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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
REPUBLIC OF TUNISIA**

20 February 2025

[Translation by the Registry]

Mr President, Members of the Court,

1. By its resolution 79/232 of 19 December 2024, the General Assembly of the United Nations decided, 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:

“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 submitting this question, the General Assembly is seeking “guidance from the [Court]” on “certain additional questions to supplement the Court’s advisory opinion of 19 July 2024”¹.

3. Tunisia voted in favour of this resolution and is participating in these proceedings because it firmly believes that the opinion requested is of crucial importance in consolidating the right of the Palestinian people to self-determination and in confirming the pivotal role of the United Nations in providing the Palestinian people with the humanitarian and development assistance necessary for the realization of this right.

4. Tunisia will not hesitate below to set out the obligations of the occupying entity as an occupying Power (II) and as a Member of the United Nations (III) 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 must in no way be construed as an act of recognition. Tunisia does not recognize the occupying entity and does not maintain relations with it. Nonetheless, the latter is responsible for its actions as an occupying Power and bound by its undertakings as a Member of the United Nations. Finally, the legal consequences of breaching those obligations will be set out (IV). First, however, it must be shown that the Court has jurisdiction and that there is no compelling reason for it to exercise its discretionary power (I).

I. JURISDICTION AND DISCRETIONARY POWER

5. Tunisia does not doubt that the Court has jurisdiction (1), and it sees no “compelling reasons” for the Court to exercise its discretionary power not to give this opinion (2).

1. Jurisdiction

6. The Court’s jurisdiction to give an advisory opinion is based on Article 65, paragraph 1, of its Statute, which provides that “[t]he Court may give an 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”. Pursuant to Article 96, paragraph 1, of the Charter, the General Assembly “may request the International Court of Justice to give an advisory opinion on any

¹ Last preambular paragraph of General Assembly resolution 79/232.

legal question”. The General Assembly made use of this right in its resolution 79/232, adopted by a majority of 137 votes to 12, with 22 abstentions.

7. The question on which the Court is requested to give its opinion is an eminently legal one. It concerns the legal status of the United Nations, other international organizations and third States in the Occupied Palestinian Territory, and the ensuing and clearly legal obligations of the occupying entity, both as an occupying Power and as a Member of the United Nations.

8. Resolution 79/232 has its origins in a letter from the Secretary-General of the United Nations urgently bringing to the attention of the General Assembly “developments which could prevent the United Nations Relief and Works Agency for Palestine Refugees in the Near East from continuing its essential work in the Occupied Palestinian Territory, including East Jerusalem”. The impediment in question is both *de facto* and *de jure*, the Knesset having passed two laws prohibiting UNRWA activities in the Occupied Palestinian Territory, thereby giving rise to “a difference [of views] . . . 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”. A difference of views on the interpretation or application of a convention is the very definition of a legal dispute.

9. The General Assembly requests that the Court pronounce on a question of law, namely the legality and enforceability of the measures taken by the occupying authority and impeding the exercise by the Palestinian people of its right to self-determination, in view of international humanitarian law, international human rights law, certain rules and principles of international law and the privileges and immunities of the United Nations.

10. In light of the above, Tunisia is of the view that the Court has jurisdiction to give the opinion requested.

2. Discretionary power

11. “The fact that the Court has jurisdiction to give an advisory opinion does not mean that it is obliged to exercise it”². As the Court has repeatedly noted, Article 65, paragraph 1, of its Statute “should be interpreted to mean that the Court has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met”. However, given its functions as the principal judicial organ of the United Nations, the Court considers that its answer to a request for an advisory opinion “represents its participation in the activities of the Organization, and, in principle, should not be refused”³ and that, “[i]n accordance with its jurisprudence, only compelling reasons may lead the Court to refuse to give its opinion in response to a request falling within its jurisdiction”⁴.

12. Do such “compelling reasons” exist in the present proceedings? The Republic of Tunisia is of the opinion that they do not.

² *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.

³ *Ibid.*

⁴ *Ibid.*, para. 31.

13. First, “[t]he involvement of the United Nations organs, and before that the League of Nations, in questions relating to Palestine dates back to the Mandate System”⁵. The question of Palestine “is a matter of particular interest and concern to the United Nations”⁶, which has a “permanent responsibility towards [that question] until [it] is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy”⁷. It is not, therefore, a bilateral matter where a possible lack of consent by a party to the conflict “render[s] the giving of an advisory opinion incompatible with the Court’s judicial character”⁸.

14. Second, the Court’s advisory opinion would not negatively impact the work of the Security Council. Resolution 79/232 was adopted under the agenda item on the “[s]trengthening of the United Nations system”. In this resolution, the General Assembly

“*stress[es]* the importance of upholding multilateralism and the central role of the United Nations in the multilateral system, *[e]xpress[es]* 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 . . . [and] *[c]alls upon* all parties to avoid actions that could weaken the critical role of the United Nations in conflict resolution”.

15. Lastly, the question put by the General Assembly is simple, straightforward and is not based on any premise or assumption. The Court cannot therefore consider, in exercising its discretionary power, that the question is biased.

16. It is true that the entry into force of a ceasefire in Gaza on 19 January 2025 and the resumption of humanitarian aid deliveries could be advanced as “compelling reasons” for the Court to refuse to give this opinion, even though it has the jurisdiction to do so. However, this argument cannot succeed for the following reasons:

(a) The humanitarian situation in Gaza remains disastrous: the crisis is of an exceptional magnitude, with 90 per cent of homes destroyed, 17,000 children left to fend for themselves, and over 110,000 injured⁹, the majority of whom require urgent care that cannot be provided in Gaza, where the local health care system has already been decimated. Displaced people returning to the north have found their homes in ruins. In the words of a UNICEF spokesperson,

“[they] are returning to communities without water and without healthcare, without the basics . . . Malnutrition is rising. The risk of famine persists . . . The needs are just skyrocketing . . . We don’t have a magic wand that can help the suffering overnight.”¹⁰

(b) Despite the entry into force of the ceasefire in Gaza, the military aggression of the occupying entity has continued in the West Bank since the end of January 2025, and the opinion sought from the Court concerns the whole of the “Occupied Palestinian Territory”. The Court is moreover of the view that “from a legal standpoint, the Occupied Palestinian Territory constitutes

⁵ *Ibid.*, para. 35.

⁶ *Ibid.*

⁷ General Assembly resolution 57/107, cited by the Court (*ibid.*, para. 35).

⁸ *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 25, para. 33; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 1[57-158], para. [47].

⁹ Update on the humanitarian situation in Gaza on 29 January 2025, <https://unric.org/fr/onu-et-la-crise-au-proche-orient-gaza/#Humanitaire>.

¹⁰ <https://news.un.org/en/story/2025/02/1159946>.

a single territorial unit, the unity, contiguity and integrity of which are to be preserved and respected”¹¹.

- (c) The ceasefire is a truce and not a peace agreement. It was agreed to in exchange for the release of hostages and is not based on an undertaking by the occupying entity to honour its international legal obligations. The head of the occupying entity’s Government has explicitly stated that he reserves the right to resume the bombing.
- (d) Stopping the war will not be sufficient to repair broken lives or heal trauma. The violations must be identified, together with the ensuing legal consequences. Responsibility must be established.
- (e) The argument that humanitarian assistance has resumed is one of pure expediency. Expediency is a political matter that should not form part of a judicial examination. It must be recalled in this respect that the Court has already stated that it is “not for the Court itself to purport to decide whether or not an advisory opinion is needed by the Assembly for the performance of its functions. The General Assembly has the right to decide for itself on the usefulness of an opinion in the light of its own needs.”¹²
- (f) Finally, the laws and measures adopted by the occupying entity to hinder the presence and activities of the United Nations, other international organizations and third States, and which gave rise to the present proceedings, are still in force.

17. It follows from the foregoing that Tunisia sees no compelling reason that may lead the Court to exercise its discretionary power.

II. THE OCCUPYING ENTITY’S BREACH OF ITS OBLIGATIONS AS AN OCCUPYING POWER

18. In this section, Tunisia will recall the obligations arising from the illegality of the occupation (*jus ad bellum*) in relation to the presence of the United Nations, other organizations and third States in the Occupied Palestinian Territory (1). It will then analyse the obligations of the occupying entity in relation to the activities of the United Nations, other organizations and third States under the law of occupation and international humanitarian law (*jus in bello*) (2).

1. The obligations of the occupying entity 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

19. The occupying entity has an obligation to bring an end to its illegal occupation (*a*) and to respect the State of Palestine’s territorial sovereignty and right of legation (*b*).

(a) Obligations arising from the legal consequences of the illegality of the occupying entity’s continued presence in the Occupied Palestinian Territory: obligation to end the occupation

20. In its Advisory Opinion of 19 July 2024, the Court concluded that “the continued presence of Israel in the Occupied Palestinian Territory is illegal”¹³ and that Israel “has an obligation to bring

¹¹ *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. 78.

¹² *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 237, para. 16.

¹³ *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. 266.

an end to [that] presence . . . as rapidly as possible”¹⁴, to dismantle and evacuate its settlements, to make full reparation to Palestinian victims and to allow the return of Palestinians displaced since 1967. It should be noted in this respect that in its above-mentioned Opinion, the Court referred only to displacement occurring between 2022 and 2023. However, under international law, the right of return concerns both the refugees of 1967 and those of 1947¹⁵.

21. In its resolution ES-10/24, the General Assembly “[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 [that] resolution”, and “[c]alls upon the United Nations, and its bodies and organs, to respect and act in a manner consistent with the determinations made by the International Court of Justice”.

22. As long as the occupying entity continues to occupy the Palestinian territory, it remains bound by these obligations and by the provisions of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (hereinafter the “Fourth Geneva Convention”), the applicable treaties of international human rights law and customary international law.

(b) Obligation to respect the State of Palestine’s territorial sovereignty and right of passive legation

23. The State of Palestine’s legal status is that of a State whose territory is occupied. It holds the “right” to exercise full jurisdiction over its territory. The ineffectiveness of the exercise of its sovereignty, as the direct consequence of the illegal occupation, has no bearing whatsoever on its statehood. The State of Palestine therefore enjoys the right of both active and passive legation as a corollary of its right to self-determination without external interference and its right “to national independence and sovereignty”¹⁶. The right of passive legation, which is defined as the right of a State “to receive the diplomatic representatives of foreign powers”¹⁷, is subject to mutual consent under the terms of Article 2 of the Vienna Convention on Diplomatic Relations. The State of Palestine is entitled to receive on its territory diplomatic representations of States and international organizations. The occupying authority has an obligation to respect that right.

24. The occupying authority’s decision of 24 May 2024 to prohibit the Spanish Consulate in East Jerusalem (Occupied Palestinian Territory) from providing consular services to Palestinians and to prevent it from carrying out any diplomatic activities constitutes a breach of that obligation¹⁸. The occupying entity went so far as to threaten to close the Spanish Consulate in Jerusalem should this order not be complied with¹⁹.

¹⁴ *Ibid.*, para. 267.

¹⁵ *Ibid.*, paras. 142-147.

¹⁶ Para. 6 of General Assembly resolution 35/169, 15 Dec. 1980.

¹⁷ M. Forteau, A. Miron and A. Pellet, *Droit international public*, Paris, LGDJ, 9th ed., 2022, p. 1052, para. 707 [translation by the Registry].

¹⁸ <https://www.lefigaro.fr/international/israel-decide-de-couper-le-lien-entre-le-consulat-d-espagne-a-jerusalem-et-les-palestiniens-20240524>.

¹⁹ <https://www.aa.com.tr/en/middle-east/israel-threatens-to-close-spanish-consulate-in-jerusalem-if-it-provides-services-to-palestinians/3236396>.

25. On 29 October 2024, the occupying entity even adopted a law prohibiting the establishment of new foreign consulates in Jerusalem, a measure aimed at bolstering its claim of sovereignty over the city. The law stipulates that no new consulates will be set up in Jerusalem and that the Government will encourage the establishment of foreign embassies in the city²⁰. This law is rooted in the occupying entity's intention to prevent the provision of all external aid to Palestinians living under occupation in East Jerusalem and the West Bank alike. These consulates are their only physical link to the rest of the world.

26. Furthermore, on 28 October 2024, the Knesset of the occupying entity enacted two laws terminating the activities of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter "UNRWA" or the "Agency")²¹. The two laws entered into force for the occupying entity on 30 January 2025. They provide for the termination of the exchange of letters between the latter and UNRWA and prohibit all authorities of the occupying entity, including persons exercising public functions, from engaging in any contact with UNRWA or anyone acting on its behalf. These laws thus constitute an infringement of the right of the Palestinian people to self-determination. They also have the effect of technically bringing to an end the activities of the United Nations Agency. Indeed, without co-ordination with the occupying authority, which imposes strict controls on all humanitarian aid shipments entering the Occupied Palestinian Territory and visa requirements on UNRWA personnel, it will be almost impossible for the Agency to operate.

27. These laws and measures also constitute a violation of international humanitarian law, in particular Article 43 of the Hague Regulations, which obliges the occupying authority to take all measures "to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country". An occupying Power has limited authority to promulgate its own legal provisions in occupied territory. The second paragraph of Article 64 of the Fourth Geneva Convention provides that the occupying Power may

"subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them".

The 1958 commentary to this provision lists the areas in which the occupying Power may exercise its legislative authority. It is limited to provisions "required for the application of the Convention" in such spheres as child welfare, labour, food, hygiene and public health, other provisions necessary to maintain the "orderly government of the territory", and penal provisions "for its own protection". It goes without saying that the laws prohibiting UNRWA's activities cannot be considered necessary for the security of the occupying Power.

28. Finally, attention must be drawn to the occupying authority's persistent refusal to allow access to the Occupied Palestinian Territory by United Nations fact-finding mechanisms and investigators of the International Criminal Court. To cite just two examples: the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has consistently been denied access to the Occupied Palestinian Territory. In her latest report, she recalls that this refusal constitutes "an obstruction of justice, in defiance of the International Court of Justice (ICJ)

²⁰ <https://www.timesofisrael.com/knesset-passes-bill-banning-establishment-of-new-foreign-consulates-in-jerusalem/>.

²¹ 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).

order that Israel allow international investigators to enter Gaza and take measures to ensure the preservation of evidence”²².

29. The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, established in 1968 by the General Assembly (resolution 2443), has never been authorized by the occupying entity to visit the occupied territories²³.

In the words of the Secretary-General of the United Nations, the occupying entity has subjected the Palestinian territory to decades of “suffocating occupation”²⁴.

2. The obligations of the occupying entity in relation to the activities of the United Nations, other international organizations and third States in and in relation to the Occupied Palestinian Territory

30. In its Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory*, the Court noted that “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”²⁵, and that

“[a] great many of the rules of that Convention are so fundamental to the respect of the human person, and elementary considerations of humanity, that they are ‘to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law’ . . . These rules incorporate obligations which are essentially of an *erga omnes* character.”²⁶

31. The Court also observed that the occupying entity is a party to certain legal instruments under international human rights law, including the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965, the International Covenant on Economic, Social and Cultural Rights of 16 December 1966, and the International Covenant on Civil and Political Rights of 19 December 1966. These treaties impose additional obligations on the occupying entity, particularly as regards respect for certain human rights. The most relevant of these are the inherent right to life, the right to health, the right to access health care, the right to an adequate standard of living (including the right to food and to be free from hunger), the right to water, the right to adequate housing and the right to education.

32. The Court has recalled in this regard that “international human rights instruments are applicable ‘in respect of acts done by a State in the exercise of its jurisdiction outside its own

²² A/79/384, para. 2. *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 (5); *ibid.*, Order of 24 May 2024, para. 57 (2) (c).

²³ A/[79/363], [Summary, para. 1].

²⁴ Address by the Secretary-General of the United Nations to the Security Council, 24 Oct. 2023 (available at: <https://webtv.un.org/en/asset/k12/k124fg2agb>).

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. 96.

²⁶ *Ibid.*, citing *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996 (I), p. 257, para. 79, and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004 (I), p. 74, para. 274.

territory', particularly in occupied territories". It has further recalled that the protection offered by human rights conventions does not cease in case of armed conflict or occupation²⁷.

33. Pursuant to this normative framework, the occupying entity has an obligation of result, namely, to ensure that the basic needs of the civilian population are met. It must provide food and medical and hospital services to the population based on its needs (Articles 55 and 56 of the Fourth Geneva Convention) and, where it is unable to do so, it is under an obligation to facilitate the work of humanitarian organizations in providing this humanitarian assistance, and to ensure that the population is able to access it in safety and with dignity. The occupying entity is also required to protect humanitarian personnel and guarantee their safety and freedom of movement.

(a) Obligation to allow the free passage of humanitarian relief

34. Article 59 of the Fourth Geneva Convention, relating to collective relief, stipulates:

“If 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. Such schemes . . . may be undertaken either by States or by impartial humanitarian organizations.”

35. Under Article 70 of Additional Protocol I,

“[t]he Parties to the conflict . . . shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel . . . even if such assistance is destined for the civilian population of the adverse Party . . . [They] shall, in no way whatsoever, divert relief consignments . . . nor delay their forwarding.”

The parties must protect relief consignments and facilitate their rapid distribution. These obligations are also provided for in the Fourth Geneva Convention (Articles 23, and 60 to 62).

36. The occupying Power's violation of its intransgressible obligation to allow free access to humanitarian assistance is of a persistent and systematic character. On 9 October 2023, the occupying entity announced a complete siege of Gaza, cutting off essential resources and the movement of goods, and severely restricting the population's access to food, water, fuel and electricity. All crossing points between the occupying entity and Gaza were closed, blocking ordinary deliveries and the entry of humanitarian aid. Between 7 and 20 October, not a single aid truck²⁸ entered Gaza.

37. Aid resumed primarily in southern and central Gaza after 21 October 2023. Aid workers reported that the inspection and control of humanitarian aid by the occupying entity was slow, incomprehensible and absurd²⁹. Control measures for the inspection of aid trucks at border crossings with Egypt severely hampered the entry of trucks, and restricted or blocked the supply of vital humanitarian items.

²⁷ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 243, para. 216, citing *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004 (I), p. 178, par. 106.

²⁸ <https://www.unocha.org/publications/report/occupied-palestinian-territory/aid-trucks-crossingegypt-gaza-15-november-2023>.

²⁹ A/HRC/56/CRP.4, paras. 284 to 295.

38. In its report of 20 September 2024, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories stated that

“[b]y mid-November, with only 10 per cent of necessary food supplies entering Gaza, the World Food Programme (WFP) warned of an immediate possibility of starvation, while United Nations experts reminded Israel that intentional starvation amounted to a war crime. Israeli authorities did not allow the entry of fuel supplies until 18 November and, even then, only at half the daily minimum required for humanitarian operations. By 3 December, the WFP warned of a high risk of famine for all the people of Gaza and emphasized that aid through Rafah was the only lifeline due to the inability to produce or import food. The main entry point for goods from Israel into Gaza, [Karam Abu Salem], remained closed until 16 December.”³⁰

39. The prolonged blockade of Gaza, imposed by the occupying entity since 2007, left half the population of Gaza suffering from food insecurity. Before October 2023, more than 80 per cent of Gazans were dependent on humanitarian assistance. The occupying authority knowingly used the obstruction of humanitarian assistance as a weapon of war. Several explicit statements by Israeli officials indicate an intention to instrumentalize humanitarian assistance for political and military gain and to hold the population of Gaza hostage³¹. Some of these statements are undoubtedly indicative of genocidal intent. In August 2024, the occupying entity’s Minister of Finance stated that starving the entire population of Gaza was “justified and moral”, even if it caused the death of two million people³². In her report dated 1 October 2024, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 noted that “[i]n recent months, 83 per cent of food aid was prevented from entering Gaza”³³.

40. This is a persistent violation of an intransgressible norm of customary international law. The obligation to ensure unimpeded access to humanitarian assistance has been recalled by the General Assembly in its resolution ES/10/22 of 18 December 2023, by the Court in its three binding Orders of 26 January, 28 March and 24 May 2024 indicating provisional measures in the *South Africa v. Israel* case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip*, and by the Security Council in its resolutions 2712 and 2720 of 12 and 15 December 2023, respectively. The occupying entity has never acted on these requests.

(b) Obligation to protect the humanitarian operations of relief and civil defence organizations

41. As an occupying Power, the entity in question has an obligation under international humanitarian law to protect humanitarian action in the Occupied Palestinian Territory. Under Article 70, paragraph 1, of Additional Protocol I, relief actions which are of a humanitarian and impartial nature and which are conducted without any adverse distinction will not be regarded as interference in the armed conflict or as unfriendly acts. In this respect, the Court has observed the following: “There can be no doubt that the provision of strictly humanitarian aid to persons or forces

³⁰ A/79/363, [para. 23].

³¹ [A/HRC/56/26], para. 50.

³² <https://www.timesofisrael.com/smotrich-it-may-be-justified-to-starve-2-million-gazans-but-world-wont-let-us/>.

³³ A/79/384, [para. 21].

in another country, whatever their political affiliations or objectives, cannot be regarded as unlawful intervention, or as in any other way contrary to international law.”³⁴

42. Article 63 of the 1949 Fourth Geneva Convention already granted relief societies, such as the National Red Cross and Red Crescent Societies, the right to pursue their activities under foreign occupation, “[s]ubject to temporary and exceptional measures imposed for urgent reasons of security by the Occupying Power”. It is clear that the almost systematic obstruction of humanitarian assistance for months on end cannot be regarded as a “temporary” measure taken by the occupying Power on an “exceptional” basis for “urgent reasons of security”.

43. Article 63 of Additional Protocol I to the four Geneva Conventions, relating to civil defence in occupied territories, extends the protection offered to such organizations to all situations of international armed conflict. It requires the occupying Power to facilitate the performance of the tasks of these organizations; prohibits it from compelling them to perform their tasks in any manner prejudicial to the interests of the civilian population; and proscribes it from requisitioning buildings or material belonging to these organizations or diverting them from their proper use.

44. Do these obligations apply to international organizations operating in the Occupied Palestinian Territory? To answer this question, reference will be made to the definition of civil defence organizations in international humanitarian law.

45. Article 61 of Additional Protocol I provides that

“‘civil defence’ means the performance of some or all of the under-mentioned humanitarian tasks intended to protect the civilian population against the dangers, and to help it to recover from the immediate effects, of hostilities or disasters and also to provide the conditions necessary for its survival.

.....

‘civil defence organizations’ means those establishments and other units which are organized or authorized by the competent authorities of a Party to the conflict to perform any of the tasks mentioned under sub-paragraph (a), and which are assigned and devoted exclusively to such tasks.”

Civil defence is therefore defined in international humanitarian law according to the tasks carried out rather than the organizations that carry out those tasks³⁵.

46. It follows from the foregoing that any United Nations or other body authorized by the Palestinian Authority to carry out in the Occupied Palestinian Territory all or several of the “humanitarian tasks” listed in the above-mentioned Article 61, subparagraph (a), may be considered a “civil defence organization” enjoying the protection of international humanitarian law within the meaning of Article 63 of the Fourth Geneva Convention and Article 63 of Additional Protocol I, when such tasks are performed with a view to achieving the following objectives: protecting the

³⁴ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 124, para. 242. The Court also observed that humanitarian aid is authorized if it covers “the provision of food, clothing, medicine, and other humanitarian assistance, and it does not include the provision of weapons, weapons systems, ammunition, or other equipment, vehicles, or material which can be used to inflict serious bodily harm or death”. *Ibid.*, p. 57, para. 97.

³⁵ https://www.icrc.org/sites/default/files/document/file_list/civil-defence-in-ihl.pdf.

civilian population against the dangers of hostilities or disasters, helping it to recover from the immediate effects of such dangers, and ensuring the conditions necessary for its survival.

47. The tasks listed in Article 61, subparagraph (a), of Additional Protocol I include:

“(iii) management of shelters; . . . (vi) medical services, including first aid, and religious assistance; . . . (x) provision of emergency accommodation and supplies; . . . (xii) emergency repair of indispensable public utilities; . . . (xv) complementary activities necessary to carry out any of the tasks mentioned above, including, but not limited to, planning and organization.”

Be that as it may, UNRWA is not a civil defence organization *de jure*, since it is not defined as such by General Assembly resolution 302 (IV) of 8 December 1949; however, it is one *de facto*.

48. Numerous violations of this protection have been recorded in respect of international organizations operating in the Palestinian territory since the outbreak of the war on Gaza. The following are just some examples:

- The military operations of the occupying entity, which almost systematically target UNRWA premises and the personnel present there. According to UNRWA’s latest update, since the beginning of the war in Gaza, 665 incidents have been reported, premises have been used for military purposes or their functioning has been disrupted for such purposes, 205 UNRWA facilities have been damaged, and 273 UNRWA staff members have been killed in Gaza, the highest death toll ever recorded among United Nations staff in a recent conflict.
- On 9 December 2023, during a high-risk mission led by the World Health Organization (hereinafter “WHO”) to Al-Ahli Hospital in Gaza City to deliver medical supplies, assess the situation in the hospital and transfer 19 critically injured patients to a hospital in the south, the United Nations convoy was inspected at the Wadi Gaza checkpoint and “ambulance crew members had to leave the vehicles for identification . . . WHO staff saw one of them being made to kneel at gunpoint and then taken out of sight, where he was reportedly harassed, beaten, stripped and searched.”³⁶
- In her statement of 24 July 2024, UNICEF’s Executive Director reported that the previous day,

“a clearly marked UNICEF vehicle was hit by bullets while waiting at a designated holding point near the Wadi Gaza checkpoint. It was one of two vehicles on the way to pick up five young children to reunite them with their father after their mother was killed. Fortunately, no one was injured, and the team managed to reunite the family. Yet in this incident, like others before it, the humanitarian consequences could have been horrific, for the children we serve, and for our teams.”³⁷
- The World Food Programme announced in a press release issued on 28 August 2024³⁸ that one of its teams had come under fire (at least ten bullets had been fired) on the evening of 27 August, a few metres from an Israeli checkpoint at the Wadi Gaza bridge. The team had been returning

³⁶ <https://www.who.int/news/item/12-12-2023-who-calls-for-protection-of-humanitarian-space-in-gaza-following-serious-incidents-in-high-risk-mission-to-transfer-patients--deliver-health-supplies>.

³⁷ <https://www.unicef.org/sop/press-releases/statement-unicef-executive-director-catherine-russell-situation-gaza-strip>.

³⁸ https://www.wfp.org/news/wfp-temporarily-suspend-staff-movement-across-gaza-following-security-incident-targeted-wfp?_ga=2.178061926.274634667.1742814852-1057403196.1742814851.

with two armoured vehicles from a mission to Karam Abu Salem, after escorting a convoy of trucks carrying humanitarian cargo routed to Gaza's central area.

III. THE OCCUPYING ENTITY'S BREACH OF ITS OBLIGATIONS AS A MEMBER OF THE UNITED NATIONS

49. As a Member of the United Nations, the occupying entity is bound by its obligations under the Charter, the relevant General Assembly and Security Council resolutions, and the Convention on the Privileges and Immunities of the United Nations, to which it acceded on 21 September 1949.

1. The obligations of the occupying entity under the Charter of the United Nations

50. The policies of the occupying entity against any humanitarian or development assistance provided or facilitated by the United Nations, international organizations and States in the Occupied Palestinian Territory are in breach of certain principles of the United Nations Charter.

(a) Obligation to respect the right of the Palestinian people to self-determination

51. The right of peoples to self-determination is embodied in Article 1 of the Charter and recognized in General Assembly resolution 2625 of 24 October 1970 as one of the seven principles of international law. In its resolution 3236 of 22 November 1974, entitled "Question of Palestine", the General Assembly reaffirmed "the inalienable rights of the Palestinian people in Palestine, including: (a) the right to self-determination without external interference; [and] (b) the right to independence and sovereignty". Numerous subsequent resolutions confirm this right. In its Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, the Court found that "[a]mong the obligations *erga omnes* violated by Israel are the obligation to respect the right of the Palestinian people to self-determination and the obligation arising from the prohibition of the use of force to acquire territory"³⁹.

(b) Obligation not to use force

52. The occupying entity also has an obligation to respect the principle of the prohibition of the use of force and aggression and the prohibition of the acquisition of territory by force, set out in Article 2, paragraph 4, of the Charter. This principle was also acknowledged in General Assembly resolution 2625 of 24 October 1970 as one of the seven principles of international law. In its above-mentioned Advisory Opinion, the Court recognized this principle as an *erga omnes* norm of international law, noting the failure of the occupying entity to comply with it.

53. The policies and practices pursued by the occupying entity with a view to asserting its sovereignty over certain parts of the Occupied Palestinian Territory also constitute a violation of the Security Council resolutions calling for the occupying entity to withdraw from the occupied territory or condemning the annexation of East Jerusalem and, finally, of Article 25 of the United Nations Charter, which requires Member States to "carry out the decisions of the Security Council".

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, para. 274]; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), p. 199, para. 156.

(c) Obligation to fulfil one's obligations in good faith

54. Article 2, paragraph 2, of the Charter states: "All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter." The expression "in good faith" is to be understood as the goodwill of each member State to co-operate fully in achieving the purposes of the Charter and its readiness to honour its undertakings thereunder. It follows from the wording of Article 2, paragraph 2, that good faith is a condition of United Nations membership itself. This interpretation is confirmed by Article 4, which stipulates: "Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations."

55. Is the occupying entity prepared to fulfil its obligations under the Charter and to comply with the relevant General Assembly resolutions and the orders and opinions of the Court? The answer, in our opinion, is that it is not.

56. In her report dated 1 October 2024, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 stated that the successive governments of the occupying entity have pursued the long-standing goal of creating a "Greater Israel", "predicated on the erasure of the Indigenous Palestinian people". She added that "[t]he cultivation of a political doctrine that frames Palestinian assertions of self-determination as a security threat to Israel has served to legitimize permanent occupation", the "[t]otality of the conduct" indicating "genocidal intent rationalized as self-defence" and aimed at the "destruction of the Palestinian people"⁴⁰. The occupying entity's failure, despite the Court's provisional measures, to prevent or punish genocidal acts, the statements by officials intentionally dehumanizing the Palestinians and, lastly, the occupying entity's failure to recognize the two-State solution and all resolutions relating thereto show, without the slightest doubt, that the occupying entity has consistently failed in its duty under the Charter to fulfil in good faith the obligations assumed by it.

(d) Obligation to assist the United Nations in all its actions and to afford it the necessary protection

57. Under Article 2, paragraph 5, of the United Nations Charter, "[a]ll Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter". The occupying entity is thus required under the Charter to support and facilitate the activities of agencies mandated by the United Nations to operate in the Occupied Palestinian Territory. Article 104 of the Charter stipulates that "[t]he Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes", and Article 105 states that

"[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes [and that] [r]epresentatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization".

It can therefore be concluded that the enactment by the Knesset of two laws prohibiting UNRWA's activities in East Jerusalem and preventing the authorities of the occupying entity from co-operating with the Agency and its representatives constitutes a violation of the above-mentioned articles of the Charter and must therefore be considered null and void. The termination of the

⁴⁰ A/79/384, pp. 22-32.

exchange of letters between the occupying entity and UNRWA, as provided for in the former's legislation, does not release the occupying entity from its obligations under the Charter. It is settled jurisprudence that "the provisions of municipal law cannot prevail over those of the treaty"⁴¹. The occupying entity cannot therefore invoke its internal law to justify failure to comply with its international obligations. This principle was codified in Article 32 of the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts: "The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations."

2. Obligations of the occupying entity under United Nations resolutions relating to refugees and the right of return

58. Resolution 273 of 11 May 1949, by which the General Assembly admitted the occupying entity to membership in the United Nations, stipulates that the occupying entity "unreservedly accepts the obligations of the United Nations Charter and undertakes to honour them from the day when it becomes a Member of the United Nations". The preamble thereto refers to the declarations made by the occupying entity in respect of the implementation of resolution 181 of 29 November 1947 on the partition plan for Palestine and resolution 194 on the right of return of refugees.

59. The very accession of the occupying entity to the United Nations was therefore closely connected to compliance with General Assembly resolution 194 (III) of 11 December 1948, establishing the right of return of Palestinian refugees who had fled during the 1948-1949 war. Paragraph 11 of this resolution allows "refugees wishing to return to their homes . . . to do so at the earliest practicable date", and entitles those who decide not to return to compensation.

60. Established under General Assembly resolution 302 (IV) of 8 December 1949, UNRWA was tasked with providing "continued assistance for the relief of Palestine refugees . . . to prevent conditions of starvation and distress among them and to further conditions of peace stability". This mandate is "without prejudice to the provisions of paragraph 11 of General Assembly resolution 194 (III)"⁴².

61. The occupying entity is bound by General Assembly resolution 2443 (XXIII) of 19 December 1968, which recognizes the essential and inalienable character of the right of return of Palestinian refugees and links that right to the fundamental right of self-determination. It is also bound by the resolutions adopted each year to renew UNRWA's mandate.

62. All laws and measures taken by the occupying entity against UNRWA's activities in the Occupied Palestinian Territory constitute a violation of this protection granted by the United Nations to Palestine refugees and of the 1951 Convention relating to the Status of Refugees, ratified by the occupying entity on 1 October 1954.

63. This violation is persistent and deliberate: the laws of the occupying entity entered into effect on 30 January 2024, despite:

— the identical letters dated 9 December 2024 and 8 January 2025 from the Secretary-General of the United Nations to the President of the General Assembly and the President of the Security

⁴¹ *Greco-Bulgarian "Communities"*, Advisory Opinion, 1930, P.C.I.J., Series B, No. 17, p. 32.

⁴² Para. 5 of General Assembly resolution 302.

Council, in which the Secretary-General notes the scale of the activities carried out by UNRWA, rendering it “unique and irreplaceable”;

— the adoption by the General Assembly of resolution ES-10/25 on 16 December 2024, which

“*[d]eplores* the legislation adopted by the Israeli Knesset on 28 October 2024, and calls upon the Israeli Government to abide by its international obligations [and] respect the privileges and immunities of the Agency . . . [and] *[r]eaffirms* the necessity for the continuation of the work of the Agency and the importance of its unimpeded operation and provision of services, including emergency assistance, for the well-being, protection and human development of the Palestine refugees and for the stability of the region, pending the just resolution of the question of the Palestine refugees in line with the relevant resolutions”;

— the adoption by the Security Council of resolution 2730 of 24 May 2024, calling on States to respect and protect humanitarian and United Nations personnel in accordance with their obligations under international humanitarian law. In this resolution, the Security Council also condemned disinformation, information manipulation and incitement to violence against humanitarian and United Nations staff. It urged States to conduct full, prompt, independent, impartial and effective investigations within their jurisdiction of violations of international humanitarian law and international human rights law committed against humanitarian and United Nations personnel.

64. It is worth pointing out in this respect that UNRWA is seen as a humanitarian agency that has endeavoured to adapt to the changing material needs of refugees as the political and socio-economic context of its operations has evolved. Although it has not been able to fully reintegrate refugees, it has succeeded in continuing to provide, under difficult conditions, the bare minimum necessary for their survival and their human development. It is for this reason that its operational performance has been deemed exceptional.

65. However, the laws adopted against UNRWA which, according to the United Nations Secretary-General, are based on unsubstantiated allegations without any supporting evidence⁴³, are being used, in Tunisia’s view, to conceal a political will to do away with the question of Palestinian refugees. Given the scale of the activities carried out by UNRWA, this decision constitutes further proof of the occupying entity’s genocidal intent. The Commissioner-General of UNRWA has notably stated in this regard that since October 2023, the Agency has delivered two-thirds of all food assistance to Gaza, provided shelter to more than a million displaced persons, and vaccinated a quarter of a million children against polio⁴⁴. Since the ceasefire began, it has delivered 60 per cent of humanitarian aid to more than half a million people. He has also stated that his Agency conducts around 17,000 medical consultations a day.

3. Obligations of the occupying entity under the Convention on the Privileges and Immunities of the United Nations

66. It is important to recall that in its resolution 79/232, the General Assembly noted “a difference [of views] . . . 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”. Under Section 30 of that Convention, “[a]ll differences

⁴³ A/79/716-S/2025/18, Identical letters dated 8 January 2025 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, pp. 3-4.

⁴⁴ <https://news.un.org/en/story/2025/01/1159516>.

arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice". The opinion of the Court in this respect "shall be accepted as decisive by the parties".

67. On 21 September 1949, the occupying entity acceded without reservations to the Convention on the Privileges and Immunities of the United Nations of 13 February 1946. Section 34 of that Convention stipulates that "when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this convention". Consequently, domestic law must be in conformity with the Convention and must allow for its implementation.

68. The occupying entity's violations of this Convention are numerous, and are both *de facto* and *de jure*. As regards *de facto* violations, Tunisia has documented in the preceding sections certain incidents in contravention of Section 3 on the inviolability of United Nations premises and Section 18 on the immunities of United Nations staff. To this must be added the denial of visas, delays in visa issuance or the issuance of short-stay visas to United Nations staff from various agencies present in the Occupied Palestinian Territory, in violation of Section 25 of the said Convention.

69. As regards *de jure* violations, Tunisia reiterates that the legislation on the cessation of UNRWA's activities does not comply with international humanitarian law, in particular Article 43 of the Hague Regulations and Article 64, paragraph 2, of the Fourth Geneva Convention⁴⁵. In this respect, Tunisia denounces the erroneous claim made by the occupying entity in its identical letters dated 18 December 2024 addressed to the President of the General Assembly and the President of the Security Council that it "does not in fact exercise effective control over Gaza and therefore is not an 'occupying Power' within the meaning of the term under international law", while reserving the right in the same letters to decide, on grounds of "public order", which humanitarian organizations are authorized to operate in Gaza⁴⁶.

70. The occupying entity has no discretionary or selective power in granting privileges and immunities to United Nations agencies and bodies operating in the Occupied Palestinian Territory.

71. It follows that the termination of the exchange of letters between the occupying entity and the United Nations Agency, decided unilaterally by domestic law, and the prohibition imposed on all authorities of the occupying entity on engaging in any contact with UNRWA have no bearing whatsoever on the occupying entity's undertakings in respect of the privileges and immunities of UNRWA premises and personnel. This obligation is integral to its status as a Member of the United Nations. The occupying entity cannot escape these undertakings while it is a Member of the United Nations. Section 35 stipulates that the Convention

"shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the United Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised convention".

⁴⁵ See para. 25 of this written statement.

⁴⁶ A/79/710-S/2024/940.

IV. LEGAL CONSEQUENCES OF THE OCCUPYING ENTITY'S VIOLATIONS OF ITS OBLIGATIONS

72. The policies and actions of the occupying entity to restrict the presence and activities of the United Nations, international organizations and States in the Occupied Palestinian Territory, and thereby prevent them from ensuring and facilitating the provision of urgently needed supplies essential to the survival of the Palestinian civilian population as well as basic services and humanitarian and development assistance for the benefit of that population, constitute serious violations of international humanitarian law, of the rules and principles of international law, and of the privileges and immunities applicable to international organizations and States. These violations give rise to the consequences set out below.

1. The specific legal consequences arising from serious breaches of *erga omnes* obligations

73. The obligations in question are the prohibition of the use of force and aggression and the prohibition of acquisition of territory by force, the right to self-determination, the fundamental rules of international humanitarian law and of international human rights law, and, finally, the prohibition of genocide. The consequences of these violations are as follows:

- The occupying entity cannot rely on self-defence, security or public order to evade its responsibility or justify its actions. Nor is it entitled to take countermeasures.
- The obligation of all States to co-operate to bring an end to the occupying entity's violations and to refrain from recognizing them as lawful.
- The right of all States to invoke the responsibility of the occupying entity and to call for the cessation of these violations, given that "the obligation breached is owed to the international community as a whole"⁴⁷.

2. The consequences arising from the persistent violation of the principles of the United Nations Charter

74. While Tunisia is aware that recommending recourse to Article 6 of the United Nations Charter falls within the prerogatives of the Security Council, it believes that the conditions for its implementation are met in this case. That article provides that "[a] Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council". In this respect, Tunisia urges all Member States to use all means at their disposal to restore the spirit of the Charter.

⁴⁷ International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, Art. 48.

3. The consequences arising from the violation of international conventions relating to the privileges and immunities of the United Nations and States

75. Domestic measures and laws adopted in contravention of these international conventions must be considered by all third States and the United Nations as unenforceable and without effect. Article 27 of the 1969 Vienna Convention on the Law of Treaties provides that “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”.

(Signed) Hatem LANDOULSI,
Director General,
International Organizations and Conferences.
