

BEFORE THE INTERNATIONAL COURT OF JUSTICE

ON BEHALF OF THE REPUBLIC OF SOUTH AFRICA

ORAL PROCEEDINGS

29 APRIL 2025

10H00

**OBLIGATIONS OF ISRAEL IN RELATION TO THE PRESENCE AND ACTIVITIES
OF THE UNITED NATIONS, OTHER INTERNATIONAL ORGANIZATIONS AND
THIRD STATES IN AND IN RELATION TO THE OCCUPIED PALESTINIAN
TERRITORY**

PART II

MS NOKUKHANYA JELE

**SPECIAL ADVISER TO THE PRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA ON LEGAL AND INTERNATIONAL AFFAIRS**

PART II – LEGAL ARGUMENT

I. Introduction

1. Mr President, distinguished Members of the Court, in an international legal order prohibiting the acquisition of territory by force, the international law rules governing military occupation must by necessity be interpreted in favour of the rights of the occupied population. The Gaza Strip and the West Bank, including East Jerusalem, remain under Israel's belligerent occupation and the law of occupation applies as a matter of *lex specialis*. Proceeding from this premise, the law of occupation imposes *limitations* on the *de facto* exercise of the occupant's power. It vests in the occupant's power, as this Court observed, a set of regulatory powers on exceptional and specifically enumerated grounds.¹
2. Israel is obliged to respect the lives, rights and property of the population of the occupied territory,² while protected persons shall not be deprived, *in any manner whatsoever*, of the benefits to the Convention by any change introduced by the occupation.³
3. The Court, in 2024, declared that it is "not convinced that the extension of Israel's law to the West Bank and East Jerusalem is justified under any of the grounds laid down in the second paragraph of Article 64 of the Fourth Geneva Convention".⁴ South Africa submits that the UNRWA-banning laws fall equally to be declared inconsistent with this provision.
4. In the **first instance**, through these laws, and their direct territorial application to occupied Jerusalem, Israel unlawfully purports to assert sovereignty over East Jerusalem. As the law of occupation does not transfer title of sovereignty to the occupying Power, this is a further measure through which Israel extends, as this

¹ *Legal Consequences 2024 Advisory Opinion*; para 134.

² The Hague Regulations 1907, Article 46, Fourth Geneva Convention (1949), Article 27

³ The Hague Regulations, Art 47.

⁴ *Ibid*, para 139.

Court considered, its “gradual annexation to Israeli territory, ... and the application of its domestic laws therein... impeding the exercise of the right to self-determination of the Palestinian people”.⁵

5. In the **second instance**, the Occupying Power cannot exercise its limited powers in a manner *inconsistent* with its other obligations under the Convention, cited in great detail by Palestine yesterday.⁶
6. Israel may not impose any measures specifically prohibited by international humanitarian law, such as mass forced displacements,⁷ property destruction, transfer in of colonial settlers,⁸ targeting schools,⁹ and even targeting the curriculum to erase the history of the Palestinian people.¹⁰ Israel cannot subject the population to collective punishment, while indiscriminately bombing civilians and civilian objects on a large scale – acts which manifestly constitute violations of its obligations as an occupying power.

⁵ *Ibid*, para 252.

⁶ In particular articles 30, 33, 49, 50, 55, 56, 59 and 60 of the Fourth Geneva Convention

⁷ UN News, Global Perspective Human Stories, *Israeli military operation displaces 40,000 in the West Bank* (10 February 2025), <https://news.un.org/en/story/2025/02/1159971>

⁸ UN OCHA, *Humanitarian Situation Update #281 | West Bank* (17 April 2025), <https://www.ochaopt.org/content/humanitarian-situation-update-281-west-bank>; Julia Frankel, “Israel turbocharges West Bank settlement expansion with largest land grab in decades”, *AP* (3 July 2025), <https://apnews.com/article/israel-palestinians-amas-war-news-07-03-2024-033deab379a16efdf9989de8d6eaf0f8>; Noa Shpigel and Hagar Shezaf, “Legislation, Land Grabs Point to Expedited Israeli Annexation in the West Bank”, *Haaretz* (20 April 2025), <https://www.haaretz.com/israel-news/2025-04-20/ty-article-magazine/.premium/legislation-land-grabs-point-to-expedited-israeli-annexation-in-the-west-bank/00000196-4f8e-d9fb-a79f-6fce7c1c0000>.

⁹ UN OCHA, *Humanitarian Situation Update #279 | West Bank* (10 April 2025), <https://www.ochaopt.org/content/humanitarian-situation-update-279-west-bank>; UN OCHA, *Humanitarian Situation Update #281 | West Bank* (17 April 2025), <https://www.ochaopt.org/content/humanitarian-situation-update-281-west-bank>; Education Cluster, *A generation at risk: Schooling in the West Bank under threat* (17 April 2025), <https://reliefweb.int/report/occupied-palestinian-territory/generation-risk-schooling-west-bank-under-threat>; Education Cluster, *Verification of damages to schools based on proximity to damaged sites - Gaza, Occupied Palestinian Territory, Update # 8 (March 2025)* (1 April 2025), <https://reliefweb.int/report/occupied-palestinian-territory/verification-damages-schools-based-proximity-damaged-sites-gaza-occupied-palestinian-territory-update-8-march-2025>.

¹⁰ Jerusalem Centre for Human Rights (JLAC), *The Israeli measures impacting the Palestinian Education in East Jerusalem* (August 2023), https://www.jlac.ps/public/files/file/fact%20sheets/Factsheet_Education%20_in_Jerusalem.pdf. See also EUMEP, *EU-funded study of Palestinian textbooks: tempering allegations while feeding a one-sided narrative* (July 2021), <https://eumep.org/wp-content/uploads/EuMEP-briefing-on-Palestinian-textbooks-21-07.pdf>; Article 50(3) of the Fourth Geneva Convention.

7. In the **third instance**, as part of its duty to ensure public order, civil life and safety, Israel must act in a manner consistent with its obligations under international humanitarian and human rights law, which prioritise the well-being of the Palestinian population. This includes not preventing, impeding or restricting collective relief schemes, which Israel *shall agree to, and shall facilitate by all means at its disposal*,¹¹ without qualification. This includes respecting the privileges and immunities of the United Nations undertaking such relief schemes, and associate entry to and movement in the Occupied Palestinian Territory.
8. Any dissolution of Palestine's quasi-State institutions, including those administered by UNRWA since 1949, would risk the complete breakdown of public order and civil life, and is an act clearly intended to destroy the viability of the Palestinian State. It would target integral parts of the Palestinian housing, education and health care system. The dissolution of such institutions is prohibited under Article 47 of the Fourth Geneva Convention.¹²
9. As part of its obligation to bring to an end its unlawful presence in the Occupied Palestinian Territory as rapidly as possible,¹³ Israel must halt its unlawful administration over movement and entry into the occupied Palestinian territory as a matter of the *jus ad bellum*.

II. The duty to accept humanitarian aid relief schemes

10. Mr President, Members of the Court, several States have, in their written submissions, outlined Israel's affirmative obligations under the Fourth Geneva Convention.¹⁴

¹¹ Fourth Geneva Convention, Article 59.

¹² Fourth Geneva Convention, Article 47, Commentary of 1958, <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-47/commentary/1958?activeTab=>. See also Article 56 of the Hague Regulations

¹³ Legal Consequences 2024 Advisory Opinion, para. 267-268, 285 (4). See also Legal Consequences 2024 Advisory Opinion, para. 105-107 & para. 202. See *infra* section III

¹⁴ Fourth Geneva Convention, Articles 1, 2, 27, 30, 32, 33, 49, 50, 53, 55, 56, 58, 59, 60, 61 and 63.

11. Israel retains primary responsibility for the implementation of its obligations in terms of the provisions of the Fourth Geneva Convention.¹⁵ No exception or qualification is provided for in these provisions. Article 69 of Additional Protocol I expands the nature of the goods that are to be supplied, taking into account local conditions.
12. These unqualified obligations include an obligation on Israel not to obstruct entry to and freedom of movement in the occupied Palestinian territory of humanitarian relief personnel.¹⁶ The Occupying Power also cannot refuse to allow and facilitate the rapid transit of humanitarian aid through its territory when it concerns relief equipment and personnel essential to the survival of the civilians.¹⁷
13. Security Council Resolution 2720 (2023) *demand*ed the full implementation of resolution 2712 (2023), which called for the provision of “*inter alia, water, electricity, fuel, food, and medical supplies, as well as emergency repairs to essential infrastructure...*”. It also demanded that all parties comply with their obligations under international law, including international humanitarian law, and called for access for United Nations humanitarian agencies and their implementing partners.
14. The Court’s orders on 26 January, 28 March and 24 May 2024¹⁸ constitute additional legal obligations for Israel to allow and facilitate the unimpeded passage of humanitarian aid to the Gaza Strip, “in full cooperation with the United Nations”.¹⁹

¹⁵ Fourth Geneva Convention Article 60.

¹⁶ ICRC’s customary international law Rules, 55-56 and commentary,

¹⁷ Fourth Geneva Convention Article 59, see also Articles 55-56.

¹⁸ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (*South Africa v Israel*) (Provisional Measures, Order) [26 January 2024]; Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (*South Africa v Israel*) (Provisional Measures, Order); [28 March 2024]; Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (*South Africa v Israel*) (Provisional Measures, Order) [24 May 2024].

¹⁹ *South Africa v. Israel* (Provisional Measures, Order) [28 March 2024] para 51 2(a).

15. However, **Israel has blatantly ignored these binding obligations.**²⁰ Instead, one and a half months after its legislation banning UNRWA went into effect, it has redoubled its denial of aid by imposing a nearly eight week-long blockade on Gaza.
16. South Africa has published two public dossiers²¹ which set out in detail, amongst others, Israel's denial of aid policy.
17. UNRWA is not engaging in 'one-sided politicized advocacy',²² but rather, acting in accordance with its obligations recognised by the UN General Assembly, as a "global advocate for the protection and care of Palestine refugees",²³ along with the UN's customary obligations not to recognise as lawful the unlawful presence of the State of Israel in the Occupied Palestinian Territory.²⁴ Israel's allegations are calculated and deliberate, in a context in which Israel has imposed a blanket ban on all humanitarian organisations, and third States' rendering of humanitarian relief to Gaza. This includes new restrictive procedures seeking to further shutter any humanitarian organisations operating in the occupied Palestinian territory.²⁵

²⁰ E.g. Israel's Written Statement, paras. 51, 52, 54, 55.

²¹ S/2024/419, Public Dossier of Evidence Relating to the State of Israel's Intent and Incitement to Commit Genocide Against The Palestinians In Gaza Presented By The Republic of South Africa to The President of the United Nations Security Council, 29 May 2024; and S/2025/130 Public Dossier of Openly Available Evidence on The State of Israel's Acts Of Genocide Against The Palestinians in Gaza as At 4 February 2025.

²² Israel's Written Statement, paras. 17, 19.

²³ Lance Bartholomeusz, *The Mandate of UNRWA at Sixty* (2010), p. 467, <https://www.unrwa.org/userfiles/201006109246.pdf>

²⁴ Legal Consequences 2024 Advisory Opinion, paras. 280, 285(8).

²⁵ Oxfam, "Let us do our jobs" — Major aid groups in Gaza warn aid system is collapsing (17 April 2025), <https://www.oxfam.org/en/press-releases/let-us-do-our-jobs-major-aid-groups-gaza-warn-aid-system-collapsing>; Eitan Diamond, "New Israeli Guidelines Threaten to Eliminate Humanitarian Action in the Occupied Palestinian Territory Almost Entirely", *Just Security* (8 April 2025), <https://www.justsecurity.org/109772/israel-humanitarian-ngo-guidelines/>; Physicians for Human Rights, *Torture of Medical Workers in Israel - A Call for Urgent Action* (26 February 2025), <https://www.phr.org.il/en/torture-of-medical-workers/>; UNRWA, *Detention and alleged ill-treatment of detainees from Gaza during Israel-Hamas War* (16 April 2024), <https://www.unrwa.org/resources/reports/detention-and-alleged-ill-treatment-detainees-gaza-during-israel-hamas-war>

III. Consent to the activities and presence of the UN and Third States

18. Mr President, Members of the Court, South Africa submits that sovereignty is always retained by the people of the occupied territory.²⁶ The people of Palestine, through their chosen representatives, have consented to the receipt of humanitarian aid and the presence and activities of the UN and third States in the Occupied Palestinian Territory.
19. The law of occupation, and in particular Articles 59-61 of the Fourth Geneva Convention, do not require an occupying Power's consent in cases where the civilian population is inadequately supplied.
20. It is therefore the law of occupation, and particularly Articles 55-61 of the Fourth Geneva Convention, which are applicable to the occupied Palestinian territory, requiring Israel not only to "enable", but to "ensure" the provision of aid and basic services.
21. Further, Article 11 of the Fourth Geneva Convention clearly envisages a role for humanitarian organisations as substitutes for Protecting Powers for the protected civilian population.²⁷ The United Nations has continued to play a protecting role over the Palestinian people, who were guaranteed full self-determination as a Class A Mandate, and subsequently dispossessed of their territory and forcibly displaced during the Nakba in 1948, necessitating the creation of UNRWA to guarantee Palestinian refugee rights — including the rights of over seventy percent of Palestinians in Gaza, who are systematically denied their right to return to their homes.
22. As part of Israel's unlawful occupation, it does not care to fulfil its obligations as an occupying Power, but seeks to wrongfully usurp rights. Israel's conduct and omissions clearly violate the law of occupation as a whole and its grave breaches of international humanitarian law cannot be allowed to persist.

²⁶ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 23 October 2017, A/72/556, para. 24 (<https://docs.un.org/en/A/72/556>).

²⁷ ICRC, IHL Databases, Article 11 – Substitutes for Protecting Powers, Commentary of 1958, <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-11>

23. **Mr President, Members of the Court, this brings to an end the second part of South Africa's submission. Mr President, may I request that you invite Mr Jaymion Hendricks, State Law Adviser (International Law) to address the Court on South Africa's conclusions.**