

INTERNATIONAL COURT OF JUSTICE

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 an Advisory Opinion)

WRITTEN STATEMENT OF THE KINGDOM OF SPAIN

February 2025

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

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I. INTRODUCTORY REMARKS

I.1. Resolution 79/232 of the General Assembly of the United Nations

1. On 19 December 2024, the General Assembly of the United Nations adopted 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”. Operative paragraph 10 of the resolution contains the following request:

“The General Assembly,

[...]

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:

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?"

2. In said resolution, the General Assembly expresses the view that the most recent developments affecting the Occupied Palestinian Territory “demand consideration by and guidance from the International Court of Justice [...] of certain additional questions to supplement the Court’s advisory opinion of 19 July 2024”.
3. Spain sponsored and voted in favour of the adoption of the aforementioned resolution, which was adopted with 137 States voting in favour.
4. In its Order of 23 December 2024, the Court decides that the United Nations and its Member States, as well as the Observer State of Palestine, are considered likely to be able to furnish information on the question submitted by the General Assembly.

I.2. Context in which resolution 79/232 was adopted

5. On 28 October 2024, the Parliament of Israel (hereinafter, the Knesset) adopted the Law for the Cessation of UNRWA Activities and the Law for the Cessation of UNRWA Activities in the State of Israel. The first of these laws establishes that the invitation to the United Nations Relief and Works Agency for the Palestine Refugees in the Near East (hereinafter, UNRWA) based on an exchange of letters between Israel and UNRWA dated 14 June 1967 to undertake its humanitarian task in the Occupied Palestinian Territory will expire on 7 October 2024. It also bans any contact between the government and UNRWA, and provides for criminal proceedings against UNRWA employees. The second of these laws bans all UNRWA activity in the State of Israel and any Israeli public authority or civil servant from having contact with UNRWA personnel.
6. The aforementioned laws came into force on 30 January 2025. In compliance with these laws, Israel stopped issuing visas to UNRWA personnel and ordered UNRWA premises in East Jerusalem to be vacated.

7. On 30 October 2024 the Member States of the Security Council of the United Nations issued a joint press release which read as follows:

“The Members of the Security Council expressed their grave concern over legislation adopted by the Israeli Knesset. In this regard, they urged the Israeli Government to abide by its international obligations, respect the privileges and immunities of UNRWA and live up its responsibility to allow and facilitate full, rapid, safe and unhindered humanitarian assistance in all its forms into and throughout the entire Gaza strip, including the provision of sorely needed basic services to the civilian population”.

8. The letter dated 28 October 2024 from the Secretary-General addressed to the President of the General Assembly read:

“UNRWA is the principal means by which essential assistance is supplied to Palestine refugees in the Occupied Palestinian Territory. There is currently no realistic alternative to UNRWA that could adequately provide the services and assistance required, whether it be other United Nations entities, other international organizations or any other entity. The cessation of or restrictions on its activities would leave Palestine refugees without the essential assistance that they require.”

9. 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 read:

“Any cessation of UNRWA activities in the Occupied Palestinian Territory would mean that millions of Palestine refugees who have been benefiting from UNRWA services and assistance would no longer be receiving them.

In the event that UNRWA is compelled to cease its activities in the Occupied Palestinian Territory, Israel would be left to ensure that the range

of services and assistance which UNRWA has been providing are provided in accordance with its obligations under international humanitarian law and international human rights law.”

10. Since October 2024, the United Nations Office for the Coordination of Humanitarian Affairs has repeatedly denounced Israel for rejecting the majority of the requests to provide humanitarian assistance in the Gaza Strip.

I.3. Position of Spain and of the European Union

11. The Spanish position regarding this matter is consistent with its attitude at the adoption of resolution 79/232, which Spain sponsored, and with its support to the work of the International Court of Justice and its commitment to international public law. Spain, at the national level but also as a Member of the European Union, reaffirms its commitment to the United Nations and the multilateral and rules-based international order (Statement by the High Representative for Foreign Affairs and Security Policy and Vice-President of the European Commission on behalf of the EU, 31 October 2024).

12. As a member of the European Union, Spain reiterates the position expressed in the successive European Council Conclusions and in statements of the High Representative on behalf of the EU, among other documents.

13. In this regard, the European Council has repeatedly recalled “the importance of ensuring the protection of all civilians at all times in line with international humanitarian law”¹ and the necessity for Israel “[in exercising its right to defend itself] to fully comply with its obligations under international law, including international humanitarian law, in all circumstances”, stressing “the importance of respecting and implementing the orders of the International Court of Justice”²,

¹ European Council conclusions 25 and 27 October 2023, paragraph 15, European Council Conclusions 21 and 22 March 2025, paragraph 24.

² European Council conclusions, 27 June 2024, paragraph 16 and European Council Conclusions, 17 October 2024, paragraphs 18 and 28.

as stated in the European Council Conclusions 25 and 27 October 2023; European Council Conclusions 21 and 22 March 2025, respectively.

14. The European Council and the High Representative on behalf of the EU have also repeatedly expressed the need to ensure the provision of humanitarian assistance and its firm support for the crucial role of the United Nations and UNRWA and, therefore, stated their deep concern over the consequences of the Israeli legislation adopted on 28 October 2024 for UNRWA's capacity to operate its mandate. (European Council conclusions of 17 October 2024 and 19 December 2024; Statements by the High Representative on behalf of the EU of 31 October 2024, 18 January 2025 and 2 February 2025).

II. COMPETENCE OF THE COURT

15. The request by the General Assembly contained in resolution 79/232 was made under Article 96, paragraph 1, of the Charter of the United Nations, pursuant to which the General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

16. The power granted to the Court to give an advisory opinion derived from Article 65 of the Statute is of a discretionary nature. Therefore, it is for the Court to determine whether it should exercise its power of discretion in the present case by deciding or not to provide the requested opinion. The observations below are submitted for consideration in the event that the Court decides to respond to the questions posed by the General Assembly.

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

III.1 General considerations

17. Israel was admitted as a Member State of the United Nations under General Assembly resolution 273(III), of 11 May 1949. This General Assembly resolution contains footnotes referring to resolutions 181(II) and 194(III), taking note of the

declarations and explanations made by the representative of the Government of Israel before the ad hoc Political Committee in respect of the implementation thereof, including in respect of the status of Jerusalem and the situation of refugees.³

18. The obligations directly linked to membership, as regards the present Request for an Advisory Opinion, are in essence the following: i) the obligation to assist the United Nations in carrying out its activities, respecting its independence and autonomy; and ii) the obligation to respect the privileges and immunities of the United Nations. Both obligations must be honoured in good faith and refer to the United Nations as a whole, including all of its bodies, activities, programmes and agencies, including UNRWA.

III.2 The obligation to provide every assistance to the United Nations in any action it takes

III.2.A) Scope and content of the obligation

19. In accordance with Article 2, paragraph 5, of the Charter of the United Nations, “All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter”.
20. As this Court has stated, “[...] the 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).⁴ The obligation to assist the Organization derives from the status of Member State, as well as from the recognition of the legal personality of the Organization, separate from that of

³See also the summary record of the meeting of the Ad Hoc Political Committee on Israel membership in the United Nations and the case for Lebanon’s draft resolution (A/AC.24/SR.45).

⁴*Reparations for injuries suffered in the service of the United Nations, Advisory Opinion, I.C.J. Reports, 1949, pp. 178-179.*

its Member States, and is built on the principle of good faith that inspires the model of the relationship between the two. Its value within the internal system of the Organization is reinforced by the fact that all Member States have the right to participate in the decision-making processes of their bodies, in accordance with procedures that have been established and accepted by the States themselves. In addition, it is in practice a necessary instrument to guarantee the principle of autonomy and independence of the Organization.

21. The duty to assist and cooperate in good faith with the Organization has both a substantive and a procedural dimension, and therefore includes the obligation to cooperate with the Organization in the application of the resolutions and other decisions adopted by its organs and bodies in accordance with the Charter and other applicable rules of the Organization, including the necessary measures for the correct functioning of the Organization's programmes and agencies. This requires Member States to act in good faith with regard to the decisions adopted by the Organization, in such a way that their conduct does not result in the impossibility of executing programmes or activities of the agencies and bodies created to perform the functions of the United Nations. This obligation does not prevent Member States from using their powers within the Organization to modify previous decisions by its bodies, cancel programmes, dissolve agencies or replace one agency with another, but this must always take place in accordance with criteria established in the Charter and in the regulations of the competent bodies.
22. The scope of the obligation to cooperate with the Organization must take into account the principle of autonomy and independence of international organizations derived from Articles 100 and 104 of the Charter of the United Nations. This principle incorporates four elements that deserve to be highlighted:
 1. The recognition that the agencies, funds and programmes of the Organization, as well as their officials and agents, have an autonomous international character and are answerable only to the Organization;
 2. The explicit recognition of the right and obligation of the UN administrative bodies and agents to carry out their functions without requesting or receiving "*instructions from any government or from any other authority external to the Organization*";

3. The consequent obligation of States “*not to seek to influence them in the discharge of their responsibilities*”; and
4. The implicit recognition of the right of the Organization to define the internal procedures necessary to fulfil its mandate and achieve its objectives.

23. The principle of autonomy and independence is the logical consequence of the recognition of the legal personality of the United Nations, distinct from that of its Member States, and of the attribution to it of a set of functions that it must perform in the exercise of the powers defined in the Charter. In virtue of the principle of autonomy and independence of the Organization, it is for the Organization to decide on issues that are within its mandate and to choose the most appropriate means to address them. It is also for the Organization to set up, where appropriate, the agencies, funds and programmes it considers most appropriate to perform the functions of the Organization in relation to said issues. Pre-established procedures, in which all Member States may take part, must be followed when taking decisions on which issues to address, and when creating the most appropriate agencies, funds and programmes. These powers are held by the Organization and may not be replaced by unilateral decisions made by a Member State.

III.2.B) Israel's obligation to cooperate with the United Nations

24. For the purposes of this Request for an Advisory Opinion, the scope of Israel's obligation to cooperate with the United Nations with regard to decisions and measures adopted in the context of the Occupied Palestinian Territory must be determined taking the following into account: i) the inclusion of the question of Palestine among the issues over which the Organization has competence; ii) the competences of the bodies which have adopted measures in this respect; iii) the lawfulness of the measures adopted by said bodies; and iv) the mandate and status of programmes and agencies created by the United Nations to perform said functions.

25. As for the first element, in resolution 79/81, of 3 December 2024 (A/RES/79/81), the General Assembly reaffirmed “the permanent responsibility of the United Nations with regard to the question of Palestine, until it is resolved in all its aspects in accordance with international law and relevant resolutions”. Said responsibility has had far-reaching implications, and we must highlight that, although at first the Organization's specific interest was focused on terminating the Palestine Mandate and creating two States in said territory, the development of events made obvious the need to provide humanitarian assistance to some of the inhabitants of the area, especially Palestine refugees who had been subjected to continuous displacement within the Occupied Palestinian Territory, Israel and other neighbouring countries.

26. In that context, the United Nations Relief for Palestine Refugees programme,⁵ and, subsequently, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA),⁶ were established. Through these instruments, as well as the participation of other United Nations offices, programmes and agencies, the Organization responded to the serious and complex situation in Palestine, implementing the mandate received from the Charter which, as the Court has stated, is charged with “political tasks of an important character, and covering a wide field namely, the maintenance of international peace and security, the development of friendly relations among nations, and the achievement of international co-operation in the solution of problems of an economic, social, cultural or humanitarian character (Article 1)”.⁷ Therefore, there is no doubt that the United Nations mandate includes the adoption of the necessary decisions and measures “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”.

⁵General Assembly resolution 212 (III), of 19 November 1948, on Assistance to Palestine refugees (A/RES/212(III))

⁶General Assembly resolution 302 (IV), of 8 December 1949, on Assistance to Palestine refugees (A/RES/302 (IV))

⁷*Reparations for injuries suffered in the service of the United Nations, Advisory Opinion, I.C. J. Reports 1949, p. 179.*

27. The necessary decisions to implement this mandate have been adopted, in particular, by the General Assembly and by the Security Council, acting within their powers and in accordance with the procedures established by the Charter and the Rules of Procedure, and therefore the mandate's validity and legality cannot be contested. The same can be said regarding the activity of the International Court of Justice, which has addressed the question of Palestine both through litigation and advisory opinions on the activities listed in the paragraph above, having even adopted provisional measures on the matter in *Application of the Convention on the Prevention and punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*.

28. In this context, we must highlight the central role that the United Nations has attributed to UNRWA, created by General Assembly resolution 302 (IV), of 8 December 1949, on Assistance to Palestine refugees, and whose mandate has been continuously renewed until now.⁸ This mandate was established by the General Assembly in accordance with applicable procedure and may only be modified by the General Assembly; no State may unilaterally cancel or modify it. In addition, it should be noted that fulfilment of this mandate must be conducted in accordance with the principle that Organization bodies and officials are strictly international in character, and are therefore only answerable to the Organization. Thus, it is the United Nations' competent bodies who must supervise the functioning of UNRWA and compliance with the principles that inspire its mandate, and said supervisory duties may not be assumed unilaterally by a Member State.⁹

29. In light of the above, Israel's obligation to meet the obligations derived from the Charter in good faith and, especially, to assist the United Nations in performing its functions include, at least, the following: i) the obligation to respect the boundaries of the Occupied Palestinian Territory, which include the West Bank, the Gaza Strip and East Jerusalem, established unequivocally by the General Assembly, the Security Council and the International Court of Justice; ii) the

⁸General Assembly resolution 77/123, of 12 December 2022, on Assistance to Palestine refugees (A/RES/77/123)

⁹See *Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality. Final Report for the United Nations Secretary General*, of 20 April 2024.

obligation not to adopt administrative, executive, legislative or judicial measures that alter the nature of said territories, especially that of East Jerusalem; iii) the obligation to facilitate the exercise of the Palestinian people's right to self-determination; iv) the obligation to cooperate fully with the agencies, funds and programmes of the United Nations that fulfil their mandates in the Occupied Palestinian Territory, abstaining from taking any kind of measures, including legislative measures, that may prevent said bodies and agencies, including UNWRA, from carrying out the tasks entrusted to them by the General Assembly; v) the obligation to abstain from making use of or threatening to make use of force against the premises and officials of United Nations bodies and agencies present in the Occupied Palestinian Territory, including UNWRA; vi) the obligation to allow the United Nations and other international organizations and neutral humanitarian bodies access to the Occupied Palestinian Territory for the purpose of providing humanitarian assistance in said territory; vii) the obligation to allow access and free movement within the Occupied Palestinian Territory to United Nations agency officials, including UNRWA officials, and to officials of other international organizations and neutral humanitarian bodies who provide assistance to the Palestinian civilian population in accordance with the Resolutions adopted by the General Assembly and the Security Council; and viii) the obligation to adopt the necessary measures to comply with the provisional measures adopted by the International Court of Justice in the case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, whose binding nature has been repeatedly stated by said Court.¹⁰

30. Spain considers that the determination of the obligations of Israel, in light of the Request for an Advisory Opinion made by the General Assembly to the International Court of Justice, requires that special attention be paid to the obligation to assist and cooperate with UNRWA, which plays an irreplaceable and crucial role in the provision of assistance to the Palestinian population in the Occupied Palestinian Territory, while also contributing to stability in the region.

¹⁰ *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. 85; Order of 24 March 2024, para. 48; Order of 24 May 2024, para. 54.

Said assistance and cooperation must be carried out in the framework of decisions adopted by competent United Nations bodies and may neither be cancelled nor limited by a unilateral decision.

III.3. The obligation to respect the privileges and immunities of the Organization

31. The matter of the privileges and immunities of the United Nations, its bodies, officials and agents is expressly included in the General Assembly's Request for an Advisory Opinion, which mentions it explicitly in paragraphs eight and ten of resolution 79/232. Said privileges and immunities are explicitly mentioned in resolution 302 (IV), creating UNRWA.¹¹ Moreover, the letter dated 28 October 2024 from the Secretary-General addressed to the General Assembly underscores that “it can readily be appreciated that a situation may exist in which a difference has arisen between the United Nations and the State of Israel regarding, among other things, the interpretation or application of the Convention on the Privileges and Immunities of the United Nations, to which Israel is a party.” Therefore, the obligations of Israel in this field must be examined separately.

32. Privileges and immunities are an essential element for ensuring that an international organization can carry out its functions independently and effectively. A system of privileges and immunities constitutes one of the legal bases for ensuring the autonomy and independence of the organisation and, therefore, for guaranteeing that the legal personality recognized to an international organization is real and effective. As this Court has stated, the recognition of privileges and immunities is one of the elements that defines the model of the relationship between the United Nations and its Member States.¹²

33. The granting of privileges and immunities to the United Nations is expressly provided for in Article 105 of the Charter of the United Nations, which has been developed by the Convention on the Privileges and Immunities of the United

¹¹General Assembly resolution 302 (IV), of 8 December 1949, on Assistance to Palestine refugees (A/RES/302(IV)), operative paragraph 17.

¹²*Reparations for injuries suffered in the service of the United Nations, Advisory Opinion, I.C. J. Reports 1949, p. 179.*

Nations, adopted by the General Assembly of the United Nations on 13 February 1946, to which Israel acceded on 21 September 1949. As the International Court of Justice has stated, the Convention of 1946 “creates rights and duties between each of the signatories and the Organization”.¹³ Although the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly of the United Nations on 21 November 1947, could also be considered a development of Article 105, Israel is not a State party to it.

34. The Convention on the Privileges and Immunities of the United Nations of 1946 regulates privileges and immunities of the United Nations in a broad, comprehensive manner. It includes both the Organization itself, its officials, representatives of Member States, experts on missions and other experts who make up the mission at the United Nations, in addition to regulating certain powers relating to communication and the system applicable to United Nations laissez-passer (Articles II to VII). For the purposes of this Request for an Advisory Opinion, Spain understands that the relevant privileges and immunities must be grouped into three categories: i) privileges and immunities relating to Organization premises, property, assets and funds; ii) privileges and immunities related to Organization archives and documents; and iii) privileges and immunities relating to Organization officials and experts on missions.
35. As regards the first category, United Nations has a right to use premises, property, assets and funds necessary to carry out its functions. These privileges and immunities are especially applicable to UNRWA and other agencies' premises and facilities in the Occupied Palestinian Territory, including East Jerusalem, and the territory of Israel, as well as to United Nations assets and funds in said territories.
36. Moreover, archives and documents belonging to or held by the United Nations “shall be inviolable wherever located” (Article II, Section 4).
37. The privileges and immunities of staff at the service of the United Nations, (including Organization officials as well as all other persons performing a mission

¹³Ibid., p. 179.

for the Organization, covered by the generic term experts on missions) are recognized to preserve their independence in performing a mission for the Organization¹⁴ and must be respected by all States that are party to the Convention, including the States of which they are nationals or on the territory of which they reside.¹⁵

38. In its condition as a Member State of the United Nations and a State party to the Convention on the Privileges and Immunities of the United Nations of 1946, for the purposes of the General Assembly's Request for an Advisory Opinion, it can be concluded that Israel is under the obligation, in particular, to respect the above-mentioned privileges and immunities with regard to the presence of United Nations agencies, funds and programmes, especially UNRWA, both in the Occupied Palestinian Territory and in Israel.

III.4 Obligations derived from General Assembly resolution 302 (IV), of 8 December 1949, on Assistance to Palestine refugees and from the exchange of letters between Israel and UNRWA

39. General Assembly resolution 302 (IV), of 8 December 1949, on assistance to Palestine refugees, established the United Nations Relief and Works Agency for Palestine Refugees in the Near East: (a) "To carry out in collaboration with local governments the direct relief and works programmes as recommended by the Economic Survey Mission".

40. The exchange of letters constituting a provisional agreement between UNRWA and Israel concerning Assistance to Palestine Refugees took place on 14 June 1967, with Israel agreeing in principle:

(a) To ensure the protection and security of the personnel, installations and property of UNRWA;

¹⁴ *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion. I.C.J., Reports 1989*, p. 187, para. 51. See also *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. 62, para. 43.

¹⁵ *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, para 52.

- (b) To permit the free movement of UNRWA vehicles into, within and out of Israel and the areas in question;
- (c) To permit the international staff of the Agency to move in, out and within Israel and the areas in question; they will be provided with identity documents and any other passes which might be required;
- (d) To permit the local staff of the Agency to move within the areas in question under arrangements made or to be made with the military authorities;
- (e) To provide radio, telecommunications and landing facilities;
- (...)
- (g) To recognize that the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, to which Israel is a party, shall govern the relations between the Government and UNRWA in all that concerns UNRWA's functions.

41. The Law for the Cessation of UNRWA Activities adopted by the Knesset on 28 October 2024 unilaterally provided for the expiration on 7 October 2024 of the agreement constituted in the exchange of letters between Israel and UNRWA of 14 June 1967 (having entered into effect on 30 January 2025). Said unilateral termination of an international agreement contravenes general international law applicable to international treaties.

IV. ISRAEL'S OBLIGATIONS AS AN OCCUPYING POWER

IV.1 The legal status of the occupation

42. In this regard, in the Advisory Opinion of 19 July 2024, the Court affirms that “[b]y virtue of its status as an occupying Power, a State assumes a set of powers and duties with respect to the territory over which it exercises effective control. In this context, the occupying Power bears a duty to administer the territory for the benefit of the local population. [...] [T]he nature and scope of these powers and duties are always premised on the same assumption: that occupation is a temporary situation to respond to military necessity, and it cannot transfer title of sovereignty to the occupying Power.” (para. 105). It then goes on to make

reference to a number of international law provisions that “emphasize that occupation is conceived of as a temporary state of affairs, during which the exercise by the occupying Power of authority over foreign territory is tolerated for the benefit of the local population” (para. 106).

43. The powers and obligations of Israel over the Occupied Palestinian Territory are governed, firstly, by international humanitarian law, comprising the Convention respecting the Laws and Customs of War on Land (Hague Convention IV of 1907) and its annex: Regulations concerning the Laws and Customs of War on Land; and by the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, ratified by Israel on 6 July 1951.
44. Although Israel is not a party to the Hague Convention IV of 1907, the International Court of Justice considers that “the provisions of the Hague Regulations have become part of customary law, as is in fact recognized by all the participants in the proceedings before the Court” (Advisory Opinion of 9 July 2004, para. 89).
45. Israel is party to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Geneva Convention (IV)) and the applicability of this Convention to the Occupied Palestinian Territory has been recognized in numerous General Assembly resolutions and Security Council resolutions (e.g. resolution 2334 (2016) of 23 December 2016), and by the International Court of Justice (Advisory Opinions of 9 July 2004 and 19 July 2024).
46. Furthermore, Israel, as an occupying Power, is bound by international human rights law and, in particular, by the International Covenant on Civil and Political Rights of 19 December 1966, the International Covenant on Economic, Social and Cultural Rights of 16 December 1966 and the Convention on the Rights of the Child of 20 November 1989. These three instruments were ratified by Israel on 3 October 1991.

47. International human rights law does not cease to be applicable in respect of acts done by a State party in the exercise of its jurisdiction outside its own territory, nor in the case of armed conflict or occupation. The applicability of international human rights law to the Occupied Palestinian Territory has been established by the International Court of Justice in its Advisory Opinions of 9 July 2004 (paras 104-113) and of 19 July 2024 (paras 97-101).

48. Moreover, the illegality of the occupation does not release the occupying Power from its obligations and responsibilities under international law, particularly the law of occupation, towards the Palestinian population and towards other States (Advisory Opinion of 19 July 2024, para. 264):

“The Court emphasizes that the conclusion that Israel’s continued presence in the Occupied Palestinian Territory is illegal does not release it from its obligations and responsibilities under international law, particularly the law of occupation, towards the Palestinian population and towards other States in respect of the exercise of its powers in relation to the territory until such time as its presence is brought to an end. It is the effective control of a territory, regardless of its legal status under international law, which determines the basis of the responsibility of a State for its acts affecting the population of the territory or other States (see Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 54, para. 118)”.

IV.2. Obligations deriving from international humanitarian law

49. The following obligations for Israel derive from Articles 50, 55, 56, 59 and 60 of the Geneva Convention (IV):

IV.2A) Obligation to ensure and facilitate the fulfilment of the local population’s basic needs

50. Israel has the obligation to ensure and facilitate the fulfilment of the local civilian population’s basic needs, including to:

- “facilitate the proper working of all institutions devoted to the care and education of children” (Article 50);
- ensure “the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate” (Article 55);
- ensure and maintain, “with the co-operation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics” (Article 56);
- “agree to relief schemes on behalf of the said population”, and “facilitate them by all the means at its disposal” (Article 59)

51. These obligations have been confirmed by the Court in the Order of 26 January 2024 indicating provisional measures in the case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip*:

“The Court further considers that Israel must 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” (para. 80).

IV.2.B) Obligation to accept or allow the provision of humanitarian assistance for the civilian population

52. If it fails to fulfil the aforementioned obligations, Israel has the obligation to accept humanitarian assistance for the civilian population. This obligation derives from the interpretation of Article 59 of the Geneva Convention (IV), which provides that “[i]f the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal”.

53. This obligation is recalled by the Court in the Order of 26 January 2024 indicating provisional measures in the case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (para. 80 and 86 (4), in which it affirms that, “Israel must take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance”.

54. The fact that humanitarian bodies provide services and assistance to Palestine refugees does not release Israel from its obligation to guarantee that the necessary services and assistance are provided. This is reflected in Article 60 of the Geneva Convention (IV), which provides that “[r]elief consignments shall in no way relieve the Occupying Power of any of its responsibilities under Articles 55, 56 and 59”.

IV.2.C) Obligation to cooperate with the United Nations, international organizations, States and local authorities

55. The obligation to cooperate for the provision of humanitarian assistance is well established in general international law, as reflected in Article 59 of the Geneva Convention (IV) and in Article 7 of the *Draft articles on the protection of persons in the event of disasters*, adopted on second reading by the International Law Commission in 2016, pursuant to which:

“States shall, as appropriate, cooperate among themselves, with the United Nations, with the components of the Red Cross and Red Crescent Movement, and with other assisting actors.”

56. The International Court of Justice has reaffirmed this obligation in the specific case of Israel in the Order of 28 March 2024 indicating provisional measures in the case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip*, indicating that Israel shall:

“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” (para. 51 (2) (a).

57. The fulfilment of the obligation to facilitate the provision of humanitarian assistance may be subject to limitations for reasons of security. In this regard, it is true that, as an occupying Power, Israel could, for reasons of security, limit access to some of the organizations or States offering cooperation. However, this right of objection must be interpreted in the light of the principles of proportionality and humanity.

IV.3 Obligations deriving from international human rights law

58. As the Court has observed, “the protection offered by human rights conventions does not cease in case of armed conflict or of occupation.¹⁶ [...] Some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may concern both these branches of international law [...]”. In this regard, the obligations to ensure and facilitate fulfilment of the basic needs of the Palestinian population are strengthened by the norms of international human rights law applicable to Israel.

59. In its Advisory Opinions of 2004 and 2024,¹⁷ the Court reiterated Israel's obligation to guarantee, among others, the right to health, education and an adequate standard of living, as provided for in both the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. In accordance with this obligation, in the light of Article 2 of the aforementioned Covenant and Article 4 of the aforementioned Convention, if Israel does not have (or does not want to provide) the resources necessary to

¹⁶*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), p. 178, para. 106, and Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, I.C.J. Reports 2024, para. 99.*

¹⁷*I.C.J. Reports 2004 (I), pp. 191-192, para. 134, I.C.J. Reports 2024, para. 206*

guarantee these rights, not only can it not oppose the presence and activities of the United Nations, other international organizations and third States in and in relation to the Occupied Palestinian Territory, but it must facilitate them so that these rights can be guaranteed. The same can be said with regard to the guarantee of all the rights contained in all the human rights treaties to which Israel is a State party.

60. To these obligations must be added those deriving from the Convention on the Prevention and Punishment of the Crime of Genocide. In the Order of 28 March 2024 indicating provisional measures in the case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip*, the Court affirms that:

“In conformity with its obligations under the Genocide Convention, and in view of the worsening conditions of life faced by Palestinians in Gaza, in particular the spread of famine and starvation, Israel shall: (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; and (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 Genocide Convention, including by preventing, through any action, the delivery of urgently needed humanitarian assistance.” (para. 45)

IV.4 Obligation to respect the right of the Palestinian people to self-determination

61. The Court has consistently affirmed that the Palestinian people have the right to self-determination. In the words of the Court, the right of peoples to self-determination is “one of the essential principles of contemporary international law” (*East Timor (Portugal v. Australia)*, *Judgment*, *I.C.J. Reports 1995*, p. 102, para. 29). Indeed, the Court has recognized that the obligation to respect the right

to self-determination is owed *erga omnes* and that all States can be held to have a legal interest in protecting said right (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 199, para. 155; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 139, para. 180).

62. The centrality of the right to self-determination in international law is also reflected in its inclusion in Article 1 common to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The International Court of Justice has referred to the right to self-determination as “a fundamental human right” (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 131, para. 144). Moreover, it considers that, “in cases of foreign occupation such as the present case, the right to self-determination constitutes a peremptory norm of international law.”¹⁸

63. The right of self-determination of peoples has a broad scope of application¹⁹ and, in the words of the Court, “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.”²⁰ In this regard, the Court has explicitly stated that:

“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 [...]”²¹

64. Furthermore, the Court has expressed that:

¹⁸*Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, I.C.J. Reports 2024*, para. 232 and 233 (added emphasis).

¹⁹*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 131, para. 144

²⁰*Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, I.C.J. Reports 2024*, para. 241.

²¹*Ibidem*

“In addition to the injury inflicted on individual persons, the violation of Palestinians’ rights — including the right to liberty and security of person, and the freedom of movement — has repercussions on the Palestinian people as a whole, frustrating its economic, social and cultural development.”²²

²²Ibid, para. 24

V. CONCLUSIONS

On Israel's obligations as a Member State of the United Nations

65. Article 2 (5) of the Charter of the United Nations provides that “[a]ll Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter [...]”.
66. In resolution 79/81, of 3 December 2024 (A/RES/79/81), the General Assembly reaffirmed the “permanent responsibility of the United Nations with regard to the question of Palestine”. It was in the context of said responsibility that UNRWA was created in 1949, with a clearly humanitarian and development-related mandate which has been consistently renewed until the present day, and which cannot be unilaterally amended or cancelled by a Member State.
67. UNRWA is being prevented from fulfilling its mandate by the laws adopted by the Knesset on 28 October 2024, which entered into force on 30 January 2025, and in particular by the following content thereof: i) the decision to unilaterally terminate the invitation to UNRWA based on “the exchange of letters between Israel and UNRWA from 14 June 1967”; ii) the stipulation that “[n]o State authority, including bodies and individuals performing public duties according to law, shall have any contact with UNRWA or any of its representatives”; and iii) the decision that “UNRWA (United Nations Relief and Works Agency) shall not operate any representation, provide any services, or carry out any activities, directly or indirectly, within the sovereign territory of the State of Israel”, which Israel considers to include East Jerusalem. These acts (and the laws on which they are based) must be considered incompatible with the obligation of Israel to provide assistance to the Agency in the performance of its functions and the fulfilment of its mandate in Palestine.
68. Moreover, Israel, as a Member State of the United Nations and as a State party to the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, is obliged to respect the privileges and immunities of the United Nations as regards the presence of the agencies, funds and programmes of the

United Nations, in particular UNRWA, both in the Occupied Palestinian Territory and in Israel.

69. By virtue of this obligation, Israel must abstain from carrying out any executive, administrative, judicial or legislative action that curtails, prevents or impedes the effective enjoyment of the privileges and immunities accorded to the United Nations and its staff. Certain actions attributable to Israel may be in conflict with said privileges and immunities, namely: i) the subjection of UNRWA personnel seconded to or hired at the East Jerusalem offices to a residence authorization and permit scheme; ii) the forced closure of UNRWA premises in East Jerusalem; and iii) the assertion in Article 3 of the Law for the Cessation of UNRWA Activities that “[t]he provisions of this law shall not negate any criminal proceedings against UNRWA employees, including proceedings related to the events of 7 October 2023, or the Iron Swords War, or any other criminal proceedings under the provisions of the Counter-Terrorism Law, 2016, or the exercise of powers against them in such proceedings”.

On the obligations of Israel as an occupying Power

70. Israel has occupied the Palestinian Territories since 1967. In the words of the Court, “[b]y virtue of its status as an occupying Power, a State assumes a set of powers and duties with respect to the territory over which it exercises effective control.” The illegality of the occupation does not release Israel from its obligations and responsibilities under international law towards the Palestinian population and towards other States.
71. The powers and obligations of Israel with respect to the Occupied Palestinian Territory are governed by international humanitarian law.
72. Articles 50, 55, 56, 59 and 60 of the Geneva Convention (IV) lead, firstly, to the obligation for Israel to ensure and facilitate the fulfilment of the basic needs of the local civilian population, which has been confirmed by the Court in the Order of 26 January 2024 indicating provisional measures in the case *Application of the*

Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip.

73. Secondly, and in the event that it fails to fulfil the aforementioned obligations, Israel has the obligation to accept humanitarian assistance for the civilian population (Article 59 of the Geneva Convention (IV) of 1949), also recalled in the aforementioned of 26 January 2024 indicating provisional measures.
74. Thirdly, Israel has the obligation to cooperate for the provision of humanitarian assistance. This obligation, provided for in Article 59 of the Geneva Convention (IV), is well established in general international law and was reaffirmed by the Court in the specific case of Israel in the Order of 26 January 2024 indicating provisional measures. Fulfilment of the aforementioned obligations to facilitate humanitarian assistance may indeed be subject to limitations for reasons of security; however, this right of objection must be interpreted in the light of the principles of proportionality and humanity. Moreover, as asserted by the Court, such reasons do not exist in the present case.
75. Fourthly, the laws adopted by the Knesset in 2024 constitute an arbitrary withholding of consent to humanitarian organizations, and in particular UNRWA, to provide humanitarian assistance. Said withholding of consent on the part of Israel contravenes international humanitarian law applicable to all occupying Powers.
76. Fifthly, Israel, as an occupying Power, is obliged by international human rights law and, in particular, by the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, all of which have been ratified by Israel. The applicability of these Conventions to the Occupied Palestinian Territory has been established by the International Court of Justice in its Advisory Opinions of 2004 and 2024, which also affirm the right of the people of Palestine to self-determination.
77. In view of the above, it can be concluded that the prevention of the presence and activities of the United Nations, other international organizations and third States

in and in relation to the Occupied Palestinian Territory is a violation of both the norms of international human rights law applicable to Israel and of the right to self-determination.

Embassy of Spain to the Kingdom of the Netherlands.

Lange Voorhout, 50, 2514 EG, the Hague

Respectfully,

A handwritten signature in blue ink, consisting of a stylized 'C' followed by a series of loops and a final horizontal stroke.

Consuelo Femenía Guardiola,

Ambassador of Spain in the Netherlands