

**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 THE NETHERLANDS**

**28 FEBRUARY 2025**

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## 1. Introduction

1.1 In Resolution 79/232, adopted on 19 December 2024, the General Assembly of the United Nations decided, in accordance with Article 96 of the Charter of the United Nations (San Francisco, 26 June 1945, 'Charter'), to request the International Court of Justice (the 'ICJ', the 'Court') to render an advisory opinion pursuant to Article 65 of the Statute of the Court, on the following question ('Request'):

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

1.2 In its Order of 23 December 2024, the Court designated 28 February 2025 as the time limit within which written statements on the questions may be presented to it in accordance with Article 66, paragraph 2, of the Court's Statute.

1.3 As the Kingdom of the Netherlands is a Member State of the United Nations and by virtue of Article 92 of the Charter also a Party to the Statute of the Court, it wishes to avail itself of the opportunity afforded by the Court's Order of 23 December 2024 to make a written statement on the Request by the General Assembly of the United Nations for an advisory opinion of the Court.

1.4 For the purposes of the present advisory proceedings, the Kingdom of the Netherlands leaves it to the discretion of the Court to satisfy itself that it has advisory jurisdiction and that it may exercise this jurisdiction with respect to the Request, in accordance with Article 65, paragraph 1, of the Statute of the Court and Article 102 of the Rules of Court.

1.5 The Kingdom of the Netherlands considers that "the object of the request before the Court is to obtain from the Court an opinion which the General Assembly of the United Nations deems of

assistance to it for the proper exercise of its functions”.<sup>1</sup> Accordingly, the Request should be regarded in “a much broader frame of reference than a bilateral dispute”.<sup>2</sup> It is with such broader frame of reference in mind that the Kingdom of the Netherlands seeks to assist the Court in answering the questions contained in the Request through the identification of the applicable international law and the presentation of the legal opinion of the Kingdom of the Netherlands on the status and interpretation of that law.

1.6 Addressing the question put before the Court requires the examination of relevant obligations under international law for an occupying Power owed to the population of an occupied territory, as well as to third parties involved in relief operations for the well-being of that population, and the international community as a whole.

1.7 An occupying Power has several obligations under international law, in particular international humanitarian law, the right to self-determination, and international human rights law. Depending on the circumstances, obligations for an occupying Power may also be applicable under bilateral agreements.

1.8 Below, the Kingdom of the Netherlands will address these obligations.

## **2. Occupation, relief operations and international humanitarian law**

2.1 The obligations of an occupying Power are set out in the following instruments, as well as in customary international law, and may guide the Court in its consideration of the Request put before it:

- Convention (IV) Respecting the Laws and Customs of War on Land of 18 October 1907 and its Annex: Regulations Concerning the Laws and Customs of War on Land (The Hague, 18 October 1907, ‘the Hague Regulations’);<sup>3</sup>
- Convention (IV) Relative to the Protection of Civilian Persons in Times of War (Geneva, 12 August 1949, ‘Fourth Geneva Convention’);<sup>4</sup> and

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<sup>1</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, *I.C.J. Reports* 2004 (hereinafter ‘*Advisory Opinion on the Construction of a Wall*’), para. 50.

<sup>2</sup> *Advisory Opinion on the Construction of a Wall*, *supra* note 1, para. 50.

<sup>3</sup> Second International Peace Conference, The Hague, Convention (IV) Respecting the Laws and Customs of War on Land of 18 October 1907 and its Annex: Regulations Concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, 205 C.T.S. 277 (hereinafter ‘the Hague Regulations’).

<sup>4</sup> International Committee of the Red Cross, Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, 75 U.N.T.S. 287 (hereinafter ‘Fourth Geneva Convention’).

- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (Geneva, 8 June 1977, ‘Additional Protocol I’).<sup>5</sup>

2.2 With regard to the above instruments, the Court has noted that the Hague Regulations have become part of customary international law.<sup>6</sup> In respect of the Fourth Geneva Convention, the Court observed 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’ [and that]

[t]hese rules incorporate obligations which are essentially of an *erga omnes* character.<sup>7</sup>

2.3 Furthermore, the Kingdom of the Netherlands considers that many of the rules set out in Additional Protocol I, have also become part of customary international law, including those relied upon in this submission.<sup>8</sup>

2.4 Pursuant to Article 42 of the Hague Regulations, territory is considered occupied when it is actually placed under the authority of the hostile army.<sup>9</sup> The relevant rules and principles of international humanitarian law and the law of occupation apply regardless of whether the occupation is considered lawful or unlawful under international law.<sup>10</sup>

2.5 In exercising effective control over an occupied territory, the occupying Power assumes a number of powers and duties with respect to that territory. The Court has observed that, in assuming those powers, “the occupying Power bears a duty to administer the territory for the

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<sup>5</sup> International Committee of the Red Cross, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 8 June 1977, 1125 U.N.T.S. 3 (hereinafter ‘Additional Protocol I’).

<sup>6</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, I.C.J. Reports 2024 (hereinafter ‘*Advisory Opinion on the Policies and Practices of Israel in the OPT*’), para. 96; *Advisory Opinion on the Construction of a Wall*, *supra* note 1, para. 89.

<sup>7</sup> *Advisory Opinion on the Policies and Practices of Israel in the OPT*, *supra* note 6, para. 96; *Advisory Opinion on the Construction of a Wall*, *supra* note 1, para. 157.

<sup>8</sup> See, for example, International Committee of the Red Cross, International Humanitarian Law Databases, *Customary International Law study of the ICRC*, Rules 31-32 and Rules 53-55, including State practice and *opinio juris* mentioned in this study, available at: <https://ihl-databases.icrc.org/en/customary-ihl/v1>.

<sup>9</sup> The Hague Regulations, *supra* note 3, Article 42; *Advisory Opinion on the Construction of a Wall*, *supra* note 1, para. 78; *Advisory Opinion on the Policies and Practices of Israel in the OPT*, *supra* note 6, para. 86.

<sup>10</sup> *Advisory Opinion on the Policies and Practices of Israel in the OPT*, *supra* note 6, para. 251.

benefit of the local population” and that the nature and scope of these powers and duties are premised on the assumption that the “occupation is a temporary situation”.<sup>11</sup>

2.6 Of particular relevance to the question put before the Court, is Article 43 of the Hague Regulations. This Article states:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

2.7 The general obligation to restore and ensure public order and safety as far as possible is limited by the second clause of Article 43 of the Hague Regulations, which regulates the extent to which the occupying Power may legislate.

2.8 The non-authentic English translation of Article 43 of the Hague Regulations refers to “public order and safety”, which could be read to merely refer to the obligation to exercise the function of law enforcement. However, the French authentic version contains the phrase “*l’ordre et la vie publics*” (order and public/civil life), which is a broader notion.<sup>12</sup> The obligation to restore and ensure public order and public life thus entails a general duty to administer the territory for the benefit of the local population and in doing so, to ensure the well-being of the population of the occupied territory, as far as possible. While Article 43 of the Hague Regulations does not, as such, specify the means through which the occupying Power is required to fulfil this general duty, other more specific rules of international humanitarian law give effect to this obligation, including the rules relevant to the question put before the Court concerning: A) private property and education; B) the provision of food, medical supplies, and healthcare to the civilian population; and C) relief operations.

#### ***A. Private property and education***

2.9 Article 50 of the Fourth Geneva Convention contains specific obligations relating to the care and education of children. It states:

The Occupying Power shall, with the co-operation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children. [...]

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<sup>11</sup> *Advisory Opinion on the Policies and Practices of Israel in the OPT*, *supra* note 6, para. 105.

<sup>12</sup> The French version holds : « [L’occupant] prendra toutes les mesures qui dépendent de lui en vue de rétablir et d’assurer, autant qu’il est possible, l’ordre et la vie publics en respectant, sauf empêchement absolu, les lois en vigueur dans le pays. ».

Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend.

2.10 This obligation is general in scope and applies to a wide variety of institutions and establishments of a social, educational, or medical character, including children's hospitals.

2.11 The Kingdom of the Netherlands considers, and agrees with the commentary of the International Committee of the Red Cross ('ICRC') on Article 50 of the Fourth Geneva Convention, that the obligation to facilitate the proper working of education entails negative as well as positive duties. The occupying Power is bound not only to avoid interfering with the activities of institutions dedicated to education, but is also obliged to support them actively and even provide assistance if the responsible local authorities fail in ensuring the proper working of such institutions. The occupying Power must therefore refrain from requisitioning staff, premises or equipment which are being used by such establishments. When their resources are inadequate, the occupying Power must ensure, by mutual agreement with the local authorities, that the institutions receive the resources that would enable them to carry out their task.<sup>13</sup>

2.12 Moreover, Article 46 of the Hague Regulations stipulates that private property must be respected and "cannot be confiscated". Pursuant to Article 56 of the Hague Regulations, property of institutions dedicated to education shall be treated as private property, including in the event this is State property. Article 56 of the Hague Regulations also stipulates that all seizure of institutions of this character is forbidden. The Court has furthermore observed that the "prohibition of confiscation of private property is unqualified: it does not allow for exceptions, whether for military exigencies or on any other ground".<sup>14</sup>

### ***B. The provision of food, medical supplies, and healthcare***

2.13 Both the Fourth Geneva Convention and Additional Protocol I contain a number of specific obligations related to the provision of basic needs, such as food and medical supplies, as well as healthcare services to the civilian population in occupied territory. Article 55 of the Fourth Geneva Convention stipulates that:

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<sup>13</sup> J.S. Pictet (ed.), *Commentary on Convention (IV) relative to the Protection of Civilian Persons in Time of War*, International Committee of the Red Cross (1958), commentary to Article 50.

<sup>14</sup> *Advisory Opinion on the Policies and Practices of Israel in the OPT*, *supra* note 6, para. 122; *Advisory Opinion on the Construction of a Wall*, *supra* note 1, paras. 124 and 135.

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring 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.

In this respect, the Court observed that “the Occupying power has the continuing duty to ensure that the local population has an adequate supply of foodstuffs, including water”.<sup>15</sup>

2.14 This obligation is supplemented by Article 69 of Additional Protocol I, which specifies that the occupying Power shall “to the fullest extent of the means available to it and without any adverse distinction, also ensure the provision of clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship”.

2.15 Article 69 of Additional Protocol I does not provide an exhaustive list of items. Rather, it obliges the occupying Power to ensure the provision of the items mentioned explicitly, as well as “other supplies” essential to the survival of the civilian population, to the fullest extent of the means available to it.

2.16 Similarly, with regard to hygiene and public health, the occupying Power is responsible for ensuring that the medical needs of the civilian population are met. In this regard, Article 56 of the Fourth Geneva Convention stipulates that “[t]o the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory” and that “[m]edical personnel of all categories shall be allowed to carry out their duties”. This provision is supplemented by Articles 14 and 15, paragraph 3, of Additional Protocol I.

2.17 The rules referred to above impose obligations on an occupying Power to ensure that, as a minimum, the basic needs of food, medical supplies and healthcare services to the benefit of the civilian population are met. While an occupying Power retains the primary obligation, in practice, basic services may (also) be carried out or provided for by others, including by international organisations, such as the United Nations. It follows that to meet its duties, the occupying Power must either allow and facilitate the work of such organisations, or when consent is withdrawn, ensure that it meets its obligations through other means.

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<sup>15</sup> *Advisory Opinion on the Policies and Practices of Israel in the OPT*, *supra* note 6, para. 124.

2.18 Moreover, the longer an international organisation or other third party operates in an occupied territory and the longer such an international organisation or other third party provides more or all of the elements contained in Articles 50, 55 and 56 of the Fourth Geneva Convention and Article 69 of Additional Protocol I, the more impact a withdrawal of consent or termination of facilitation by the occupying Power for the provision of supplies will have on the population of the occupied territory. This is logical, because over time the population of the occupied territory may become significantly dependent for its development and survival on the relief provided by such an organisation.

2.19 Finally, the Kingdom of the Netherlands observes that Article 55 of the Fourth Geneva Convention and Article 69 of Additional Protocol I contain the qualifier “to the fullest extent of the means available to it”, which recognises that an occupying Power may face practical difficulties in meeting its obligations to ensure food and medical supplies for the civilian population. However, if the occupying Power is not able to fulfil its duty to provide the civilian population under its control with essential supplies, it must agree to relief operations on behalf of this population, as detailed below.

### *C. Relief operations*

2.20 Relief operations for the benefit of the civilian population in occupied territories are governed by Articles 59-62 and 108-111 of the Fourth Geneva Convention, and by Article 71 of Additional Protocol I. Such relief operations, consisting of items indispensable for the survival of the population, must be implemented without delay.<sup>16</sup> In this regard, Article 59 of the Fourth Geneva Convention stipulates:

If 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 means at its disposal.

Such schemes, which may be undertaken by either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing.

All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection.

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<sup>16</sup> Additional Protocol I, *supra* note 5, Article 69(2).

2.21 The obligation to agree to and facilitate relief operations is worded in absolute and unconditional terms, as a direct consequence of the inability or unwillingness of the occupying Power to provide for the required supplies itself. Accordingly, the occupying Power is under an obligation to agree to relief being delivered to the population, “in all cases where occupied territory is inadequately supplied”.<sup>17</sup>

2.22 Relief operations may be undertaken by neutral States or impartial humanitarian organisations, such as the ICRC. The occupying Power must not only "agree" to relief operations on behalf of the population but, in accordance with Article 59 of the Fourth Geneva Convention, it must also "facilitate" these by all means at its disposal. This means that the occupying Power is obliged to take active steps to cooperate with the impartial humanitarian organisation or third neutral State undertaking relief operations, to grant access to the occupied territory, subject to the right of search, and facilitate the distribution of relief through any means, even if, out of practical necessity, this requires some form of agreement between the various parties. This may also include agencies and bodies of the United Nations undertaking relief operations.

2.23 In order to facilitate the transportation and distribution of relief goods, where necessary, relief personnel may form part of the assistance provided. Article 71 of Additional Protocol I, which also applies to occupied territory, stipulates that the “participation of such personnel shall be subject to the approval of the Party”. However, a refusal to grant admission should apply to a particular individual involved in the relief mission (who could then be replaced by another person), not to all or any necessary personnel involved in such actions, which may lead to the obstruction of the entire relief operation. Relief personnel shall be protected and respected. This obligation applies to all parties to an armed conflict and entails, in particular, that the parties must inform and instruct their armed forces not to attack such personnel.<sup>18</sup> The activities of relief personnel may only be limited or their movements temporarily restricted in the case of imperative military necessity.<sup>19</sup>

2.24 While not an element under Article 59 of the Fourth Geneva Convention, agreement between the occupying Power and humanitarian organisations may, in practice, be necessary to facilitate access to an occupied territory. Practice shows that such an agreement normally takes the form of a treaty – in cases of international organisations such as the United Nations and third States

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<sup>17</sup> J.S. Pictet (ed.), *Commentary on Convention (IV) relative to the Protection of Civilian Persons in Time of War*, International Committee of the Red Cross (1958), commentary on Article 59.

<sup>18</sup> Sandoz et. al. (ed.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, International Committee of the Red Cross (1987), commentary to Article 71.

<sup>19</sup> Additional Protocol I, *supra* note 5, Article 71.

– or a politically binding instrument – in cases of non-governmental organisations. This raises the question of the circumstances under which such agreement can be refused or withdrawn. The obligations of an occupying Power are relevant in determining whether such a refusal or withdrawal of consent complies with an occupying Power’s obligations under international law.

2.25 Furthermore, it is important to note that even when relief is supplied by third parties, an occupying Power retains the responsibility, under both the applicable treaty law and customary international law, to fulfil the duties of an occupying Power, as contained in Articles 50, 55 and 56 of the Fourth Geneva Convention and Article 69 of Additional Protocol I, related to essential supplies and healthcare, for the benefit of the civilian population in occupied territories.

2.26 A failure to agree to and facilitate relief operations by the occupying Power in situations where the population is inadequately supplied would be unlawful under international humanitarian law, unless the occupying Power has fully taken over the relief operations previously conducted by such an international organisation or third party and ensures the adequate provision of supplies. Such a failure would constitute a breach of Article 59 of the Fourth Geneva Convention and Article 69 of Additional Protocol I, as reflected in customary international law. Moreover, as the occupying Power retains its responsibility over the occupied territory, a failure to ensure essential supplies to the fullest extent of the means available to it, would also constitute a breach by the occupying Power of the customary international law obligations contained in Articles 50 and 55 of the Fourth Geneva Convention.

2.27 It would appear that the Court has considered that these obligations do not only apply *vis-à-vis* the population of the occupied territory, but also *vis-à-vis* the international community as a whole. Hence, said obligations would be obligations *erga omnes*.<sup>20</sup>

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<sup>20</sup> *Advisory Opinion on the Policies and Practices of Israel in the OPT*, *supra* note 6, para. 96; *Advisory Opinion on the Construction of a Wall*, *supra* note 1, para. 157.

### 3. Occupation, relief operations and self-determination

3.1 As has been observed by the Kingdom of the Netherlands, the right of self-determination is applicable in the colonial and in the post-colonial context.<sup>21</sup> It is equally applicable to peoples “under foreign or alien occupation”.<sup>22</sup>

3.2 The applicability of the right to self-determination to peoples residing in an occupied territory was confirmed by the Court in the *Advisory Opinion on the Construction of a Wall*<sup>23</sup> and the *Advisory Opinion on the Policies and Practices of Israel in the OPT*.<sup>24</sup> The Court affirmed that the right of all peoples to self-determination is “one of the essential principles of contemporary international law”.<sup>25</sup> Indeed, it has recognised that the obligation to respect the right to self-determination is owed *erga omnes* and that all States have a legal interest in protecting that right.<sup>26</sup>

3.3 In the *Advisory Opinion on the Policies and Practices of Israel in the OPT*, the Court emphasised the centrality of the right to self-determination in international law as reflected in its inclusion as common Article 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.<sup>27</sup> The Court made reference to the observation of the Human Rights Committee that the importance of the right of self-determination stems from the fact that “its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights”.<sup>28</sup> The Court continued to state that it considered the right to self-determination to be a fundamental human right and made reference to several resolutions of the General Assembly of the United Nations which emphasised the significance of the right to self-determination as an “inalienable right”.<sup>29</sup> The Court then considered that

[I]n cases of foreign occupation [...], the right to self-determination constitutes a peremptory norm of international law.<sup>30</sup>

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<sup>21</sup> Written Statement of the Kingdom of the Netherlands, submitted on 27 February 2018, with respect to *Legal Consequences of the Separation of the Chagos Archipelago*, paras. 2.1-2.7.

<sup>22</sup> UN Doc. A/RES/51/84, 28 February 1997, Operative para. 1; UN Doc. A/RES/55/2, 18 September 2000, Section I, para. 4.

<sup>23</sup> *Advisory Opinion on the Construction of a Wall*, *supra* note 1, para. 118.

<sup>24</sup> *Advisory Opinion on the Policies and Practices of Israel in the OPT*, *supra* note 6, para. 230.

<sup>25</sup> *East Timor (Portugal v. Australia)*, Judgment, *I.C.J. Reports* 1995, para. 29.

<sup>26</sup> *Advisory Opinion on the Construction of a Wall*, *supra* note 1, para. 155; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, *I.C.J. Reports* 2019 (hereinafter ‘*Legal Consequences of the Separation of the Chagos Archipelago*’), para. 180.

<sup>27</sup> *Advisory Opinion on the Construction of a Wall*, *supra* note 1, para. 233.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

3.4 In cases of prolonged occupation, the population of the occupied territory may have, for its development and survival, become mainly dependent on the provision of foreign aid provided by international organisations and other third parties. As a result, this population becomes dependent on the willingness of the occupying Power to facilitate such relief and cooperate with these international organisations and third parties. Such a situation, according to the Court, in itself impairs the enjoyment of fundamental human rights, in particular the right to self-determination of a people residing in the occupied territory.<sup>31</sup>

3.5 In a situation of extreme dependence on relief operations, the occupying Power's unilateral decision to terminate its agreement and cooperation with a third party responsible for the bulk of the humanitarian assistance, directly and severely affects a people as a whole, frustrating its economic, social and cultural development. Such conduct also has direct repercussions on the possibility for individual persons to receive the necessary health care, education, shelter, food and drinking water, and other basic needs. This has severe negative consequences on the ability for the people concerned to exercise its right to self-determination, politically, economically, socially, and culturally. It would likely contribute to the departure of parts of the population from the occupied territory and would thus risk alterations to the demographic composition of the occupied territory, which would severely impede the exercise of the right to self-determination by the people concerned.<sup>32</sup> These effects could only be mitigated if and when the occupying Power itself takes over these responsibilities in accordance with its obligations under international law (or makes arrangements with other third parties for that purpose). Should an occupying Power fail to provide for the required humanitarian assistance in such a situation, either directly or through third parties, its conduct would appear to violate the right to self-determination as a peremptory norm of international law.

#### **4. Occupation, relief operations and international human rights law**

4.1 All persons within the jurisdiction of a certain State, meaning under its effective control, are entitled to the enjoyment of the human rights obligations incumbent upon this State.<sup>33</sup> The existence of effective control depends on the circumstances of the case. The existence of an occupation in accordance with Article 42 of the Hague Regulations is an indication that there is also effective control over an area for the purpose of the application of international human

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<sup>31</sup> *Advisory Opinion on the Policies and Practices of Israel in the OPT*, *supra* note 6, para. 241; *Advisory Opinion on the Construction of a Wall*, *supra* note 1, para. 237.

<sup>32</sup> *Advisory Opinion on the Policies and Practices of Israel in the OPT*, *supra* note 6, para. 237.

<sup>33</sup> *Idem.*, paras. 99-100.

rights law. When an occupied territory is under the effective control of a State, this territory should in principle be treated as indistinguishable from the State's own territory for the purposes of its international human rights obligations.

4.2 The Court has observed that international human rights law continues to apply during situations of armed conflict, including during occupation.<sup>34</sup> International humanitarian law is applicable alongside international human rights law in case of occupation. Only in case of normative conflict, the principle *lex specialis derogat legi generali* regulates the relationship between the rules of the two legal regimes.

4.3 Humanitarian relief as such is not explicitly provided for in international human rights law, but human rights are relevant for the question whether relief should be provided and the determination of the level/content of relief. The withholding or denial of relief in a situation may cause breaches of international human rights law. If the occupying Power does not, or is not willing or able to, comply with its human rights obligations, the Kingdom of the Netherlands considers that the occupying Power should refrain from interfering with other parties that help ensure the enjoyment of “the basic rights of the human person”<sup>35</sup> and other human rights for the population of an occupied territory. These include the rights to food, safe and clean drinking water and sanitation, health, and education.

## **5. Obligations under international law of an occupying Power *vis-à-vis* the United Nations, including its agencies and bodies, other international organisations and third States**

### ***A. Obligations of an occupying Power vis-à-vis the United Nations and other international organisations***

5.1 Pursuant to Article 104 of the Charter, Member States have an obligation to afford the United Nations legal personality in their domestic legal order. Article 105 of the Charter stipulates that the United Nations enjoys in the territory of each of its Member States such privileges and immunities as are necessary for the fulfilment of its purposes. Representatives of the Member

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<sup>34</sup> *Application of the International Convention on the Elimination of all forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections, Judgment, *I.C.J. Reports* 2024, para. 76; *Advisory Opinion on the Policies and Practices of Israel in the OPT*, *supra* note 6, para. 99; *Advisory Opinion on the Construction of a Wall*, *supra* note 1, para. 106; Draft articles on the effects of armed conflicts on treaties, adopted by the International Law Commission at its sixty-third session (2011) and submitted to the General Assembly as a part of the Commission's report covering the work of that session (UN Doc. A/66/10, para. 100); Yearbook of the International Law Commission, 2011, Vol. II, Part Two, Articles 6-7 and Annex, under (f).

<sup>35</sup> *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Judgment on Second Phase, *I.C.J. Reports* 1970 (hereinafter ‘*Barcelona Traction case*’), para. 34.

States of the United Nations and officials of the United Nations similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the United Nations.

5.2 Details of the application of these obligations can be included in conventions, such as has been the case in the United Nations and the Convention on the Privileges and Immunities of the United Nations<sup>36</sup> (New York, 13 February 1946, the ‘General Convention’). The obligations stemming from the Charter and the General Convention must be respected by all Member States of the United Nations, also in the event of occupation, when an agency or body of the United Nations or its officials are present.

5.3 This does not encompass an obligation to receive the United Nations, one of its agencies or bodies, or its officials on the territory of a State. A State is entitled unilaterally to regulate who may enter and leave its territory and under what conditions. This freedom may be limited through bilateral or multilateral treaties to which a State is a party and by rules of customary international law.

5.4 In general, staff members of international intergovernmental organisations, such as the United Nations, have no *a priori* entitlement to enter the territory of a State of which they are not nationals or permanent residents.<sup>37</sup> The right to enter the territory of a State for staff members of international organisations may be regulated in a multilateral treaty, such as the General Convention,<sup>38</sup> and/or a bilateral agreement between the host State and the international organisation. Such agreements may stipulate a requirement of the issuing of visas by the host State and other procedures to be complied with by the international organisation and its staff members. It may also stipulate the conditions for a compulsory departure of staff members of an international organisation (for instance a declaration of *persona non grata*). However, abuse of such conditions could constitute a violation of the customary international law obligation of a host State to facilitate an international organisation to perform its functions independently and effectively.

5.5 Further provisions regarding the functioning of an international organisation and the legal status of the organisation and its staff within the territory of a State are usually laid down in the statute of

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<sup>36</sup> United Nations General Assembly, Convention on the Privileges and Immunities of the United Nations, New York, 13 February 1946, 1 U.N.T.S. 15.

<sup>37</sup> Cf. Section 24 and Section 25 of the United Nations Convention on Privileges and Immunities and Bilateral Agreements, such as Article XVII of the Agreement between the United Nations Relief and Works Agency for Palestine Refugees in the Near East and the Palestinian Authority regarding the Location of UNWRA Headquarters in the West Bank and Gaza Strip Area of 5 July 1996.

<sup>38</sup> *Ibid.*

the relevant international organisation and a host State agreement or comparable instrument. A State may terminate a host State agreement or comparable instrument in accordance with the terms of the agreement itself, or, in their absence, in accordance with the rules of customary international law as codified in the Vienna Convention on the Law of Treaties between States and International Organizations of between International Organizations<sup>39</sup> (Vienna, 12 March 1986, ‘VCLT-IO’) and without prejudice to any continuing obligations stemming from the statute of the international organisation and/or a multilateral treaty on its privileges and immunities. As a result, both the international organisation and its staff will need to leave the territory of the State within a reasonable period of time. During that period of time, the host State needs to continue to respect its obligations under the applicable (multilateral) legal framework, including the inviolability and immunity of the international organisation, its premises and the members of its staff. These general rules also apply to the territory of an occupying Power and, as a result of the exercise of control, also to the territory it occupies.

5.6 When the United Nations, including its agencies or bodies, or a specialised agency of the United Nations is operating within the territory of a Member State of the United Nations or a territory that is occupied by that State, with that State’s consent, this State is obliged to respect the provisions contained in Article 105 of the Charter and the General Convention, and/or the United Nations Convention on the Privileges and Immunities of the Specialized Agencies<sup>40</sup> (New York, 21 November 1947) in regard of such organisation and its staff present within those territories. In the context of the present Request, it is irrelevant whether the occupation is lawful or unlawful under international law. For their applicability, it is also irrelevant whether the privileges and immunities contained in the Charter, the General Convention and/or the United Nations Convention on the Privileges and Immunities of the Specialized Agencies have been implemented under national law.<sup>41</sup>

5.7 When another international organisation is operating with a State’s consent within its territory or a territory that is occupied by that State, and that State is a member of that international organisation or has concluded a bilateral agreement with that organisation, the State is obliged to respect the obligations, including those with respect to privileges and immunities, stemming from the legal

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<sup>39</sup> United Nations, Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, Vienna, 12 March 1986 (A/CONF.129/15).

<sup>40</sup> United Nations, Convention on the Privileges and Immunities of the Specialized Agencies, New York, 21 November 1947, 33 U.N.T.S. 261.

<sup>41</sup> For example, the United Nations Secretary-General in his report on the implementation of Security Council resolution 2334 (2016) (report of 14 December 2023) stated that national legislation cannot alter the obligations of Israel under the Charter and its other obligations under international law, including those concerning the privileges and immunities of the United Nations; United Nations Security Council, *Implementation of Security Council resolution 2334 (2016)*, S/2024/913, 13 December 2024, para. 84.

framework that applies to the international organisation and its membership as well as those stemming from the bilateral agreement.

5.8 The termination by an occupying Power of the agreement that regulates the hosting of the United Nations or a specialised agency of the United Nations within its territory in accordance with the provisions of such a bilateral agreement or, in their absence, in accordance with the rules of customary international law as codified in the VCLT-IO, leaves unaffected the continued applicability of the Charter and other conventions regulating the privileges and immunities of the United Nations or a specialized agency of the United Nations and its staff within an occupied territory. In the same vein, the termination of a bilateral agreement that regulates the hosting of another international organisation within the territory of a State, has no bearing on the continued application of the international framework that provides for privileges and immunities of that international organisation and its staff, and to which the occupying Power remains a State Party.

5.9 If a bilateral agreement concluded between the host State and an international organisation does not contain a provision on the denunciation of the agreement or withdrawal thereof, the rules of customary international law as codified in the VCLT-IO would be applicable. Article 56 of the VCLT-IO indicates that a treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal, unless it is established that the parties intended to admit the possibility of denunciation or withdrawal, or a right of denunciation or withdrawal may be implied by the nature of the treaty. It could be argued that the consensual nature of an agreement that regulates the hosting of an international organisation by facilitating the task of that international organisation and by providing for its access to a State's territory, as well as to occupied territories, implies also the right of denunciation or withdrawal of the agreement. The nature of this type of agreements is such that the host State should be able to end it if it no longer consents to the international organisation operating within its territory and a territory that is occupied by that State. In the event of denunciation in accordance with Article 56, paragraph 1, under b, of the VCLT-IO, paragraph 2 of that same provision obliges the State to give the other party to the agreement at least twelve months' notice of its intention.

5.10 However, if the agreement so terminated relates to an international organisation that is engaged in major relief operations regarding the population of the occupied territory, such termination must not only be in accordance with the law of treaties, but also with international humanitarian law, international human rights law, and the right to self-determination.

5.11 As set out above, the occupying Power is not only under an obligation to agree to relief being delivered to the population of an occupied territory, “in all cases where an occupied territory is inadequately supplied”,<sup>42</sup> but it must also “facilitate” relief operations by all means at its disposal. This obligation, as set out in Article 59 of the Fourth Geneva Convention, could also imply that the occupying Power no longer has the freedom unilaterally to end a bilateral agreement with an international organisation that is the main provider of essential services, if this results in the occupied territory being inadequately supplied. Such unilateral action in that case could be found to violate the occupying Power’s obligation under Article 59 of the Fourth Geneva Convention.

5.12 In addition, it is recalled that the General Assembly of the United Nations has urged all States to take the necessary measures to ensure the safety and security of humanitarian personnel and United Nations personnel and to respect and ensure respect for the inviolability of United Nations premises, which are essential to the continuation and successful implementation of United Nations operations.<sup>43</sup> This also includes respect for the obligations stemming from the Convention on the Safety of United Nations and Associated Personnel (New York, 9 December 1994)<sup>44</sup> for States that are Party to that Convention.

### ***B. Obligations of an occupying Power vis-à-vis third States***

5.13 Non-compliance with *erga omnes* obligations, including those referred to in paragraph 2.27 above, may cause breaches of peremptory norms applying *erga omnes*, as it may impair the right to self-determination and cause breaches of international human rights law as well as of other norms of international humanitarian law.

5.14 The right to self-determination, at least in the colonial context and in situations of foreign occupation, the basic rules of international humanitarian law, and certain human rights, all constitute peremptory norms that, as such, apply *erga omnes*.<sup>45</sup> In addition, the “basic rights of the human person” apply *erga omnes*.<sup>46</sup>

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<sup>42</sup> Fourth Geneva Convention, *supra* note 4, Article 59.

<sup>43</sup> United Nations General Assembly, Resolution adopted by the General Assembly at its fifty-third session, *Safety and Security of Humanitarian Personnel and Protection of United Nations Personnel*, A/RES/53/87, 27 January 1999.

<sup>44</sup> United Nations General Assembly, Convention on the Safety of United Nations and Associated Personnel, New York, 9 December 1994, 2051 U.N.T.S. 363.

<sup>45</sup> *Advisory Opinion on the Construction of a Wall*, *supra* note 1, para. 155; *Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago*, *supra* note 26, para. 180; *Advisory Opinion on the Policies and Practices of Israel in the OPT*, *supra* note 6, para. 233; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, *I.C.J. Reports* 2012, para. 99; Draft Articles on the Responsibility of States for Internationally Wrongful Acts, Report of the International Law Commission on the work of its fifty-third session, 23 April – 1 June and 2 July – 10 August 2001, Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10, UN Doc. A/56/10 (hereinafter ‘ARSIWA’), commentary to Article 26, para. 5 and commentary to Article 40, paras. 4-5.

<sup>46</sup> *Barcelona Traction case*, *supra* note 35, paras. 33-34.

5.15 In light of the question submitted to the Court, the Kingdom of the Netherlands will now address the question to whom such obligations are owed.

5.16 Compliance with international humanitarian law, international human rights law, and the right to self-determination is first and foremost owed to the people inhabiting an occupied territory. As a consequence of any breaches of their corresponding rights by an occupying Power, it owes the population cessation, assurances and guarantees of non-repetition as appropriate, restitution, and compensation to the extent that restitution is impossible.<sup>47</sup>

5.17 Due to the *erga omnes* application of these norms, the occupying Power not only owes the relevant obligations to the people residing in the occupied territory, but also to the international community as a whole. This could have legal consequences for the occupying Power. First, as a corollary of the obligations owed to the international community, the occupying Power has the duty – towards the international community – to cease its wrongful conduct, to continue performance of its obligations, to offer assurances and guarantees of non-repetition as appropriate, and to make reparation in the interests of the beneficiaries of the rights concerned.<sup>48</sup>

5.18 Second, as all States have “a legal interest in their protection”<sup>49</sup> in relation to obligations applying *erga omnes*, those States have standing to invoke the responsibility of the occupying Power for its wrongful conduct. For the present purposes, it means that in situations involving a breach by the occupying Power of its obligations applying *erga omnes*, an international organisation or third State that was part of the entities providing for the necessary humanitarian relief may request to be allowed to resume its operations. An occupying Power acting in breach of such obligations, would, as part of its obligation of cessation of its breach and continued performance of its obligation, have to allow such an international organisation or third State to resume operations.

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<sup>47</sup> See, for example, *Advisory Opinion on the Policies and Practices of Israel in the OPT*, *supra* note 6, para. 269.

<sup>48</sup> ARSIWA, *supra* note 45, Article 48.

<sup>49</sup> *Barcelona Traction* case, *supra* note 35, para. 33.

Respectfully,

A handwritten signature in blue ink, appearing to read 'René J.M. Lefebber', enclosed in a light blue rectangular box.

Professor Dr. René J.M. Lefebber

Legal Adviser

Representative for the Government of the Kingdom of the Netherlands