

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 Advisory Opinion)

WRITTEN STATEMENT OF HUNGARY

February 2025

## INTRODUCTION

1. On 19 December 2024, the United Nations General Assembly adopted Resolution 79/232, whereby, pursuant to Article 65 of the Statute of the Court, it requested the Court to urgently render an advisory opinion on '*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*'. This Written Statement is filed pursuant to the Court's Order of 23 December 2024 concerning the request for an advisory opinion, and in accordance with Article 66 (2) of the Statute of the International Court of Justice.
2. The present statement, following a short introduction, addresses the main issues that Hungary considers important to highlight with respect to the case '*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*' before the Court. The first Chapter will discuss issues related to the jurisdiction of the Court, arguing that the Court should use its discretionary power to decline to give an opinion based on the fact that the questions relate to a bilateral dispute, and there is a lack of consent by the parties for the submission of the dispute to the Court. The second Chapter will give an introduction to the established legal framework regarding the agreements on privileges and immunities of United Nations with a particular focus on the United Nations Relief and Works Agency for Palestine Refugees (UNRWA). The last Chapter will provide the position of Hungary with regards to the context of the present advisory procedure in which we conclude that such as an advisory opinion by the Court would only lead to unnecessary further disputes and hindrance of humanitarian efforts.

## GENERAL CONSIDERATIONS

### 1. Role of the Court in Maintaining the Rules-based International Order

#### a) General Remarks

3. The International Court of Justice is a unique judicial forum. During its 80 years long history, the Court has contributed significantly to the strengthening of the rules-based international order deciding contentious cases brought before it by states. The increasing number of States submitting their disputes to the Court's adjudication reflects their confidence both in the Court's mandate and in the quality of its work.
4. It is of great importance to maintain the confidence in the work of the Court and to abstain from proceedings that erode that confidence and which establish a situation where the Court becomes an actor in an ongoing conflict.

#### b) Jurisdiction and Admissibility in Advisory Cases

5. While most of the workload of the Court stems from deciding contentious cases, Article 96 of the Charter of the United Nations establishes the possibility for certain organs of the United Nations to initiate advisory proceedings. In accordance with Article 96, paragraph 1, of the Charter of the United Nations, “[t]he General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question”.
6. In case the request refers to the decision of a legal question, the Court can establish its jurisdiction and elaborate on the merits of the case. Although the Court's decisions on the merits in several cases have contributed to the formation of international law, filled gaps, and provided valuable interpretations of international law, we are of the view that the mere formal admissibility of a request should not automatically result in a determination of admissibility. Such a determination must be made only after due consideration of the discretionary power conferred upon the Court under Article 65 of its Statute.

7. According to paragraph 1 of Article 65 of the Statute, “[t]he Court may give an advisory opinion on any legal question”. The Court has reflected on the interpretation of this Article on multiple occasions. The Court was unanimously convinced that Article 65 “means that the Court has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met” (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, para. 44).
8. The Court has to take into consideration several aspects when elaborating on the question of whether to use its discretionary power to refuse to give an opinion. As regards the limits of the discretionary power, the Court’s jurisprudence is consistent in this regard: “only *“compelling reasons”* should lead the Court to refuse its opinion” (Legal Consequences of the Construction of a Wall, para. 44).
9. Finding the balance among contradicting principles is core to maintaining the judicial integrity of the Court. According to Article 92 of the United Nations Charter and Article 1 of the Statute, the Court is the “*principal judicial organ of the United Nations*”, thus it has certain responsibilities with respect to requests dealing with legal issues that affect the United Nations or its Member States. However, the principle of consent, according to which a “*State is not obliged to allow its disputes to be submitted to judicial settlement without its consent*” (Western Sahara, Advisory Opinion, I.C.J. Reports 1975, para. 33) is equally important to respect.
10. In this context, it is important to recall, that according to the Court „there would be a compelling reason for it to decline to give an advisory opinion when such a reply “*would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent*” (Western Sahara, Advisory Opinion, I.C.J. Reports 1975, para. 33) (as quoted in the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019, para. 85).
11. Therefore, in every case serious consideration should be given to whether the issues underlying the questions addressed to the Court relate to a bilateral dispute, in which case the consent of the parties to the dispute is a necessary requisite for the Court to proceed

with the case, as it has also been argued by Judge Tomka in his Declaration (Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019, para. 6).

**c) Compelling Reasons why the Court should Reject to Give its Opinion**

12. While the Court has previously interpreted “compelling reasons” in a restrictive manner, taking into account the particularities of the present case before the Court, we are of the view that several “compelling reasons” should be taken into account, that individually, as well as cumulatively, may compel the Court to refrain from issuing an advisory opinion to the present questions.
13. *First*, the Request and question put to the Court touches upon issues which the Court has to a great extent already addresses in earlier Advisory Opinions relating specifically to Israel. Most recently in the “*Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*” Advisory Opinion given on 19 July 2024, that is merely 4 months before the request of the present Advisory Opinion. The Court has given its opinion with regards to the applicable rules and principles of international law, and expanded on its understanding of Israel’s specific obligations.
14. *Second*, a contentious proceeding is currently pending before the Court, namely, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) also touches upon the specific obligations of Israel. Giving the advisory opinion might essentially pre-judge elements relevant to the case brought against Israel by South Africa, thus gravely undermining the integrity of the Court’s judicial function.
15. We recall the existing precedent for rejecting a request for an advisory opinion based on compelling reasons. The predecessor of the Court, the Permanent Court of International Justice declined to issue an advisory opinion on the status of Eastern Carelia, a decision that gave rise to the “Eastern Carelia principle”. This decision – and principle - has never been overruled. We note that the Court, in its subsequent decisions, has always taken due care to demonstrate the factual differences from the Eastern Carelia case when considering

the exercise of its jurisdiction. This must lead us to the conclusion that the legal criteria set out in that decision remain authoritative. In the decision not to render an advisory opinion it was stated “the question put to [the PCIJ] was directly related to the main point of the dispute actually pending between two States, so that answering the question would be substantially equivalent to deciding the dispute between the parties”. The situation in the present case is strikingly similar, as any advisory opinion rendered will unquestionably influence (and thus might potentially pre-judge) determinations to be made in the parallel contentious proceeding.

16. *Third*, the question submitted to the Court has been formulated in a manner that is blatantly prejudicial and one-sided. The question posed by the Request is indeed so targeted at Israel, that it proceeds on the assumption that Israel has failed to meet its obligations under international law, without any regard to Israel’s legitimate security interests and concerns, or to the obligations of the UN and other third parties in relation to the very subject-matter of the question. Replying to the question would inherently entail an affirmation of the statements in the Request. Advisory proceedings were designed as an instrument to contribute to, and facilitate the work of, the requesting organs. These proceedings are not an appropriate forum for making the kinds of determinations that are implied in the question specifically with regards to Israel. The issue at hand is of a general nature and thus rendering an advisory opinion based on a pre-judging Request and question targeting one UN Member State should be declined.
17. *Fourth*, the Request would require the Court to undertake significant factual investigations and make factual findings on disputed and dynamic matters, which cannot properly be pursued in the framework of advisory proceedings. However the advisory proceedings of the Court are inherently ill-suited for fact-specific analysis. Disregarding such analysis may further hinder the legitimacy of the Court, thus the limitations of advisory proceedings should be duly taken into account by the Court when deciding to exercise its jurisdiction.
18. Therefore, we conclude that the provision of an advisory opinion in the present case would be contrary to the common interpretation of “*compelling reasons*” and therefore could have a negative impact on the perceived legitimacy of the Court.

## **2. Legal framework of United Nations presence in member states and specificities of UNRWA**

19. Without prejudice to our firm position that the Court should decline to give the advisory opinion below observations are provided on the privileges and immunities of United Nations with a particular focus on the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).
20. Members of the United Nations have assumed voluntarily obligations to enable the UN, its specialized agencies, funds and subsidiary bodies to fulfil its principal purpose, as enshrined in the Charter of the United Nations—namely, the maintenance of international peace and security and the peaceful settlement of disputes. The obligations enabling the fulfilment of these peaceful purposes are, as such, neither absolute nor unqualified.
21. The obligations that Members of the UN have taken upon themselves are in the Charter of the United Nations as well as the Convention on Privileges and Immunities of the United Nations, which was adopted by the General Assembly of the United Nations on 13 February 1946.
22. Article 1 of the Charter states clearly the purposes of the Organization and the introductory sentence of Article 2 of the Charter makes a clear link to the first article. In it the introductory sentence of Article 2 a distinction is made clearly indicating that obligations arising from Article 1 and 2 are also prescribed for the Organization itself.
23. The obligations arising from Article 2 thus have to be interpreted consistently taking into account the actions of the UN, its specialized agencies and subsidiary bodies as well. Thus when paragraph 5 of Article of the Charter stipulates that “[a]ll Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter ...” it is clear that a limitation to this obligation is included. The Organization is obliged to take actions in accordance with the Charter, thus if actions of the Organization were to be found contrary to the Charter the Member in question cannot be expected to give the assistance required by the said Article.

24. Article 105 of the Charter provides that the “*The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes*”. This provision is also clearly linked to Article 1 and 2 of the Charter as the fulfilment of the purposes of the Organisation must be in accordance with the Charter. Article 105 also sets a clear limitation in terms of the extent of the privileges and immunities making it clear that there is a functional approach to be applied.
25. The obligation of impartiality in the execution of the functions of the Organization can be derived from Articles 100 and 101 of the Charter of the United Nations. This obligation is further codified in the Staff Regulations and Rules of the United Nations, including its core values. Moreover, the duty to act impartially constitutes a fundamental principle of the status of international civil servants.
26. Members of the UN have concluded the Convention on Privileges and Immunities of the United Nations, which was adopted by the General Assembly of the United Nations on 13 February 1946. By this instrument the States Parties have accorded certain privileges and immunities to the UN. It must be noted however that the Convention has a specific functional approach as laid down in the preamble and Articles IV and V of the Convention. As is customary in international law privileges and immunities are intended to enable the efficient functioning of actors of international law in this case the United Nations.
27. In line with the important principle that the purpose of privileges and immunities is to enable the work of the Organization the Convention further stipulates in Article V Section 20 that the UN Secretary-General shall have both “the right and the duty to waive the immunity of any official” where that immunity would impede the course of justice, and that “[t]he United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities [of its officials]”.
28. The joint interpretation of Articles 1, 2, 100, 105 of the Charter, the 1946 Convention and the Staff Regulations and Staff Rules, including provisional Staff Rules, of the United Nations are necessary. It can thus be concluded that obligations exist not only for the Member States, but the Organization as well in acting in accordance with the purposes of



the Charter and this creates a limitation to the privileges and immunities provided to the Organization in carrying out its functions. The above mentioned articles were specifically created to enable the work of the Organization and with the aim of protecting the UN when it is acting in accordance with the Charter respecting the peaceful purposes and the principles of neutrality and impartiality.

29. As Resolution 79/232 is specifically focused on UNRWA we submit the following observations to be taken into account by the Court with regards to this subsidiary body established by the UN General Assembly. UNRWA was established under General Assembly Resolution 302 (IV) in 1949, which did not specifically outline UNRWA's immunity and privileges. Rather, it simply called on states to grant UNRWA the same privileges and immunities as its predecessor, the United Nations Relief for Palestine Refugees. This clearly means that in order to be able to implement the requirements of the Charter and the 1946 Convention additional agreements with the host states needed to be concluded with regards to UNRWA's privileges and immunities. This has in fact become the practice with regards to other host states of UNRWA (*E.g. Agreement between the Government of the Hashemite Kingdom of Jordan And the United Nations Relief and Works Agency for Palestine Refugees in the Near East of 14 March 1951*).
30. With regard to Israel an Exchange of letters was conducted on 14 June 1967 between Israel and UNRWA, the so called Comay-Michelmores Agreement. The exchange of letters specifically states the provisional nature of the Agreement. It also states that '*the Israel Government will facilitate the task of UNRWA to the best of its ability, subject only to regulations or arrangements which may be necessitated by considerations of military security*.'" It has to be thus concluded that the Agreement took into account the legitimate security concerns of Israel. It is also important to note that the Exchange of letters makes a specific reference to the 1946 Convention.
31. UNRWA's failure to maintain neutrality and the involvement of UNRWA staff members in acts of terror undermine its status as a legitimate aid organization UNRWA's ties to terrorism has become an established fact, particularly following revelations regarding the involvement of UNRWA employees in the 7 October 2023 attacks. Following allegations that at least 19 UNRWA employees participated in the October 7 attacks the United Nations itself also responded, thus acknowledging the necessity to react to the presented evidence of this involvement.

32. An Independent Review Group was set up, which delivered its Report o 20 April 2024 (the “Colonna Report”). This report confirms the longstanding views expressed by Israel that UNRWA has been systemically breaching its duty of neutrality. In light of the extent of the lack of neutrality the Independent Review Group issued fifty recommendations addressing “eight critical areas requiring immediate improvement”. The UN Secretary-General also activated a separate investigation by the UN’s Office of Internal Oversight Services (“OIOS”) in relation to 19 UNRWA staff members who were alleged to have participated in the attacks of 7 October 2023.
33. The involvement of UNRWA staff members in acts of terror constitutes a serious breach of the principle of impartiality and the lack of acting in accordance with the principles in enshrined in the UN Charter. Furthermore it is a well-established international norm, reflected in multiple conventions and UN resolutions, such as Resolution 1373(2001) that organizations are prohibited from providing assistance to terrorist organizations. These facts can constitute a ground for the abrogation from the Comey-Michelmores Agreement and may justify the limitations to privileges and immunities granted to UNRWA as a subsidiary body of the UN General Assembly.
34. With regards to the extent of humanitarian activities carried out by UNRWA and the effects that limitations with regards to UNRWA may have it is important to note that other UN bodies carrying out humanitarian work such as the UNHCR and World Food Programme are also operational in the given territory. These UN bodies also carry out their work respecting the Charter of the United Nations and the 1946 Convention, whose rights and obligations apply to them. No provision exists specifying that a particular aid agency must provide the assistance, only that the facilitation of humanitarian aid is required.
35. In terms of extent of humanitarian activities it must be noted that according to the data provided the Coordination of Government Activities in the Territories (COGAT) of Israel, the successful entry of over 1.3 million tons of aid to Gaza was facilitated within the last 15 months. We note that Israel has provided extensive information on the humanitarian efforts it has undertaken submitted in the document “Observations of the state of Israel on the request filed by the Republic of South Africa on 6 march 2024 for the indication of additional provisional measures and/or the modification of measures previously indicated” in the case

on Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel).

### **3. Context of the present request for an advisory opinion**

36. Without prejudice to our request for the denial of the advisory opinion, the Court should also consider, during its proceedings, the broader context in which the Request for the advisory opinion was made.
37. In this regard it is important to note that Israel in the Gaza Strip has not exercised effective control since it withdrew from the territory in 2005. It is the terrorist organization Hamas, which violently seized control of the Gaza Strip in 2007 that has been governing the territory, including by way of control over the local economy, policing and internal security, welfare services, tax collection, education, and the media. The lack of Israeli effective control over Gaza is made evident by the repeated attacks against Israel originating from Gaza and in particular by the brutal terrorist attack of 7 October 2023.
38. It is important to further note that there is ongoing armed conflict for the resolve of which we refer to the already existing and accepted institutional architecture for maintaining international peace and security. In this institutional fabric, each actor has its own distinct role and responsibilities, as institutional guarantors of peace and security. Within this intricate system, it is the UN Security Council that has the primary responsibility for the maintenance of international peace and security according to the UN Charter.
39. The Request for an advisory opinion cannot be separated from the ongoing conflict and regrettably, may can only be interpreted as an additional avenue within the conflict. There is a realistic fear that the Court itself is being used as a “battleground”. As explained above the involvement of a subsidiary body - through its staff members - of the United Nations General Assembly in actual acts of terrorism is precisely the reason why there is a need to consider the abrogation of privileges and immunities.
40. Hungary in its submissions to the Court in the advisory proceedings on *The legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* has argued that the Court will implicate itself in matters

that unduly politicise the esteemed institution of an otherwise strictly judicial character. The political discussions, the debates in the United Nations General Assembly prove that this plea was not in vain, the Advisory Opinion of 19 July 2024 did in fact become part of the already heated political debate. Thus we once again draw the attention to the fact that rendering an advisory opinion upon the present Request could threaten to undermine the ability of the Court to contribute to the maintenance of global peace and security.

41. The fact that in less than four months after the deliverance of the Advisory Opinion of the Court on *The legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* and that there are two ongoing contentious cases related to the conflict in front of the Court clearly demonstrate the will to make the Court an active part of the ongoing conflict.
42. Furthermore, it is worth noting that an advisory opinion, although of legal significance, may have limitations in its effectiveness compared to decisions or resolutions issued by international bodies with enforcement mechanisms, such as the United Nations Security Council. These bodies have the authority to implement binding measures, adopt resolutions, and engage in diplomatic negotiations to achieve concrete outcomes. Their decisions and resolutions hold significant political weight.
43. We firmly believe that peace and long-term solution of the Israeli-Palestinian conflict can only be achieved through enabling meaningful dialogue between the parties concerned. Current international efforts should be focused on maintaining the current ceasefire between Israel and the terrorist organization Hamas, while – among other elements – also contributing to reforming and strengthening of the Palestinian Authority and very importantly building trust between the parties. Engagement in the framework of existing international mechanisms provides the most effective and sustainable approach to these goals. The proceedings before the Court due to their highly politicized and divisive nature further escalate the tensions between the parties.

## CONCLUSIONS

### a) Summary

44. In the present Statement, Hungary discusses three issues – including reflections on judicial propriety, emphasizing the limitations on privileges and immunities of the United Nations and specifically UNRWA and the concerns that the Court utilized as a political tool hinders processes aimed at resolving the wider conflict - which might be of interest to the Court when deciding whether to provide an advisory opinion as requested by the General Assembly of the United Nations in its Resolution 79/232 of 19 December 2024.

### b) Submission

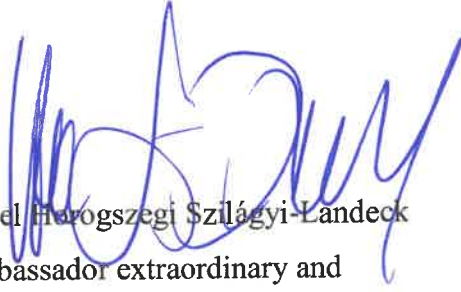
45. Hungary accordingly submits that:

- a) The General Assembly's request for an advisory opinion satisfies the conditions set out in Article 65 of the Statute of the Court and Article 96 of the United Nations Charter both as regards the competence of the requesting organ and as regards the substance of the request; and the Court accordingly has jurisdiction in this case.
- b) However, the (1) fact that the Request and question put to the Court touches upon issues which the Court has to a great extent already addressed in earlier Advisory Opinions; (2) a contentious proceeding is currently pending before the Court; (3) the question put to the Court has been formulated in a blatantly prejudicial, one-sided manner; (4) the Request would require the Court to undertake significant factual investigations and make factual findings on disputed and dynamic matters, which cannot properly be pursued in the framework of advisory proceedings constitute "*compelling reasons*" why the Court should not render the advisory opinion, which has been requested of it.

46. For the above reasons, Hungary respectfully requests that the Court decline to provide the opinion requested.

47. Hungary reserves the right to furnish information and/or to make any further submissions on the questions submitted to the Court for an advisory opinion in a possible second written statement.

The Hague, 28 February 2025



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