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INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING
OBLIGATIONS OF ISRAEL IN RELATION TO THE PRESENCE AND ACTIVITIES
OF THE UNITED NATIONS, OTHER INTERNATIONAL ORGANIZATIONS
AND THIRD STATES IN AND IN RELATION TO
THE OCCUPIED PALESTINIAN TERRITORY
(REQUEST FOR ADVISORY OPINION)**

WRITTEN STATEMENT OF THE KINGDOM OF BELGIUM

26 February 2025

[Translation by the Registry]

I. INTRODUCTION

1. On 19 December 2024, the General Assembly of the United Nations (hereinafter the “General Assembly”) adopted resolution A/RES/79/232, by which it decided, in accordance with Article 96 of the Charter of the United Nations and pursuant to Article 65 of the Statute of the Court, to request the International Court of Justice (hereinafter the “Court”) to give an advisory opinion on the following question:

“What are the obligations of Israel, as an occupying Power and as a member of the United Nations, in relation to the presence and activities of the United Nations, including its agencies and bodies, other international organizations and third States, in and in relation to the Occupied Palestinian Territory, including to ensure and facilitate the unhindered provision of urgently needed supplies essential to the survival of the Palestinian civilian population as well as of basic services and humanitarian and development assistance, for the benefit of the Palestinian civilian population, and in support of the Palestinian people’s right to self-determination?”¹

2. By an Order dated 23 December 2024, the Court held that “the United Nations and its Member States, as well as the observer State of Palestine, are likely to be able to furnish information on the question submitted to the Court for an advisory opinion and may do so” until 28 February 2025². Availing itself of this possibility, Belgium hereby transmits the following considerations to the Court.

3. Before presenting its observations on the question put to the Court by the General Assembly (III), Belgium will briefly discuss the Court’s jurisdiction and the propriety of its exercise with regard to this request (II).

II. JURISDICTION OF THE COURT AND PROPRIETY OF ITS EXERCISE

4. It is Belgium’s opinion that the Court has jurisdiction to accede to the request for an advisory opinion from the General Assembly (A) and that there is no compelling reason for the Court to decline to exercise this jurisdiction (B).

A. The Court has jurisdiction to accede to the request for an advisory opinion from the General Assembly

5. The Court’s jurisdiction to give an opinion requested by the General Assembly is founded on Article 96, [paragraph 1], of the Charter of the United Nations and Article 65, paragraph 1, of the Statute of the Court, and is not in doubt in the present case.

6. Article 96, [paragraph 1], of the Charter of the United Nations stipulates that “[t]he General Assembly . . . may request the International Court of Justice to give an advisory opinion on any legal question”. Article 65, paragraph 1, of the Statute of the Court provides that “[t]he Court may give an

¹ UNGA resolution 79/232, Request for an advisory opinion of the International Court of Justice on the obligations of Israel in relation to the presence and activities of the United Nations, other international organizations and third States, A/RES/77/232, para. 10.

² *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, Order of 23 December 2024*, paras. 1 and 2.

advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request”.

7. The question put to the Court by the General Assembly is undeniably of a legal nature as it concerns the legal obligations of Israel “as an occupying Power and as a member of the United Nations”, “considering the rules and principles of international law”, several of which are explicitly cited in paragraph 10 of resolution 79/232³. Moreover, the Court has stated in its previous rulings that neither lack of clarity in a question nor any political aspects thereof will have an impact on the Court’s jurisdiction⁴.

8. The Court therefore has jurisdiction to give the advisory opinion requested by the General Assembly.

B. There is no compelling reason for the Court to refuse to exercise its jurisdiction

9. Pursuant to Article 65, paragraph 1, of the Statute of the Court, set out above, the Court “may give an advisory opinion”. The Court’s jurisprudence, well established on this point, indicates that, on the basis of this provision of its Statute, the Court has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met⁵. Nevertheless, it is equally well established in the jurisprudence of the Court that, “given its functions as the principal judicial organ of the United Nations”, the Court’s answer to a request for an advisory opinion “represents its participation in the activities of the Organization, and, in principle, should not be refused”, unless there are “compelling reasons” for the Court to decline to give its opinion⁶.

10. In the advisory proceedings on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, some States

³ UNGA resolution 79/232, para. 10:

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

⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004 (I), pp. 153-156, paras. 37-38 and 41; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 29.

⁵ See, for example, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004 (I), pp. 156-157, para. 44; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019 (I), p. 113, paras. 63-65; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 30.

⁶ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, paras. 30-31; see also, for example, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004 (I), pp. 156-157, para. 44; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019 (I), p. 113, para. 65.

called on the Court to exercise its discretionary power. The Court thus had occasion to analyse six categories of argument in favour of the exercise of its discretionary power in connection with the situation of the Occupied Palestinian Territory:

“[t]he arguments raised by th[e] participants may be categorized as follows: (1) the request for an advisory opinion relates to a dispute between two parties, one of which has not consented to the jurisdiction of the Court; (2) the opinion would not assist the General Assembly; (3) the opinion may undermine the Israeli-Palestinian negotiation process; (4) an advisory opinion would be detrimental to the work of the Security Council; (5) the Court does not have sufficient information to enable it to give an advisory opinion; and (6) the questions are formulated in a biased manner”⁷.

11. In its Advisory Opinion of 19 July 2024 on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, the Court found that none of the six categories of argument constituted “compelling” reasons for it to decline to give the opinion requested⁸. Since the present request for an advisory opinion concerns the same general situation, namely that of Israel’s activities in and in relation to the Occupied Palestinian Territory, including East Jerusalem, and the guidance requested of the Court by the General Assembly is intended to “supplement the . . . advisory opinion of 19 July 2024”⁹, Belgium submits that there is no reason for the Court to change its assessment. None of the aforementioned arguments has become, in under a year, a “compelling reason” justifying the exercise of the Court’s discretionary power.

12. Belgium concludes that there is no compelling reason for the Court to decline to give an advisory opinion.

13. Having considered that the Court has jurisdiction and that there are no compelling reasons for it to decline to give the opinion requested by the General Assembly, Belgium will set out, on the following pages, its observations with regard to the question put to the Court.

III. THE QUESTION PUT TO THE COURT BY THE GENERAL ASSEMBLY

14. The question put to the Court by the General Assembly in resolution 79/232 concerns the obligations of Israel

“as an occupying Power and as a member of the United Nations, in relation to the presence and activities of the United Nations, including its agencies and bodies, other international organizations and third States, in and in relation to the Occupied Palestinian Territory”¹⁰.

15. It places particular emphasis on the obligations

“to ensure and facilitate the unhindered provision of urgently needed supplies essential to the survival of the Palestinian civilian population as well as of basic services and

⁷ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 32.

⁸ *Ibid.*, paras. 33-50.

⁹ UNGA resolution, A/RES/79/232, preambular para. 23.

¹⁰ *Ibid.*, para. 10.

humanitarian and development assistance, for the benefit of the Palestinian civilian population, and in support of the Palestinian people's right to self-determination"¹¹.

16. The factual context of this request for an advisory opinion is described in the preamble to resolution 79/232, where the General Assembly, among other things, expresses "grave concern about plans and measures, including legislation adopted, by Israel to interfere with or obstruct the presence and operations of the United Nations and United Nations entities and organizations, including the United Nations Relief and Works Agency for Palestine Refugees in the Near East", and "deep concern at measures taken by Israel that impede assistance to the Palestinian people"¹². The general context is supplemented by the documents communicated to the Court by the Secretariat of the United Nations on 30 January 2025 and available on the Court's website. Belgium's observations are based on the factual context described in those documents.

17. The question posed by the General Assembly is multifaceted. Belgium will concentrate its observations on Israel's general obligations relating to the provision of humanitarian assistance (B) and on the specific obligations relating to the presence and activities of United Nations personnel in and in relation to the Occupied Palestinian Territory (C). However, before examining those obligations, it is useful to recall the general legal framework in which they arise (A).

A. Reminder of the applicable legal framework

18. Paragraph 10 of resolution 79/232 refers to "the rules and principles of international law" deemed relevant by the General Assembly for responding to the question put to the Court,

"in particular the Charter of the United Nations, international humanitarian law, international human rights law, privileges and immunities applicable under international law for international organizations and States, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, the advisory opinion of the Court of 9 July 2004, and the advisory opinion of the Court of 19 July 2024"¹³.

19. As the General Assembly's use of the words "in particular" suggests, the list is not exhaustive. In Belgium's opinion, if Israel's obligations for the purposes of the present request for an advisory opinion are to be correctly identified, it is also important to take into account:

- the Palestinian people's right to self-determination; and
- Israel's obligations pursuant to the Orders indicating provisional measures rendered by the Court 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)*.

20. First, concerning the right to self-determination, in its 2024 Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, the Court reiterated the applicability of that right to the

¹¹ *Ibid.*

¹² *Ibid.*, preambular para. 20.

¹³ *Ibid.*, para. 10.

Palestinian people¹⁴, affirming that “in cases of foreign occupation such as the present case [namely that of the Occupied Palestinian Territory], *the right to self-determination constitutes a peremptory norm of international law*”¹⁵. Of significance for the present proceedings, the Court also confirmed that

“a key element of the right to self-determination is the right of a people freely to determine its political status and to pursue its economic, social and cultural development . . . The Court has already discussed the impact of Israel’s policies and practices on some aspects of the economic, social and cultural life of Palestinians, in particular by virtue of the impairment of their human rights. *The dependence of the West Bank, East Jerusalem, and especially of the Gaza Strip, on Israel for the provision of basic goods and services impairs the enjoyment of fundamental human rights, in particular the right to self-determination*”¹⁶.

21. Second, Israel is also required to comply with the provisional measures indicated by the Court having regard to Article 41 of its Statute in three Orders rendered 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)*. In its Order of 26 January 2024, the Court indicated that:

“[t]he 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”¹⁷.

In a second Order, rendered on 28 March 2024, the Court reaffirmed the provisional measures indicated in its Order of 26 January 2024¹⁸ and indicated the following provisional measures:

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

- (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

¹⁴ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, paras. 230-243. See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 182-183, para. 118.

¹⁵ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 233 (emphasis added).

¹⁶ *Ibid.*, para. 241 (emphasis added).

¹⁷ *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 of 26 January 2024*, para. 86 (4).

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 of 28 March 2024*, para. 51 (1).

Genocide, including by preventing, through any action, the delivery of urgently needed humanitarian assistance”¹⁹.

Finally, in a third Order, rendered on 24 May 2024, the Court reaffirmed the provisional measures indicated in its Orders of 26 January and 28 March 2024, recalling that they “should be immediately and effectively implemented”²⁰, and indicated further provisional measures as follows:

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

.....

(b) . . . Maintain open the Rafah crossing for unhindered provision at scale of urgently needed basic services and humanitarian assistance”²¹.

22. The aforementioned provisional measures have binding effect²² and constitute some of Israel’s obligations concerning the provision of basic services and humanitarian assistance to the Gaza Strip in particular. Belgium has repeatedly recalled the importance of implementing the provisional measures ordered by the Court in accordance with Israel’s obligations under the Convention on the Prevention and Punishment of the Crime of Genocide²³.

23. As indicated above, the 2004 Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* and the 2024 Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, are both explicitly mentioned in resolution 79/232 as forming part of the legal framework of relevance for the Court’s response to the question posed by the General Assembly²⁴. Both Advisory Opinions contain an analysis by the Court of several legal aspects relating to the situation in the Occupied Palestinian Territory. It is important therefore to recall the Court’s main legal findings with regard to the law applicable in the Occupied Palestinian Territory;

¹⁹ *Ibid.*, para. 51 (2).

²⁰ *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 of 24 May 2024, para. 57 (1).

²¹ *Ibid.*, para. 57 (2).

²² See *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 of 26 January 2024, para. 83; *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 of 28 March 2024, para. 48; *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 of 24 May 2024, para. 54.

²³ See, for example, UNGA, Seventy-eighth session, 59th plenary meeting, 4 Mar. 2024, Official Records, A/78/PV.59, p. 22 (available at: <https://digitallibrary.un.org/record/4067721?ln=en&v=pdf>);

“We call for the implementation of the provisional measures of the International Court of Justice, including that Israel must take immediate and effective measures to enable the urgent provision of basic services and humanitarian assistance to the population of Gaza. It is imperative that permanent and unhindered humanitarian access to the Gaza Strip be allowed and that the conditions enabling humanitarian actors to distribute aid on the ground be created”;

UNGA, Seventy-eighth session, 67th plenary meeting, 8 Apr. 2024, Official Records, A/78/PV.67, p. 28 (available at: <https://digitallibrary.un.org/record/4069973?ln=en&v=pdf>); joint statement by Belgium, Ireland, Luxembourg, Malta, Norway, Portugal, Slovenia and Spain, delivered by Luxembourg, Security Council, 9607th meeting, 17 Apr. 2024, S/PV.9607, p. 28 (available at: <https://docs.un.org/en/S/PV.9607>).

²⁴ UNGA resolution A/RES/77/232, para. 10.

these findings will serve as a background for any examination of Israel's legal obligations in the present advisory proceedings.

- In its activities in and in relation to the Occupied Palestinian Territory, Israel is bound by “the prohibition of the acquisition of territory by threat or use of force and the right of peoples to self-determination, which are enshrined in the Charter of the United Nations and also form part of customary international law”²⁵.
- “Israel’s powers and duties in the Occupied Palestinian Territory are governed by the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 . . . and by customary international law”, which includes obligations set out in the Hague Rules of 1907²⁶.
- With regard to the Gaza Strip, the Court considered “that Israel remained capable of exercising, and continued to exercise, certain key elements of authority over the Gaza Strip, including control of the land, sea and air borders, restrictions on movement of people and goods, collection of import and export taxes, and military control over the buffer zone, despite the withdrawal of its military presence in 2005”²⁷. The Court therefore took the view that “Israel’s withdrawal from the Gaza Strip ha[d] not entirely released it of its obligations under the law of occupation”²⁸. Consequently, in the Court’s opinion, the Gaza Strip was to be qualified as an occupied territory even though Israeli troops had not been physically present since 2005²⁹. Belgium takes the view that, as the Court itself emphasized, these considerations have become even more applicable since 7 October 2023³⁰. According to the Court, “Israel’s obligations [will] remain commensurate with the degree of its effective control over the Gaza Strip”³¹.
- Israel is also bound by the rules of international human rights law, including the 1966 International Covenant on Civil and Political Rights (hereinafter the “ICCPR”), the 1966 International Covenant on Economic, Social and Cultural Rights (hereinafter the “ICESCR”), the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter “CERD”)³² and the 1989 Convention on the Rights of the Child³³.
- The Court considered that “policies, practices or other measures that are such as to bring the occupied territory under the occupying Power’s permanent control constitute acts of annexation”³⁴ prohibited under international law, and recalled that “[u]nder contemporary

²⁵ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 95.

²⁶ *Ibid.*, para. 96.

²⁷ *Ibid.*, para. 93.

²⁸ *Ibid.*, para. 94.

²⁹ See, in the same sense, International Criminal Court, *Situation in the State of Palestine*, Decision on the “Prosecution request pursuant to article 19 (3) for a ruling on the Court’s territorial jurisdiction in Palestine”, Pre-Trial Chamber I, ICC-01/18, 5 Feb. 2021, p. 51, para. 118: “the Chamber finds that the Court’s territorial jurisdiction in the *Situation in Palestine* extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem” (emphasis in the original).

³⁰ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 93: “This is even more so since 7 October 2023.”

³¹ *Ibid.*, para. 94.

³² *Ibid.*, para. 97.

³³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 181, para. 113.

³⁴ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 172.

international law as contained in the Charter of the United Nations and reflected in customary international law, occupation can under no circumstances serve as the source of title to territory or justify its acquisition by the occupying Power”³⁵.

- “The sustained abuse by Israel of its position as an occupying Power, through annexation and an assertion of permanent control over the Occupied Palestinian Territory and continued frustration of the right of the Palestinian people to self-determination, violates fundamental principles of international law and renders Israel’s presence in the Occupied Palestinian Territory unlawful.”³⁶
- Accordingly, whether it is a *de facto* annexation, a “simple” occupation or a violation of other rules of international law, “the State of Israel’s continued presence in the Occupied Palestinian Territory is unlawful”. As a result, the State of Israel is under an obligation to bring to an end its unlawful presence “as rapidly as possible”³⁷. This obligation is reiterated in resolution ES-10/24, adopted by the General Assembly on 18 September 2024, which “[d]emands that Israel brings to an end without delay its unlawful presence in the Occupied Palestinian Territory, which constitutes a wrongful act of a continuing character entailing its international responsibility, and do so no later than 12 months from the adoption of the present resolution”, in other words by 18 September 2025³⁸.
- “[T]he protection of the settlers and settlements, the presence of which in the Occupied Palestinian Territory is contrary to international law, cannot be invoked as a ground to justify measures” adopted by Israel with regard to Palestinians³⁹.
- “The dependence of the West Bank, East Jerusalem, and especially of the Gaza Strip, on Israel for the provision of basic goods and services impairs the enjoyment of fundamental human rights, in particular the right to self-determination”⁴⁰.

24. Bearing in mind the legal framework described above, Belgium will now examine Israel’s obligations relative to the provision of humanitarian assistance.

B. Israel’s obligations relative to the provision of humanitarian assistance

25. Israel’s obligations relative to the provision of humanitarian assistance as the occupying Power in the Occupied Palestinian Territory and as a Member of the United Nations are founded on the legal framework described above, including in particular international humanitarian law, international human rights law, the right to self-determination, the Charter of the United Nations — in particular with regard to the obligations set out in Security Council resolutions, which constitute binding decisions for Member States of the United Nations under Article 25 of the Charter — and

³⁵ *Ibid.*, para. 253.

³⁶ *Ibid.*, para. 261.

³⁷ *Ibid.*, para. 285 (3) and (4).

³⁸ UNGA resolution A/RES/ES-10/24, adopted on 18 Sept. 2024, Advisory opinion of the International Court of Justice on the legal consequences arising from Israel’s policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and from the illegality of Israel’s continued presence in the Occupied Palestinian Territory, para. 2.

³⁹ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, paras. 139 and 205.

⁴⁰ *Ibid.*, para. 241.

the Statute of the Court, in respect of the obligations arising from the provisional measures indicated by the Court.

26. Belgium considers the obligations in question to be negative (1) and positive (2). Both types will be examined below, beginning with the negative obligations.

1. Negative obligations

27. Israel's negative obligations as the occupying Power in the Occupied Palestinian Territory and as a Member of the United Nations require it to refrain from taking certain actions that are prejudicial in the broad sense to the provision of humanitarian assistance. The main negative obligations identified by Belgium are set out below.

(a) *The obligation not to attack, harass, intimidate or detain humanitarian relief personnel*

28. This obligation arises from the general obligation to respect humanitarian personnel, identified as one of the customary obligations of international humanitarian law⁴¹. On the same basis, in its resolution 2730 adopted on 24 May 2024, the Security Council of the United Nations (hereinafter the "Security Council") confirmed that the obligation to respect and protect humanitarian personnel is rooted not only in the rules of international humanitarian law but also in the rules of international human rights law, when it

"[d]emand[ed] that all parties to armed conflict fully comply with their obligations under international law, including international human rights law, as applicable, and international humanitarian law; including their obligations related to the respect and protection of humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, as long as they are entitled to the protection given to civilians or civilian objects under international humanitarian law"⁴².

29. In the same resolution, the Security Council said that it was "[g]ravelly concerned about the growing number of attacks, acts of violence, and threats against humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, and their premises and assets"⁴³, and condemned "the targeting, killing, harassment, intimidation, reprisal, criminalization, prosecutions, arbitrary arrest and arbitrary detentions of humanitarian personnel for humanitarian activities"⁴⁴.

30. The notion of humanitarian relief personnel is understood in a broad sense and includes anyone involved in a humanitarian assistance operation or mission, such as, for example, "experts in

⁴¹ J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules, ICRC — Cambridge University Press, 2005, p. 105, Rule 31: "Humanitarian relief personnel must be respected and protected".

⁴² UNSC resolution S/RES/2730 (2024), adopted on 24 May 2024, para. 3 (emphasis in the original).

⁴³ *Ibid.*, preambular para. 9 (emphasis in the original).

⁴⁴ *Ibid.*, preambular para. 15 and operative para. 6. See also J.-M. Henckaerts and L. Doswald-Beck, *op. cit.*, p. 108:

"[c]ivilian humanitarian relief personnel are protected against attack according to the principle of distinction . . . In addition to the prohibition of attacks on such personnel, practice indicates that harassment, intimidation and arbitrary detention of humanitarian relief personnel are prohibited under this rule. The collected practice also contains examples in which the following acts against humanitarian aid personnel have been condemned: mistreatment, physical and psychological violence, murder, beating, abduction, hostage-taking, harassment, kidnapping, illegal arrest and detention."

transport, in relief administration, in organization”⁴⁵. Moreover, humanitarian personnel do not need to be authorized as such⁴⁶. National and locally recruited personnel also benefit from this protection, as confirmed by Security Council resolution 2730 (2024)⁴⁷.

31. As is also confirmed by Security Council resolution 2730, the prohibition on attacking humanitarian personnel is applicable “as long as [such personnel] are entitled to the protection given to civilians”⁴⁸. This refers in turn to the rule according to which “[c]ivilians are protected against attack unless and for such time as they take a direct part in hostilities”⁴⁹. Consequently, like all civilians, humanitarian personnel only lose their immunity from attack if and for such time as they take a direct part in hostilities.

(b) *The obligation not to attack, destroy, misappropriate or loot objects used for humanitarian relief operations*

32. This obligation is the corollary of the previous obligation, applied to objects used for humanitarian relief operations. It is also an obligation of customary law⁵⁰.

33. The notion of objects used for humanitarian relief operations must also be broadly understood to cover in any event the installations, material, units and vehicles involved in a humanitarian assistance mission⁵¹. In its resolution 2730 (2024), the Security Council

“[s]trongly condemn[ed] attacks and all forms of violence, . . . threats, and intimidation, against humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, and their premises and assets, including

⁴⁵ Y. Sandoz, “Commentary on Article 71 — Personnel participating in relief actions”, in C. Pilloud *et al.*, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Martinus Nijhoff Publishers, Geneva, 1987, p. 833, para. 2879.

⁴⁶ J.-M. Henckaerts and L. Doswald-Beck, *op. cit.*, p. 109: “While the Additional Protocols provide that the protection of humanitarian relief personnel applies only to ‘authorised’ humanitarian personnel as such, the overwhelming majority of practice does not specify this condition.”

⁴⁷ UNSC resolution S/RES/2730 (2024), preambular para. 10:

“*Deeply concerned* about the particular vulnerability of national and locally recruited humanitarian personnel to threats and acts of violence, who accounted in recent years for the majority of safety and security incidents, and *underscoring* the need for concerted efforts and concrete risk mitigation strategies to enhance their safety and security” (emphasis in the original).

⁴⁸ *Ibid.*, para. 3.

⁴⁹ J.-M. Henckaerts and L. Doswald-Beck, *op. cit.*, p. 19, Rule 6. The rule is set out in Article 51, paragraph 3, of the Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of international armed conflicts (hereinafter the “First Additional Protocol”), adopted in Geneva on 8 June 1977, United Nations, *Treaty Series (UNTS)*, Vol. 1125, p. 26. Although Israel is not party to the Protocol, the obligation set out in Article 51, paragraph 3, is part of customary international law and it is as such that it is applicable to Israel.

⁵⁰ J.-M. Henckaerts and L. Doswald-Beck, *op. cit.*, p. 109, Rule 32: “Objects used for humanitarian relief operations must be respected and protected”.

⁵¹ See Article 8, paragraph 2 (b) (iii) and (e) (iii), of the Statute of the International Criminal Court, according to which war crimes in international and non-international armed conflicts include:

“[i]ntentionally directing attacks against personnel, *installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission* in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict” (emphasis added).

Rome Statute of the International Criminal Court, 17 July 1998, *UNTS*, Vol. 2187, pp. 95 and 97, respectively.

humanitarian supplies, facilities and transports, in violation of international humanitarian law”⁵².

34. In the same resolution, the Security Council confirmed that, like humanitarian personnel, humanitarian assets may not be attacked “as long as they are entitled to the protection given to . . . civilian objects under international humanitarian law”⁵³. This refers in turn to the rule according to which “[a]ttacks must not be directed against civilian objects” and “may only be directed against military objectives”⁵⁴. Furthermore, “military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage”⁵⁵. Accordingly, like all civilian objects, objects used for humanitarian relief operations may not be attacked if they meet both cumulative conditions laid down in the definition of military objective.

(c) *The obligation not to hinder humanitarian personnel or activities*

35. Based on the general obligation to respect humanitarian personnel and assets, this obligation takes the form of the prohibition of any action that directly or indirectly hinders humanitarian relief activities. It is illustrated by a number of specific obligations, including

- the obligation not to divert relief consignments from their intended purpose, except in cases of urgent necessity, in the interests of the population of the occupied territory⁵⁶;
- the obligation in occupied territory not to collect any charges, taxes and customs duties on relief consignments, unless these are necessary in the interests of the economy of the territory⁵⁷; and
- the obligation not to carry out any activities of disinformation, information manipulation or incitement to violence against humanitarian personnel and assets⁵⁸.

(d) *The obligation to let relief societies and humanitarian bodies pursue their activities in occupied territories*

36. This obligation is set out in Article 63 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (hereinafter the “Fourth Geneva Convention”), which stipulates that National Red Cross (Red Crescent, Red Lion and Sun) Societies and other relief societies shall be able to pursue their humanitarian activities in occupied territories, subject to “temporary and exceptional measures imposed for urgent reasons of security by the Occupying Power”⁵⁹. Article 63

⁵² UNSC resolution S/RES/2730 (2024), para. 6.

⁵³ *Ibid.*, para. 3.

⁵⁴ J.-M. Henckaerts and L. Doswald-Beck, *op. cit.*, p. 25, Rule 7. The obligation to direct attacks only against military objectives is set out in Article 52, paragraph 1, of the First Additional Protocol, *UNTS*, Vol. 1125, p. 27, and is part of customary international law.

⁵⁵ J.-M. Henckaerts and L. Doswald-Beck, *op. cit.*, p. 29, Rule 8. The definition of military objectives is set out in Article 52, paragraph 2, of the First Additional Protocol, *UNTS*, Vol. 1125, p. 27, and is part of customary international law.

⁵⁶ Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (hereinafter the “Fourth Geneva Convention”), *UNTS*, Vol. [7]5, p. 326, Art. 60.

⁵⁷ *Ibid.*, Art. 61, second para.

⁵⁸ UNSC resolution S/RES/2730 (2024), para. 11.

⁵⁹ Fourth Geneva Convention, *UNTS*, Vol. 75, p. 328.

further provides that “the Occupying Power may not require any changes in the personnel or structure of these societies, which would prejudice the aforesaid activities” and specifies that

“[t]he same principles shall apply to the activities and personnel of special organizations of a non-military character, which already exist or which may be established, for the purpose of ensuring the living conditions of the civilian population by the maintenance of the essential public utility services, by the distribution of relief and by the organization of rescues”⁶⁰.

37. Apart from stipulating that their activities must be pursued “in accordance with Red Cross principles”⁶¹, Article 63 of the Fourth Geneva Convention provides no further information regarding the definition of “other relief societies”. The protection afforded by Article 63 of the Fourth Geneva Convention may therefore be applied to the humanitarian activities and personnel of relief societies attached to international organizations, third States and non-governmental organizations⁶².

38. On the same basis, in its resolution 2730 (2024), the Security Council

“[s]trongly condemn[ed] the unlawful denial of humanitarian access and depriving civilians of objects indispensable to their survival, which impede relief supplies and access for responses to conflict-induced food insecurity in situations of armed conflict, which may constitute violations of international humanitarian law”⁶³.

(e) Negative obligations of a specific kind

39. In addition to the general negative obligations identified above, there are specific obligations related to respect for humanitarian assistance and personnel.

40. With regard to medical personnel and humanitarian activities of a medical nature, it must be recalled that health workers, activities of a medical nature, medical units and medical transports all enjoy specific protection under the rules of international humanitarian law⁶⁴.

41. Likewise, the obligations not to use starvation as a method of warfare⁶⁵ and not to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population⁶⁶ also contribute to respect for and protection of humanitarian assistance. Objects considered indispensable to the survival of the civilian population include foodstuffs, agricultural goods and

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Cf. commentary on the Fourth Geneva Convention, which refers to private institutions and organizations that “rendered services of immense value by carrying out charitable work similar to that of the Red Cross” during the Second World War; see J. Pictet (ed.), *Commentary on the Geneva Convention relative to the Protection of Civilian Persons in Time of War*, ICRC, Geneva, 1958, p. 333, fn. [1].

⁶³ UNSC resolution S/RES/2730 (2024), para. 8 (emphasis in the original). See also UNSC resolution S/RES/2417 (2018), adopted on 24 May 2018, para. 8.

⁶⁴ See J.-M. Henckaerts and L. Doswald-Beck, *op. cit.*, pp. 79-104, Rules 25-30.

⁶⁵ *Ibid.*, p. 186, Rule 53. The obligation is set out in Article 54, paragraph 1, of the First Additional Protocol, *UNTS*, Vol. 1125, p. 27, and is part of customary international law.

⁶⁶ J.-M. Henckaerts and L. Doswald-Beck, *op. cit.*, p. 189, Rule 54. The obligation is set out in Article 54, paragraph 2, of the First Additional Protocol, *UNTS*, Vol. 1125, p. 27, which reflects customary international law. See also UNSC resolution S/RES/2417 (2018), para. 1.

areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies, irrigation works, food supplies, medicines, blankets, bedding and means of shelter⁶⁷. In its resolution 2417, adopted on 24 May 2018, the Security Council confirmed that the unlawful denial of humanitarian assistance to civilian populations in armed conflict may be tantamount to the use of starvation as a method of warfare⁶⁸.

42. Having set out the main negative obligations relative to the provision of humanitarian assistance, Belgium will now address the positive obligations applicable to Israel.

2. Positive obligations

43. The obligations in question are the corollary of the above-mentioned negative obligations: in laying down duties to take action to protect and ensure the provision of humanitarian assistance, they complement and reinforce the protection afforded. As indicated above, these obligations are founded on a number of rules within the legal framework of relevance. Israel is bound by several specific positive obligations as the occupying Power in the Occupied Palestinian Territory and as a Member of the United Nations that may be categorized under three general headings.

(a) *The obligation to ensure the provision of humanitarian assistance to the civilian population*

44. The civilian population of an occupied territory must be afforded humanitarian assistance. The occupying Power must either itself ensure the supplies of the population or agree to that provision being undertaken by other actors, such as international organizations including the United Nations, third States or other impartial humanitarian bodies.

45. With regard to the provision of humanitarian assistance to the civilian population of the Occupied Palestinian Territory, it is worth recalling the following:

- In its 2024 Advisory Opinion, the Court considered that “Israel’s planning policy in relation to . . . in particular its practice of property demolition for lack of a building permit, which treats Palestinians differently from settlers without justification, amounts to prohibited discrimination”, in violation of Articles 2, paragraph 1, and 26 of the ICCPR, Article 2, paragraph 2, of the ICESCR, and Article 2 of CERD⁶⁹. The Court noted that, among the structures demolished by Israel, “more than 1,600 were structures providing humanitarian aid, more than 600 were water, sanitation and hygiene buildings, and more than 20 were schools educating approximately 1,300 children”⁷⁰. In this regard, it should be kept in mind that these demolitions are part and parcel of the policies and practices being implemented and applied in the Occupied Palestinian Territory that, in the opinion of the Court, manifest “an intention to

⁶⁷ J.-M. Henckaerts and L. Doswald-Beck, *op. cit.*, p. 193; UNSC resolution S/RES/2417 (2018), para. 1.

⁶⁸ UNSC resolution, S/RES/2417 (2018), para. 10: “*Strongly urges* States to conduct . . . investigations within their jurisdiction into violations of international humanitarian law related to the use of starvation of civilians as a method of warfare, including the unlawful denial of humanitarian assistance to the civilian population in armed conflict”.

⁶⁹ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 222.

⁷⁰ *Ibid.*, para. 217.

create a permanent and irreversible Israeli presence in the Occupied Palestinian Territory”⁷¹ and that have been deemed unlawful for being in breach of a number of rules of international law⁷².

- 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)*, the Court has, as previously stated, issued three Orders indicating provisional measures addressed to Israel in relation to the hostilities being carried out in the Gaza Strip⁷³. In all three Orders, the Court states that Israel must take immediate and effective measures to enable the provision of humanitarian assistance; however, none of these Orders has been respected by Israel. In the most recent one, rendered on 24 May 2024, the Court, considering that the measures taken by Israel were inadequate, “confirm[ed] the need for the immediate and effective implementation of the measures indicated in its Orders of 26 January 2024 and 28 March 2024”, and found it necessary “to reaffirm the measures indicated in those Orders”⁷⁴.
- On 21 November 2024, Pre-Trial Chamber I of the International Criminal Court issued warrants of arrest for Mr Benjamin Netanyahu, Prime Minister of Israel, and Mr Yoav Gallant, Minister of Defence of Israel at the time of the acts in question, considering that there were reasonable grounds to believe that they bore criminal responsibility for, among other things, the war crime of starvation as a method of warfare, and the crimes against humanity of murder, persecution, and other inhumane acts⁷⁵. Of course, the issuance of an arrest warrant by the International Criminal Court is not tantamount to a judicial confirmation of the facts, nor does it prove the guilt of the accused. However, the conduct constituting all of these crimes is related to the restrictions on humanitarian assistance imposed by Israel during the hostilities in the Gaza Strip. It is therefore worth reproducing in full the arguments of Pre-Trial Chamber I, as set out in the press release announcing the issuance of the arrest warrants (which have themselves not been made public in order to protect witnesses and to safeguard the conduct of the investigations):

“The Chamber considered that there are reasonable grounds to believe that both individuals intentionally and knowingly deprived the civilian population in Gaza of objects indispensable to their survival, including food, water, and medicine and medical supplies, as well as fuel and electricity, from at least 8 October 2023 to 20 May 2024. This finding is based on the role of Mr Netanyahu and Mr Gallant in impeding humanitarian aid in violation of international humanitarian law and their failure to facilitate relief by all means at its disposal. The Chamber found that their conduct led to the disruption of the ability of humanitarian organisations to provide food and other essential goods to the population in need in Gaza. The aforementioned restrictions together with cutting off electricity and reducing fuel supply also had a severe impact on the availability of water in Gaza and the ability of hospitals to provide medical care.

The Chamber also noted that decisions allowing or increasing humanitarian assistance into Gaza were often conditional. They were not made to fulfil Israel’s obligations under international humanitarian law or to ensure that the civilian population in Gaza would be adequately supplied with goods in need. In fact, they were a response to the pressure of the international community or requests by the United States of

⁷¹ *Ibid.*, para. 252.

⁷² See, for example, *ibid.*, paras. 147, 156, 179, 229, 243 and 261.

⁷³ See para. 21 above.

⁷⁴ *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 of 24 May 2024, para. 52.

⁷⁵ International Criminal Court, “Situation in the State of Palestine: ICC Pre-Trial Chamber I rejects the State of Israel’s challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant”, Press Release, 21 Nov. 2024 (available at: <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges>).

America. In any event, the increases in humanitarian assistance were not sufficient to improve the population's access to essential goods.

Furthermore, the Chamber found reasonable grounds to believe that no clear military need or other justification under international humanitarian law could be identified for the restrictions placed on access for humanitarian relief operations. Despite warnings and appeals made by, inter alia, the UN Security Council, UN Secretary-General, States, and governmental and civil society organisations about the humanitarian situation in Gaza, only minimal humanitarian assistance was authorised. In this regard, the Chamber considered the prolonged period of deprivation and Mr Netanyahu's statement connecting the halt in the essential goods and humanitarian aid with the goals of war.

The Chamber therefore found reasonable grounds to believe that Mr Netanyahu and Mr Gallant bear criminal responsibility for the war crime of starvation as a method of warfare.

The Chamber found that there are reasonable grounds to believe that the lack of food, water, electricity and fuel, and specific medical supplies, created conditions of life calculated to bring about the destruction of part of the civilian population in Gaza, which resulted in the death of civilians, including children due to malnutrition and dehydration. On the basis of material presented by the Prosecution covering the period until 20 May 2024, the Chamber could not determine that all elements of the crime against humanity of extermination were met. However, the Chamber did find that there are reasonable grounds to believe that the crime against humanity of murder was committed in relation to these victims.

In addition, by intentionally limiting or preventing medical supplies and medicine from getting into Gaza, in particular anaesthetics and anaesthesia machines, the two individuals are also responsible for inflicting great suffering by means of inhumane acts on persons in need of treatment. Doctors were forced to operate on wounded persons and carry out amputations, including on children, without anaesthetics, and/or were forced to use inadequate and unsafe means to sedate patients, causing these persons extreme pain and suffering. This amounts to the crime against humanity of other inhumane acts.

The Chamber also found reasonable grounds to believe that the abovementioned conduct deprived a significant portion of the civilian population in Gaza of their fundamental rights, including the rights to life and health, and that the population was targeted based on political and/or national grounds. It therefore found that the crime against humanity of persecution was committed.”⁷⁶

46. In view of the foregoing, Belgium is convinced that the safest and most effective way for the civilian population in the Occupied Palestinian Territory to receive adequate humanitarian assistance is through humanitarian assistance operations undertaken by third party actors, namely international organizations including the United Nations, third States or impartial humanitarian organizations such as the International Committee of the Red Cross. Israel has an obligation to agree to these humanitarian assistance operations on behalf of the civilian population of the Occupied Palestinian Territory.

⁷⁶ *Ibid.*

47. This obligation is founded on a number of sources. As regards as international humanitarian law:

- the first paragraph of Article 55 of the Fourth Geneva Convention provides for the obligation of the occupying Power to ensure the food and medical supplies of the population and to bring in foodstuffs, medical stores and any other necessary articles;
- the first paragraph of Article 56 of the Fourth Geneva Convention stipulates that the occupying Power also has the duty of ensuring and maintaining medical and hospital establishments and services, and public health and hygiene in the occupied territory; and
- in accordance with Article 59 of the Fourth Geneva Convention, if the civilian population of an occupied territory is inadequately supplied, the occupying Power must agree to relief schemes on behalf of the said population (first paragraph); these schemes consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing and may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross (second paragraph).

48. As confirmed by the three charges of crimes against humanity contained in the arrest warrants issued by Pre-Trial Chamber I of the International Criminal Court, the rules on the protection of human rights also impose obligations relative to the provision of humanitarian assistance in an armed conflict. This refers to the following, in particular:

- the right to life (Article 6 of the ICCPR); in its General Comment No. 36, the Human Rights Committee confirmed that the obligation to protect life implies that States have the obligation to ensure access to goods that are essential for survival and to take “measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health care, electricity and sanitation”⁷⁷;
- the fundamental right of everyone to be free from hunger (Article 11, paragraph 2, of the ICESCR);
- the right of everyone to an adequate standard of living for themselves and their families, including adequate food, clothing and housing (Article 11, paragraph 1, of the ICESCR); and
- the right to water ([derived from] Articles 11 and 12 of the ICESCR).

49. The general obligation of parties to conflict to allow rapid and unhindered humanitarian access is reiterated in several Security Council resolutions, both in general⁷⁸ and with specific reference to the hostilities in the Gaza Strip⁷⁹. For example, in its aforementioned resolution 2730 (2024), the Security Council “[u]rges all parties to armed conflict to allow and facilitate, in a manner consistent with relevant provisions of international humanitarian law, full, safe, rapid and unhindered humanitarian access to all civilians in need”⁸⁰.

⁷⁷ Human Rights Committee, General Comment No. 36, Article 6: right to life, CCPR/C/GC/36, 3 Sept. 2019, p. 6, para. 26 (available at: <https://docs.un.org/en/CCPR/C/GC/36>).

⁷⁸ See, for example, UNSC resolution S/RES/2417 (2018), para. 4.

⁷⁹ See UNSC resolution S/RES/2712 (2023), adopted on 15 Nov. 2023, paras. 2 and 4; UNSC resolution S/RES/2720 (2023), adopted on 22 Dec. 2023, para. 13; UNSC resolution S/RES/2728 (2024), adopted on 25 Mar. 2023, paras. 1 and 2.

⁸⁰ UNSC resolution S/RES/2730 (2024), para. 9 (emphasis in the original). See also UNSC resolution S/RES/1674 (2006), adopted on 28 Apr. 2006, para. 5; UNSC resolution S/RES/1296 (2000), adopted on 19 Apr. 2000, para. 8.

(b) *The obligation to protect humanitarian assistance and personnel*

50. In order to enable the effective fulfilment of the positive obligations aimed at ensuring the provision of humanitarian assistance, Israel is required to protect humanitarian personnel and assets. This includes not only the obligation to ensure their safety and the freedom of movement essential for the exercise of their functions, but also the obligation not to allow the provision of humanitarian assistance to be hindered by third parties, such as members of its own civilian population.

51. This obligation is part of customary international humanitarian law⁸¹. A State's obligation not to allow members of its own civilian population to hinder the distribution of humanitarian assistance is also founded on the obligation to ensure respect for international humanitarian law by its own civilian population, pursuant to common Article 1 of the four Geneva Conventions⁸².

52. The Security Council has repeatedly underscored the obligation to protect humanitarian personnel and installations. As early as 1999, in its resolution 1265 on the protection of civilians in armed conflict, the Security Council emphasized "the need for combatants to ensure the safety, security and freedom of movement of United Nations and associated personnel, as well as personnel of international humanitarian organizations"⁸³.

53. The Security Council's most recent confirmation of the obligation to protect humanitarian personnel was given in the aforementioned resolution 2730, in which it

"1. [c]alls upon all States to respect and protect humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, in accordance with their obligations under international law;

.....

9. [u]rges all parties to armed conflict . . . to promote the safety, security and freedom of movement of humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, and the safety and security of their premises and assets;

.....

12. [e]ncourages Member States and the United Nations system to take appropriate action to address the increasing threat of disinformation campaigns and misinformation that undermine trust in United Nations and humanitarian organizations and put humanitarian personnel and United Nations and associated personnel . . . at risk"⁸⁴.

⁸¹ J.-M. Henckaerts and L. Doswald-Beck, *op. cit.*, p. 105, Rule 31, p. 109, Rule 32, and p. 200, Rule 56.

⁸² J.-M. Henckaerts *et al.*, "Commentary on Article 1", in *Commentary on the First Geneva Convention — Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, Cambridge University Press, 2016, para. 150 (available at: <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-1/commentary/2016?activeTab=>): "The duty to ensure respect . . . extends to the whole of the population over which [the High Contracting Parties] exercise authority, i.e. also to private persons whose conduct is not attributable to the State."

⁸³ UNSC resolution S/RES/1265 (1999), adopted on 17 Sept. 1999, para. 8.

⁸⁴ UNSC resolution S/RES/2730 (2024), paras. 1, 9 and 12. See also UNSC resolution S/RES/2417 (2018), para. 7; UNSC resolution S/RES/2175(2014), adopted on 29 Aug. 2014, para. 1; UNSC resolution S/RES/1296(2000), para. 12.

(c) *The obligation to facilitate the provision of humanitarian assistance*

54. Israel's obligations to ensure the provision of humanitarian assistance and to protect humanitarian personnel and assets are complemented by the positive obligation to facilitate the provision of humanitarian assistance.

55. This obligation is made explicit in Article 59 of the Fourth Geneva Convention, which provides that the occupying Power must not only "agree to relief schemes on behalf of" the civilian population but also "facilitate them by all the means at its disposal"⁸⁵. Article 61, paragraph 2, of the same Convention stipulates that the occupying Power "shall facilitate the rapid distribution" of relief consignments⁸⁶.

56. The obligation to facilitate the rapid and unimpeded passage of humanitarian relief for civilians is a customary norm⁸⁷. It is reiterated in several Security Council resolutions, including resolution 2730 (2024), in which the Security Council urged all parties to armed conflict

"to . . . facilitate, in a manner consistent with relevant provisions of international humanitarian law, full, safe, rapid and unhindered humanitarian access to all civilians in need, and to promote the safety, security and freedom of movement of humanitarian personnel and United Nations and associated personnel, and locally recruited personnel, and the safety and security of their premises and assets"⁸⁸.

57. Since the civilian population of the Occupied Palestinian Territory is inadequately supplied and Israel itself is unlikely to provide the Palestinian population with the humanitarian assistance it needs, it can be concluded, with regard to the specific provisions applicable in the Occupied Palestinian Territory, that Israel has an obligation to agree to the presence and activities of international organizations, third States and humanitarian bodies aimed at ensuring the provision of humanitarian assistance to the Palestinian civilian population. In fact, this is a minimum obligation. As indicated above, Israel is also obliged to respect and protect humanitarian personnel and assets and to adopt measures to facilitate the provision of humanitarian assistance.

58. Having set out Israel's obligations relative to the provision of humanitarian assistance, Belgium will now address its specific obligations in relation to the presence and activities of the United Nations in the Occupied Palestinian Territory.

C. Israel's legal obligations in relation to the presence and activities of the United Nations in the Occupied Palestinian Territory

59. In its resolution 77/232, the General Assembly

⁸⁵ Fourth Geneva Convention, *UNTS*, Vol. 75, p. 326.

⁸⁶ *Ibid.*

⁸⁷ J.-M. Henckaerts and L. Doswald-Beck, *op. cit.*, p. 193, Rule 55. Cf. statement delivered at the 59th meeting of the Seventy-eighth session of the General Assembly, in which Belgium affirmed that "[i]t is imperative that permanent and unhindered humanitarian access to the Gaza Strip be allowed and that *the conditions enabling humanitarian actors to distribute aid on the ground be created*"; A/78/PV.59, p. 22 (emphasis added).

⁸⁸ UNSC resolution S/RES/2730 (2024), para. 9. See also: UNSC resolution S/RES/2175(2014), para. 3; UNSC resolution S/RES/1674(2006), para. 22; UNSC resolution S/RES/2139 (2014) on the conflict in the Syrian Arab Republic, adopted on 22 Feb. 2014, paras. 4, 7 and 8.

“*[e]xpress[ed] grave concern* about plans and measures, including legislation adopted, by Israel to interfere with or obstruct the presence and operations of the United Nations and United Nations entities and organizations, including the United Nations Relief and Works Agency for Palestine Refugees in the Near East, as mandated [by the General Assembly]”⁸⁹.

Moreover, the General Assembly

“*[e]xpress[ed] deep concern* at measures taken by Israel that impede assistance to the Palestinian people, including through measures that affect the presence, activities and immunities of the United Nations, its agencies and bodies, and those of other international organizations, and the representation of third States in the Occupied Palestinian Territory, including East Jerusalem, aimed at providing, in accordance with international law, basic services and humanitarian assistance in the Occupied Palestinian Territory”⁹⁰.

60. From the outset Belgium would emphasize that since the presence and activities concerned relate to the provision of basic services and humanitarian assistance, as is apparent from the preambular paragraphs of General Assembly resolution 77/232 cited above, all of the obligations mentioned in the previous section also apply to the activities, personnel and premises of the United Nations.

61. With regard to the presence and activities of United Nations personnel more specifically, the latter enjoy specific privileges and immunities pursuant to Articles 104 and 105 of the Charter of the United Nations and under the 1946 Convention on the Privileges and Immunities of the United Nations (hereinafter the “1946 Convention”), to which Israel is party⁹¹.

62. The 1946 Convention provides for a series of privileges and immunities enjoyed by the Organization itself (Article II, Sections 2-8, on the privileges and immunities of the property, premises and assets of the United Nations, and Article III, Sections 9-10, on the communications facilities), by its officials (Article V, Sections 17-21) and by experts on missions for the United Nations (Article VI, Sections 22-23). For example, Section 3 of the Convention provides that

“*[t]he premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.*”⁹²

63. Section 17 provides that “[t]he Secretary-General will specify the categories of officials to which the provisions of this Article and Article VII shall apply”. For its part, Section 18 of the 1946 Convention sets out a number of privileges and immunities accorded to United Nations officials; Belgium draws particular attention to Section 18 (*a*), which stipulates that United Nations officials are “immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity”, and Section 18 (*d*), which provides that, together with their spouses and

⁸⁹ UNGA resolution A/RES/77/232, preambular para. 15 (emphasis in the original).

⁹⁰ *Ibid.*, preambular para. 20 (emphasis in the original).

⁹¹ *UNTS*, Vol. 1, p. 15. The list of States parties is available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-1&chapter=3&clang=_en.

⁹² *Ibid.*, p. 18.

relatives dependent on them, they are “immune from immigration restrictions and alien registration”⁹³.

64. Concerning more specifically those acts that are covered by the immunities granted by the 1946 Convention, the Court has observed that

“[i]n the process of determining whether a particular expert on mission is entitled, in the prevailing circumstances, to the immunity provided for in Section 22 (*b*), the Secretary-General of the United Nations has a pivotal role to play. The Secretary-General, as the chief administrative officer of the Organization, has the authority and the responsibility to exercise the necessary protection where required”⁹⁴.

In addition, the Court has found that

“the Secretary-General, as the chief administrative officer of the Organization, has the primary responsibility to safeguard the interests of the Organization; to that end, it is up to him to assess whether its agents acted within the scope of their functions and, where he so concludes, to protect these agents, including experts on mission, by asserting their immunity.”⁹⁵

65. This finding is equally valid for characterizing all action taken by United Nations officials and experts as falling within the scope of their functions.

66. It follows from the above that the legal basis of the privileges and immunities of United Nations bodies and those of their officials and agents is found in the Charter of the United Nations and the 1946 Convention. With regard to the activities of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter “UNRWA”) in the Occupied Palestinian Territory, for example, the exchange of letters constituting a provisional agreement between UNRWA and Israel concerning assistance to Palestine refugees of 14 June 1967⁹⁶ *did not create* the privileges and immunities of UNRWA; its function was simply *to recognize them and ensure their implementation*. It is clear, therefore, that the termination of this agreement by Israel, notified in a letter dated 3 November 2024 from the Director General of the Ministry of Foreign Affairs of Israel addressed to the President of the General Assembly⁹⁷, does not deprive UNRWA of its status of a subsidiary organ of the United Nations, nor does it deprive its staff of their status of United Nations officials. Consequently, the privileges and immunities recognized in the Charter of the United Nations and 1946 Convention remain applicable to them.

67. This is especially so given that an occupying Power has no title of sovereignty over the territory that it occupies. It is essential to bear in mind, therefore, that the reference in the rules of international humanitarian law to the occupying Power’s agreement to humanitarian assistance is explained by the *de facto* control which that Power exercises over the occupied territory and which means that the provision of humanitarian assistance on the ground cannot be effectively undertaken

⁹³ *Ibid.*, p. 24.

⁹⁴ *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, I.C.J. Reports 1999, p. 84, para. 50.

⁹⁵ *Ibid.*, p. 87, para. 60.

⁹⁶ UNTS, Vol. 620, p. 183.

⁹⁷ Letter dated 3 November 2024 from the Director General of the Ministry of Foreign Affairs of Israel addressed to the President of the General Assembly, reproduced in Part II, Section II (F): Other documents without document symbols (documents received from the Secretariat of the United Nations).

without its co-operation. However, that does not mean that the occupying Power is granted the authority to deprive an international organization of its privileges and immunities or to render unlawful the presence of an international organization or other relief actions operating in the occupied territory on the basis of another valid legal title such as an agreement with the State to which the occupied territory belongs and whose title of sovereignty remains intact.

68. It is clear from the foregoing that the United Nations bodies and their personnel operating in the Occupied Palestinian Territory benefit fully from their privileges and immunities. With regard to UNRWA, this was explicitly confirmed by the Secretary-General, when he emphasized that, having been established “by the General Assembly in its resolution 302 (IV) of 8 December 1949”, UNRWA is “an integral part of the United Nations” and thus falls under the scope of the 1946 Convention⁹⁸. The Office of Legal Affairs of the United Nations has noted that “[a]s a subsidiary organ and an integral part of the United Nations, UNRWA enjoys the privileges and immunities that are accorded to the United Nations and its officials under Article 105 of the UN Charter and the General Convention [the ‘1946 Convention’]”⁹⁹. Similarly, in its resolution ES-10/25, adopted on 11 December 2024, the General Assembly

“[c]alls upon Israel to abide by Articles 100, 104 and 105 of the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations in all aspects and to ensure the safety of the personnel of the Agency, the protection of its installations and the safeguarding of the security of its facilities in the Occupied Palestinian Territory, including East Jerusalem, at all times”¹⁰⁰.

69. In addition to the obligation to respect the privileges and immunities of United Nations bodies and personnel, Israel also has the obligation to give them every assistance in carrying out effectively the mandate entrusted to them. This obligation is founded on Article 2, paragraph 5, of the Charter of the United Nations, which provides that “[a]ll Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter”. In its Advisory Opinion on the *Reparation for Injuries Suffered in the Service of the United Nations*, delivered on 11 April 1949, the Court drew attention to the duty of the Member States of the United Nations to give “every assistance”¹⁰¹ in any action the Organization undertakes, stating that:

“[t]he Charter has not been content to make the Organization created by it merely a centre ‘for harmonizing the actions of nations in the attainment of these common ends’ (Article 1, para. 4). It has equipped that centre with organs, and has given it special tasks. It has defined the position of the Members in relation to the Organization by requiring them to give it every assistance in any action undertaken by it (Article 2, para. 5)”¹⁰².

⁹⁸ Identical letters dated 9 December 2024 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, A/79/684-S/2024/892, 10 Dec. 2024, pp. 3 and 5.

⁹⁹ [Note verbale] dated 8 January 2025 from the Office of Legal Affairs of the Secretariat of the United Nations addressed to the Ministry of Foreign Affairs of Israel, reproduced in Part II, Section II (F): Other documents without document symbol (documents received from the Secretariat of the United Nations).

¹⁰⁰ UNGA resolution A/RES/ES-10/25, adopted on 11 Dec. 2024, para. 14.

¹⁰¹ *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, I.C.J. Reports 1949, p. 18[3].

¹⁰² *Ibid.*, p. 178.

70. This obligation has been referred to as one of the rules of relevance in relation to the measures taken by Israel with regard to UNRWA¹⁰³. According to the Office of Legal Affairs of the United Nations, “[a]s a Member of the United Nations, Israel continues to be required, pursuant to Article 2, paragraph 5, of the Charter, to give UNRWA every assistance in any action it takes in accordance with the Charter, including by fulfilling its obligations under the General Convention [the ‘1946 Convention’]”¹⁰⁴.

71. While the obligation under Article 2, paragraph 5, of the Charter is cited as including the obligation to respect the privileges and immunities of the United Nations and its officials — *ad abundantiam*, since Israel is bound to respect those privileges and immunities irrespective of Article 2, paragraph 5, of the Charter — the provision clearly cannot be limited to that without being deprived of any *effet utile*. It is clear from the terms of Article 2, paragraph 5, of the Charter that, pursuant to this provision, Israel is required not only not to hinder actions taken by the United Nations in accordance with the provisions of the Charter, but also to take all measures at its disposal to facilitate those actions. In keeping with what was stated above on the obligations relative to the provision of humanitarian assistance, the obligation to give “every assistance” includes both negative and positive obligations that apply specifically to the activities and personnel of the United Nations.

72. With regard to the termination of the 1967 provisional agreement, in the exchange of letters it is specified that the agreement will “remain in force until replaced or cancelled”¹⁰⁵. The President of the General Assembly was notified of the termination of the agreement in a letter of 3 November 2024 from the Director General of the Ministry of Foreign Affairs of Israel, in which it was stated that the Israeli legislation enacting the decision to terminate the agreement would enter into effect “following a three-month period”¹⁰⁶. In letters dated 18 December 2024 addressed to the President of the General Assembly and the President of the Security Council, the Permanent Representative of Israel to the United Nations stated that, by formal notification issued on 3 November 2024, “[t]his provisional agreement has thus been terminated”¹⁰⁷. This termination is problematic, not least because it constitutes a breach of the obligation to agree to the provision of humanitarian assistance to the Palestinian civilian population and to respect, protect and facilitate that provision. Respecting those obligations is all the more urgent given that UNRWA is “the backbone of United Nations

¹⁰³ Letters dated 9 Dec. 2024, A/79/684-S/2024/892, p. 5:

“I would further like to recall that, as a Member of the United Nations, Israel continues to be required, pursuant to Article 2, paragraph 5, of the Charter of the United Nations, to give UNRWA every assistance in any action it takes in accordance with the relevant decisions of competent principal organs adopted pursuant to the provisions of the Charter, including General Assembly resolution 302 (IV) and subsequent Assembly resolutions renewing the UNRWA mandate.”

¹⁰⁴ [Note verbale] dated 8 January 2025 from the Office of Legal Affairs of the Secretariat of the United Nations addressed to the Ministry of Foreign Affairs of Israel.

¹⁰⁵ *UNTS*, Vol. 620, p. 188.

¹⁰⁶ Letter from the Director General of the Ministry of Foreign Affairs of Israel addressed to the President of the General Assembly, 3 Nov. 2024.

¹⁰⁷ Identical letters dated 18 December 2024 from the Permanent Representative of Israel to the United Nations addressed to the President of the General Assembly and the President of the Security Council, A/79/710-S/2024/940, 31 Dec. 2024, p. 4.

humanitarian relief operations” and, more specifically, “the backbone of all humanitarian response in Gaza”, and that “no organization can replace or substitute the Agency’s capacity and mandate”¹⁰⁸.

IV. CONCLUSION

73. The present request for an advisory opinion will afford the Court an opportunity to address a specific aspect of the situation of the Occupied Palestinian Territory. If the Court decides to accede to the General Assembly’s request — and, as it has argued above, Belgium believes that it should — it will be the third advisory opinion rendered by the Court on the same situation.

74. In its statement to the Security Council delivered on 20 January 2025, Belgium called on “Israel to implement the advisory opinion of the International Court of Justice” given in 2024 and to put an end to the Israeli settlements and presence in the Occupied Palestinian Territory¹⁰⁹. It also underscored that “international law and international humanitarian law cannot be selectively applied, lest they be diluted overall”¹¹⁰.

75. To all intents and purposes, it is to that risk of a selective application of international law and its gradual dilution that the Court will be responding in giving the advisory opinion requested. By clarifying the legal framework of relevance to the specific question put to the Court and Israel’s obligations in that regard, the Court will not only be laying the foundations for strengthening the much needed protection of the civilian population of the Occupied Palestinian Territory and all United Nations and other humanitarian personnel, it will be reaffirming the importance of preserving the international legal order and keeping it intact as the basis for resolving all conflicts.

Brussels, 26 February 2025.

(Signed) Antoine MISONNE,
Agent of the Government,
Legal Adviser, Director-General of Legal Affairs,
Ministry of Foreign Affairs, Foreign Trade
and Development Co-operation.

¹⁰⁸ UNGA resolution A/RES/79/232, preambular paras. 17 and 22. See, in the same sense, the Security Council press statement on the United Nations Relief and Works Agency for Palestine Refugees in [the] Near East (UNRWA), SC/15874, 30 Oct. 2024 (available at: https://press.un.org/en/2024/sc15874.doc.htm?_gl=1*8xmr4h*_ga*MTc3NTE5Njk3Ni4xNjk5OTQxNzEz*_ga_TK9BQL5X7Z*MTczOTkxNTY3Ni42LjEuMTczOTkxNTc4Ny4wLjAuMA); joint statement by Belgium, Ireland, Malta, Norway, Portugal, Slovenia, Spain and Luxembourg, delivered by Luxembourg, S/PV.9607, p. 27; statement by Belgium, UNSC, 9763rd meeting, 29 Oct. 2024, S/PV.9763 (Resumption 1), p. 13 (available at: <https://documents.un.org/doc/undoc/pro/n24/319/01/pdf/n2431901.pdf>).

¹⁰⁹ UNSC, 9841st meeting, 20 Jan. 2025, S/PV.9841 (Resumption 1), p. 21 (available at: [https://docs.un.org/en/S/PV.9841%20\(Resumption%201\)](https://docs.un.org/en/S/PV.9841%20(Resumption%201))).

¹¹⁰ *Ibid.*, p. 21.