end to the unlawful presence of the State of Israel in the Occupied Palestinian Territory.

IV. Comments and Observations of the AALCO Secretariat

123. The reports presented by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 and the UN High Commissioner for Human Rights on Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice provide a detailed record and analyses of the abysmal situation of the rights of the Palestinian people. While the report presented by the Special Rapporteur Ms. Francesca Albanese deals with the most alarming assertion that the Israel is guilty of the commission of the Crime of Genocide in the Occupied Palestinian Territory, the report of the UN Commissioner provides a report over the reporting period of a year on the grave crimes against the law of armed conflict as well as numerous gross human rights violations. These reports are instrumental in bringing to the attention of the international community the scale of the violations, and the impunity with which they have prolonged for decades without any recourse. The report details a situation wherein it is apparent that the People of Palestine have been continuously denied their most basic human rights and constantly been the victims of grave and universally recognized grave international crimes in particular Genocide.

124. With a view to further cooperative action to bring an end to the deplorable and alarming situation in Palestine, States have over the past one year taken collective action to bring the matter to the attention of the International Court of Justice. While the provisional measures ordered by the Court are not being implemented in full as was recognized by the Court in later order on further provisional measures, it has built international pressure on Israel to comply with the binding order of the Court. The ruling of the Court also brings attention to the fact that the World Court considers that it is plausible that Israel is committing Genocide in Gaza.

125. The advisory opinion rendered by the ICJ on the questions posed by the UNGA is a welcome step towards taking efforts for the realization of the rights of the Palestinian people. The opinion clarifies fundamental question of the right to self-determination of people's and its systematic denial through the commission of brazen acts which are illegal under the customary and conventional law of occupation. While the Court held that that the practices and policies of Israel were in violation of the right to self-determination, including the right to permanent

sovereignty over natural resources and the right to political participation, the right against discrimination and was impermissible during occupation it also held that the Occupied Territory was being subjected annexation, in violation of the fundamental principles of non-acquisition of territory by force.

126. It is a matter of great significance that the Court has clarified the content of the firmly established right to self-determination and the conditions for its applications, but also delineated the obligations *erga omnes* which are incumbent on the international community with respect to the situation. It is also a matter of utmost satisfaction, that the ICJ has in its contentious cases and advisory opinions for the first time recognized that in the context of foreign occupation the right to self-determination is a peremptory norm of international law. Also, it undoubtedly reflects a shift in the practice of the Court to deal with questions of international law that may be political in nature and do not squarely fall within the black letters of the law, but are undoubtedly fundamental for the Court to clarify. There is no doubt the international community needs to pay particular attention to the advisory opinion and generate international consensus for its implementation through specific modalities in the General Assembly and the Security Council.

127. The AALCO Member States have a long history of leading from the front in the struggle for decolonization over the many years since the creation of the UN and have striven for its firm grounding in international law not only as a customary rule but as a fundamental norm of peremptory character or *jus cogens*. Therefore, it is evident that the topic holds great importance for the AALCO Member States, which is reflected in the number of written submissions made by them before the Court in the advisory proceedings, as well as other international organisations such as the League of Arab States, Organisation for Islamic Cooperation, the African Union. The AALCO Member States are urged to present their views on the international developments on the situation in Palestine and the cooperative measures that AALCO Member States and the international community can take to implement the measures through multilateral cooperation and bring an end to the armed conflict and the prolonged occupation.

ANNEX

SECRETARIAT'S DRAFT
AALCO/RES/DFT/62/S4
13 SEPTEMBER 2024

VIOLATIONS OF INTERNATIONAL LAW IN PALESTINE AND OTHER OCCUPIED TERRITORIES BY ISRAEL AND OTHER INTERNATIONAL LEGAL ISSUES RELATED TO THE QUESTION OF PALESTINE

The Asian-African Legal Consultative Organization at its Sixty-Second Session,

Noting with appreciation the introductory remarks of the Deputy Secretary-General,

Recalling and reiterating the decisions taken at the consecutive Annual Sessions of the Asian- African Legal Consultative Organization since 1988, when the topic was first introduced on the agenda of the Organization, in particular the decisions adopted on 22 April 1998 and 23 April 1999,

Also recalling and reiterating the resolutions adopted on 23 February 2000, RES/40/4 of 24 June 2001, RES/41/4 of 19 July 2002, RES/42/3 of 20 June 2003, RES/43/S4 of 25 June 2004, RES/44/S4 of 1 July 2005, RES/45/S4 of 8 April 2006, RESW/46/S4 of 6 July 2007, RES/47/S4 of 4 July 2008, RES/48/S4 of 20 August 2009, RES/49/S4 of 8 August 2010, RES/50/S4 of 1 July 2011, RES/51/S4 of 22 June 2012, RES/52/S4 of 12 September 2013, RES/53/S4 of 18 September 2014, RES/54/S4 of 17 April 2015, and RES/55/S4 of 20 May 2016, RES/56/S4 of May 2017

Having followed with great interest the deliberations on the item reflecting the views of Member States,

Being concerned with the serious obstacles created by the occupying power, which hinder the achievement of a just and lasting peace in the region,

Recognizing that the massive Israeli military operation in the occupied Gaza strip has caused grave violations of international humanitarian law and of the inalienable human rights of the Palestinian civilians therein, and has exacerbated the severe humanitarian crisis in the Occupied Palestinian Territory,

Welcoming the international and regional initiatives for peace in the Middle East and in particular, for the people in the Occupied Palestinian Territory and anticipating that these initiatives may pave the way for the exercise of their right to self-determination,

Being concerned about the continuing dangerous deterioration of the situation in the Occupied Palestinian Territories, including East Jerusalem and Gaza strip, the continuous deportation of Palestinians from their homeland, and the continuing serious and systematic violation of human rights of the Palestinian people by Israel, the occupying power.

Being alarmed by reports of international crimes committed in these territories, and calling for the implementation of the relevant United Nations resolutions on the humanitarian situation of the Palestinian people,

Welcoming the Advisory Opinion rendered by the International Court of Justice in the case concerning the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, and related General Assembly Resolution A/RES/77/247 of 30 December 2022

Recalling the Advisory Opinion rendered by the International Court of Justice in the case concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, and related General Assembly Resolution A/RES/ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006, as well as the United Nations initiative of establishment of a Register of Damage arising from the construction of the separation wall, and bearing in mind that more than twenty years have elapsed since the International Court of Justice delivered its opinion,

Acknowledging with deep concern that the United Nations Security Council is yet unable to adopt a resolution stipulating the illegality of the Israeli expansionist wall,

Taking note of conclusions and outcomes of all events held at both regional and international levels aiming at the achievement of a just, durable and comprehensive solution of the question of Palestine,

Also taking note of the initiation of investigations of the ongoing situation in Palestine by the Prosecutor of the International Criminal Court,

Affirming that a comprehensive, just and durable solution can only be achieved by ending the occupation in pursuance of the Charter of the United Nations, the existing agreement between the parties, and the relevant Security Council and General Assembly resolutions, which will allow all the countries in the region to live in peace, security and harmony,

Condemning the shocking developments that have continued to occur in the Occupied Palestinian Territory, including East Jerusalem, and particularly the Gaza strip, including the deportation of Palestinians from their homeland, the large number of deaths and injuries, mostly among Palestinian civilians, the acts of violence and brutality against Palestinian civilians, the widespread destruction of public and private Palestinian property and infrastructure, the internal displacement of civilians and the serious deterioration of the socio-economic and humanitarian conditions of the Palestinian people,

Urging its Member States to take part in the peace process/efforts exerted by the international community for the achievement of a just and comprehensive solution of the question of Palestine on the basis of relevant Security Council resolutions, including 242 (1967), 338 (1973), 425 (1978), 1397 (2002) and 1860 (2009), and relevant General Assembly Resolutions, including 194 (1949) on the formula of “land for peace” and the legitimate rights of the Palestinian people, and expressing solidarity with the Palestinian people and their elected leadership,

Also taking note of the Annual Report of the UN High Commissioner for Human Rights on Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice:

1. Condemns the shocking developments that have continued to occur in the Occupied Palestinian Territory, including East Jerusalem, including the deportation of Palestinians from their homeland, the large number of deaths and injuries, mostly among Palestinian civilians, the acts of violence and brutality against Palestinian civilians, the widespread destruction of public and private Palestinian property and infrastructure, the internal displacement of civilians and the serious deterioration of the socio-economic and humanitarian conditions of the Palestinian people;
2. Demands that Israel, the Occupying Power, comply fully with the provisions and principles of the Charter of the United Nations, Universal Declaration of Human Rights, the Regulations annexed to the Hague Convention of 1907 and the Geneva Conventions in particular the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, in order to protect the rights of Palestinians;
3. Also demands that Israel positively respond to the 2024 Report of the Special Rapporteur, Ms. Francesca Albanese on the situation of Human Rights in the Palestinian territories occupied since 1967
4. Further Demands that Israel comply with its legal obligations as mentioned in the Advisory Opinion rendered by the International Court of Justice in the case concerning *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, and related General Assembly Resolution A/RES/77/247 of 30 December 2022
5. Further demands for an immediate cessation of all acts of violence, including all acts of terror, provocation, incitement and destruction of property and calls for the immediate implementation of a full ceasefire and the terms of the three phase ceasefire deal in implementation of Security Council Resolutions 2735 (2024);
6. Calls upon Israel to ensure the return of refugees and displaced Palestinians to their homes and the restoration to them of their properties, in compliance with the relevant UN resolutions;
7. Directs the Secretariat to closely follow the developments in occupied territories from the perspective of relevant legal aspects; and
8. Decides to place the item on the provisional agenda of the AALCO Annual Session as and when required.