

INTERNATIONAL COURT OF JUSTICE

Request for Advisory Opinion

**“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”**

Written Statement of the Federative Republic of Brazil

28th February 2025

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INTRODUCTION

1. Pursuant to the International Court of Justice's Order of 23 December 2024, the Federative Republic of Brazil has the honor to submit this Written Statement to furnish information on the questions addressed to the Court in General Assembly resolution 79/232, adopted on 19 December 2024. This submission aims to assist the Court in the advisory proceedings entitled "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."
2. On 19 December 2024, under its agenda item 123, the United Nations General Assembly adopted Resolution 79/232, by a recorded vote of 137 to 12, with 22 abstentions, entitled "Request for an advisory opinion of the International Court of Justice on the obligations of Israel in relation to the presence and activities of the United Nations, other international organizations and third states."
3. In this resolution, the General Assembly decided, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice to render an advisory opinion pursuant to Article 65 of the Statute of the Court, 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?"
4. The General Assembly resolution requested the Court to render its opinion considering "the rules and principles of international law, as regards in particular the Charter of the United Nations, international humanitarian law, international human rights law, privileges and immunities applicable under international law for international organizations and States, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, the advisory opinion of the Court of 9 July 2004, and the advisory opinion of the Court of 19 July 2024, in which the Court reaffirmed the duty of an occupying Power to administer occupied territory for the benefit of the local population and affirmed that Israel is not entitled to sovereignty over or to exercise sovereign powers in any part of the Occupied Palestinian Territory on account of its occupation."
5. Brazil cosponsored the aforementioned resolution together with 52 States and decided to submit this Written Statement based on its permanent commitment to the promotion of international law and its unwavering support for the International Court of Justice as the principal judicial organ of the United Nations.

6. Brazil does not perceive this advisory proceeding as a bilateral dispute, nor does it approach the present statement as being adversarial to any State. Since 1949, Brazil recognizes the State of Israel. Since 2010, Brazil recognizes the State of Palestine, in the borders of 1967. Brazil remains committed to the idea of the achievement of a comprehensive, just and lasting peace in the Middle East with no delay based on international law and relevant United Nations resolutions. In this connection, Brazil reiterates its commitment to a two-state solution, with an independent and viable State of Palestine living side by side with Israel, in peace and security, within the 1967 borders, which includes the Gaza Strip and the West Bank, with East Jerusalem as its capital.

7. This Written Statement is structured in six parts, as follows: (i) considerations on jurisdiction and judicial propriety; (ii) the right of the Palestinian people to self-determination; (iii) UNRWA's mandate and activities; (iv) obligations of Israel as an occupying power; (v) obligations of Israel as a member of the United Nations and (vi) conclusion.

(I) CONSIDERATIONS ON JURISDICTION AND JUDICIAL PROPRIETY

8. According to Article 65(1) of its Statute, “the Court may give an advisory opinion on any legal question at the request of whatever body authorized by or in accordance with the Charter of the United Nations to make such a request.” The General Assembly is competent to request an advisory opinion by virtue of Article 96, paragraph 1, of the Charter, which provides that “The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.”

9. The questions submitted by the General Assembly to the Court in the present case have been framed in terms of law and are susceptible of replies based on law. As acknowledged by the Court in the Wall proceedings, the fact that a legal question also has political aspects does not preclude the Court from exercising its advisory jurisdiction¹. In addition, since the purpose of an advisory opinion is merely to assist the organ that has requested it in the performance of its activities, the “political history of the request” is also irrelevant to the Court². The hypothetical “political consequences” of an advisory opinion are equally to be disregarded, since to envisage such consequences is the province of the General Assembly³.

10. For these reasons, Brazil considers that all criteria for the Court to have advisory jurisdiction according to Article 65(1) of the Statute are met.

11. As the Court recalled multiple times, the fact that it has jurisdiction does not mean that it is obliged to exercise it. Article 65(1) of the Statute provides that the Court “may” give an Advisory Opinion, which is interpreted to mean that the “Court

¹ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, para 41.

² Legality of the Threat or Use of Nuclear Weapons, I.C.J. Reports 1996 (I), para. 16.

³ Unilateral Declaration of Independence, I.C.J. Reports 2010, para. 35.

has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met". This discretion exists so as to protect the integrity of the Court's judicial function⁴.

12. Given its responsibilities as the principal judicial organ of the United Nations, and considering that its answer to a request for an advisory opinion represents its participation in the activities of the Organization, the consistent jurisprudence of the Court is that only "compelling reasons" may lead the Court to refuse its opinion in response to a request falling within its jurisdiction⁵.

13. When the subject-matter of a request by the General Assembly cannot be regarded solely as a bilateral dispute, there is no compelling reason not to give an advisory opinion. In the present case, the object of the request is to obtain an opinion that the General Assembly deems of assistance to it for the proper exercise of its functions, including in relation to an Agency of the United Nations whose mandate was created by the Assembly.

14. The question raised by the General Assembly is located in a "much broader frame of reference than a bilateral dispute"⁶. It relates to the obligations of Israel in relation to the presence and activities of the United Nations, other International Organizations and third States in and in relation to the Occupied Palestinian Territory. Israel is "a Member of the United Nations and has accepted the provisions of the Charter and Statute; it has thereby in general given its consent to the exercise by the Court of its advisory jurisdiction."⁷

15. An advisory opinion would neither interfere with the Israeli-Palestinian negotiation process nor hinder the work of the Security Council.

16. At this critical juncture in the history of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, an advisory opinion from the Court would furnish the elements of law necessary for the General Assembly with reference to its responsibilities and functions regarding the Occupied Palestinian Territory, as well as to the relation of the United Nations *lato sensu* in connection with the State of Palestine.

17. Therefore, Brazil submits that there is no compelling reason for the Court to use its discretionary power not to give its opinion to the General Assembly. Given its responsibilities as one of the principal organs of the United Nations, the Court should exercise its advisory jurisdiction in order to assist the General Assembly in its functions.

⁴ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, paras. 44-45.

⁵ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, paras. 44-45.

⁶ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, para. 50

⁷ Western Sahara, I.C.J. Reports 1975, p. 25, para. 30

(II) THE RIGHT OF THE PALESTINIAN PEOPLE TO SELF-DETERMINATION

18. The Court has affirmed the Palestinian people's right to self-determination⁸.

19. One of the essential principles of contemporary international law, the right to self-determination is the basis for one of the purposes of the United Nations, as enshrined in article 1(2) of the Charter. The General Assembly recognizes this right as a prerequisite to the full enjoyment of all fundamental human rights⁹.

20. In its 2024 Advisory Opinion, the Court considered that "in cases of foreign occupation such as the present case, the right to self-determination constitutes a peremptory norm of international law" (para 233), and the obligation to respect it is owed *erga omnes*.

21. The Court concluded that Israel's unlawful policies and practices in the Occupied Palestinian Territory are "in breach of Israel's obligation to respect the right of the Palestinian people to self-determination" (para 243).

22. The Court recalled that the right to self-determination is also set out in common Article 1 of the ICESCR and the ICCPR, the first paragraph of which provides: "All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development."

23. General Assembly resolution 2625 (XXV), of 1970, containing the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, reiterated that "all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter". The Court recognizes that the right to self-determination as elaborated in this resolution reflects customary international law.¹⁰

24. The General Assembly has repeatedly affirmed "the right of the Palestinian people to self-determination, including the right to their independent State of Palestine"¹¹. Other United Nations organs, such as the Human Rights Council, have done the same.¹²

⁸ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), p. 183, para. 118 and Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, ICJ Reports, 2024, p. 65, para 230.

⁹ UNGA resolution 637 (VII) of 1952, Part A.

¹⁰ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, para. 188.

¹¹ A/RES/79/163.

¹² A/HRC/RES/55/30.

25. On November 29 2012, United Nations General Assembly resolution 67/19 granted the State of Palestine non-member observer State status in the United Nations. This decision was expanded upon in 2024, when Resolution ES-10/23 determined “that the State of Palestine is qualified for membership in the United Nations in accordance with Article 4 of the Charter of the United Nations and should therefore be admitted to membership in the United Nations.” At the present time, the State of Palestine is officially recognized by an important majority of more than 140 of the United Nations Member States.

26. In its 2024 advisory opinion, the Court also considered “that Israel, as the occupying Power, has the obligation not to impede the Palestinian people from exercising its right to self-determination, including its right to an independent and sovereign State, over the entirety of the Occupied Palestinian Territory” (para 237).

27. As regards the presence and activities of third States in the Occupied Palestinian territory in support of the Palestinian people’s right to self-determination, the General Assembly has already called upon Israel “not to impede or impair the work of third States in the Occupied Palestinian territory.”¹³

28. Moreover, Brazil recalls that establishing diplomatic relations is a prerogative of independent States. Article 1 of the Montevideo Convention on the Rights and Duties of States, which is widely considered to reflect customary law, clearly states that the “capacity to enter into relations with other states” is a qualification of the state as a person of international law. This right does “not depend upon the power which [the State] possesses to assure its exercise, but upon the simple fact of its existence as a person under international law” (article 4), and is not “susceptible of being affected in any manner whatsoever” (article 5). Finally, article 8 of the Montevideo Convention expressly provides that “no state has the right to intervene in the internal or external affairs of another.”

29. The Court may thus wish to consider whether measures taken by Israel to undermine, impede or retaliate the establishment of diplomatic relations between third States and the State of Palestine, as well as the establishment of permanent diplomatic missions, in attempts to deny the Palestinian people’s right to an independent State, constitute a violation of the right to self-determination.

30. In the context of the present Advisory Opinion, Brazil considers that systematic measures and practices by Israel aimed at undermining the presence and activities, in the Occupied Palestinian Territory, of the United Nations, including its agencies and bodies, other international organizations, and third States, may infringe upon the Palestinian people’s right to self-determination and its widely recognized statehood.

(III) UNRWA’S MANDATE AND ACTIVITIES

¹³ A/RES/79/232.

31. The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was established by the General Assembly in its resolution 302 (IV) of 8 December 1949, and has been providing assistance to Palestinian refugees in the Occupied Palestinian Territory, including East Jerusalem, since 1950.

32. This mandate can only be revised or revoked by the General Assembly and its implementation may not be unilaterally thwarted by domestic legislation.

33. On October 28, 2024, the Israeli Knesset approved two bills that will, if implemented, impede UNRWA's operations in the Occupied Palestinian Territory. The first bill prevents any Agency activities within the "sovereign" territory of the State of Israel, which, from Israel's perspective, includes East Jerusalem (unilaterally annexed in 1980). The second bill (i) revokes the 1967 "Comay-Michelmores" letters between UNRWA and Israel, through which Israel agreed to facilitate UNRWA's tasks in the West Bank and Gaza (the agreement covers topics such as the protection of staff and facilities, free movement of vehicles and staff, and tax exemptions); (ii) prohibits contacts between Israeli authorities and Agency representatives; and (iii) opens the way for criminal proceedings against UNRWA staff. The legal provisions have come into force after a three-month period from the date of publication (October 28, 2024), i.e., on January 28, 2025. On January 26, Israel already ordered UNRWA to vacate all premises in occupied East Jerusalem and cease its operations in them by 30 January 2025.

34. Presently, UNRWA is the cornerstone and backbone of the United Nations humanitarian relief operations in the region, delivering critical support to generations of Palestinian refugees through vital education, healthcare, relief, social service programs, and emergency assistance across the Occupied Palestinian Territory, Jordan, Lebanon, and the Syrian Arab Republic. Over 6 million people are now registered with UNRWA as Palestinian refugees across its five areas of operation.

35. In his identical letters to the President of the General Assembly and the President of the Security Council dated 10 December 2024, the Secretary General recalled that "[u]nder normal conditions, UNRWA operates almost 400 schools, over 65 primary health clinics and 1 hospital in the Occupied Palestinian Territory, which enable the provision of education to over 350,000 children and over 5 million health consultations annually. More specifically, in East Jerusalem, UNRWA schools provide education to approximately 2,000 students and its health clinics serve around 40,000 registered patients. UNRWA has also been providing vital poverty relief and social services, including a social safety net, emergency assistance and food vouchers, benefiting over 1.2 million people. In Gaza specifically, UNRWA has been the main provider of basic and essential services, providing education to approximately 300,000 children in 288 schools and 2 training centres, healthcare services to around 900,000 patients and around 3.5 million patient consultations annually in 22 primary health clinics, and emergency assistance to approximately 1.1 million people."¹⁴

¹⁴ A/79/684-S/2024/892

36. The Agency delivers vital support to nearly 2.3 million people in Gaza, the overwhelming majority affected by the ongoing conflict. Assistance includes food aid for approximately 1.9 million individuals, polio vaccinations for more than 200,000 children, healthcare for around 15,000 people -- representing over 60 percent of primary healthcare services in Gaza -- and shelter for hundreds of thousands of internally displaced persons in and around more than 100 schools.
37. The Agency not only delivers life-saving humanitarian assistance to Palestinian refugees but also plays a crucial role in enabling the Palestinian people to exercise their right to self-determination.
38. As stated by Commissioner-General of UNRWA Philippe Lazzarini at the Ministerial Conference to enhance the humanitarian response in Gaza, hosted by Egypt in December 2024, beyond its humanitarian and human development services, “UNRWA is also the custodian of Palestinian history and identity. Since its establishment, the Agency has maintained and updated family files of registered Palestine Refugees. These files consist of some 30 million documents and span up to five generations. They document everything from family composition to place of origin, to the circumstances of displacement in 1948.”
39. Therefore, the Agency is indispensable for safeguarding the rights of the Palestinian people, including their right of return, as affirmed in paragraph 11 of General Assembly Resolution 194 (III).
40. According to the final report of the Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality (“Colonna Report”), “UNRWA has established a significant number of mechanisms and procedures to ensure compliance with the humanitarian principles, with emphasis on the principle of neutrality, and that it possesses a more developed approach to neutrality than other similar UN or NGO entities.”
41. As second vice-president of UNRWA’s Advisory Commission, which it will preside over during the one-year term starting in July 2025, Brazil welcomes the Secretary-General’s and the Agency’s ongoing efforts and commitment to fully implementing the recommendations of the Colonna report, in order to continue ensuring its neutrality, impartiality, and independence.
42. In resolution ES-10/25 of 11 December 2024 (“Support for the mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East”), the General Assembly recognized that “no organization can replace or substitute the Agency’s capacity and mandate to serve Palestine refugees and civilians in urgent need of life-saving humanitarian assistance.”
43. There is currently no realistic alternative to UNRWA that could adequately provide the services and assistance required by the Palestinian people. The Agency is a pillar of regional stability and a lifeline of hope and opportunity for the millions of Palestinians it serves. Any interruption or suspension of its vital role would have serious humanitarian, political and security risks.

44. In this context, Israel has obligations both 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 in and in relation to the Occupied Palestinian Territory. In Brazil's view, it is not lawful for the occupying Power to unilaterally hinder the application of a mandate established by the General Assembly, with respect to occupied territory.

(IV) OBLIGATIONS OF ISRAEL AS AN OCCUPYING POWER

45. In the *Wall* Advisory Opinion, the Court found that "the Fourth Geneva Convention is applicable in any occupied territory in the event of an armed conflict arising between two or more High Contracting Parties. Israel and Jordan were parties to that Convention when the 1967 armed conflict broke out. The Court accordingly finds that the Convention is applicable in the Palestinian territories which before the conflict lay to the east of the Green Line and which, during that conflict, were occupied by Israel, there being no need for any enquiry into the precise prior status of those territories."¹⁵ Previously, the Security Council had also made similar findings in 1989, through Resolutions 636 and 641.

46. In its 2024 Advisory Opinion, the Court recognized that "the Occupied Palestinian Territory constitutes a single territorial unity" (para 78), that "[t]he Gaza Strip is an integral part of the territory that was occupied by Israel in 1967" (para 88), and that Israel is bound by "its obligations under the law of occupation" (para 94), inasmuch as it remains "capable of exercising, and continued to exercise, certain key elements of authority over the Gaza Strip, including control of the land, sea and air borders, restrictions on movement of people and goods, collection of import and export taxes, and military control over the buffer zone, despite the withdrawal of its military presence in 2005. This is even more so since 7 October 2023" (para 93).

47. The Court also stated that "[b]y virtue of its status as an occupying Power, a State assumes a set of powers and duties with respect to the territory over which it exercises effective control. In this context, the occupying Power bears a duty to administer the territory for the benefit of the local population" (para 105). The performance of this duty must be compatible with the obligation to refrain from exercising acts of sovereignty (para 108).

48. The Court also found that the policies and practices of Israel, which are designed to remain in place indefinitely and to create irreversible effects on the ground, especially in East Jerusalem and in Area C of the West Bank, "amount to annexation of large parts of the Occupied Palestinian Territory" (para 173). This act is "contrary to the prohibition of the use of force in international relations and its corollary principle of the non-acquisition of territory by force" (para 179).

¹⁵ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, para 101.

49. Furthermore, the Court considered that “the violations by Israel of the prohibition of the acquisition of territory by force and of the Palestinian people’s right to self-determination have a direct impact on the legality of the continued presence of Israel, as an occupying Power, in the Occupied Palestinian Territory. The sustained abuse by Israel of its position as an occupying Power, through annexation and an assertion of permanent control over the Occupied Palestinian Territory and continued frustration of the right of the Palestinian people to self-determination, violates fundamental principles of international law and renders Israel’s presence in the Occupied Palestinian Territory unlawful” (para 72).

50. Therefore, “Israel has an obligation to bring an end to its presence in the Occupied Palestinian Territory as rapidly as possible” (para 267). In this connection, the General Assembly, in its resolution ES-10/24, adopted on 18 September 2024, “demand[ed] that Israel brings to an end without delay its unlawful presence in the Occupied Palestinian Territory, which constitutes a wrongful act of a continuing character entailing its international responsibility, and do so no later than 12 months from the adoption of the present resolution”.

51. In its 2024 Advisory Opinion, the Court further concluded that “all States are under an obligation not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory. They are also under an obligation not to render aid or assistance in maintaining the situation created by Israel’s illegal presence in the Occupied Palestinian Territory. It is for all States, while respecting the Charter of the United Nations and international law, to ensure that any impediment resulting from the illegal presence of Israel in the Occupied Palestinian Territory to the exercise of the Palestinian people of its right to self-determination is brought to an end. In addition, all the States parties to the Fourth Geneva Convention have the obligation, while respecting the Charter of the United Nations and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention” (para 279). The duty of non-recognition also applies to the United Nations (para 280).

52. The illegality of the Israeli presence in the Occupied Palestinian Territory “does not release it from its obligations and responsibilities under international law, particularly the law of occupation, towards the Palestinian population and towards other States” (para 264), and Israel is under the obligation to administer the territory for the benefit of the local population.

53. The obligations of Israel, as the occupying Power, are set out both in customary international humanitarian law and in treaties, including the Regulations respecting the Laws and Customs of War on Land (“the Hague Regulations”) annexed to the Convention respecting the Laws and Customs of War on Land of 18 October 1907, and the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (“the Fourth Geneva Convention”).

54. The Hague Regulations have become part of customary international law, and they are thus binding on Israel (*ibid.*, para 96), and Israel is a party to the Fourth Geneva Convention since 1952. Furthermore, as was stated by the Court in the *Nuclear Weapons* case, the “fundamental rules” found in the Hague and Geneva

Conventions “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.”¹⁶

55. Article 43 of the Hague Regulations provides as follows: “[t]he 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.”

56. Article 50, paragraph 1, of the Fourth Geneva Convention provides that “[t]he Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.”

57. Article 55, paragraph 1, of the Fourth Geneva Convention further provides that “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.”

58. Article 56, paragraph 1, of the Fourth Geneva Convention provides that “to 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, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories shall be allowed to carry out their duties.”

59. Furthermore, article 59, paragraph 1, of the Fourth Geneva Convention provides that “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.”

60. Such relief actions should comply with humanitarian principles in full respect of General Assembly resolution 46/182. However, abusing this requirement in order to avoid the provision of urgently needed basic services and humanitarian assistance, in particular for political or military purposes, is a breach of international humanitarian law. Brazil is of the view that the necessary agreement for humanitarian access must not be withheld on arbitrary grounds. As set forth in article 1 of the Fourth Geneva Convention, Israel has an obligation not only to respect the provisions of humanitarian law, but also to ensure they are respected.

61. Israel’s obligation to allow for the provision of humanitarian assistance is also an issue of compliance with mandatory provisional measures ordered by the Court.

¹⁶ Legality of the Threat or Use of Nuclear Weapons, I.C.J. Reports 1996 (I), para 79.

62. In the case “Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)”, the Court ruled, in an order dated 26 January 2024, that “Israel must take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip” (para 80).

63. On March 28 2024, the Court ordered a second set of provisional measures, stating that “Israel shall (a) take all necessary and effective measures to ensure, without delay, in full co-operation with the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance, including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians throughout Gaza; and (b) ensure with immediate effect that its military does not commit acts which constitute a violation of any of the rights of the Palestinians in Gaza as a protected group under the Genocide Convention, including by preventing, through any action, the delivery of urgently needed humanitarian assistance.” (para 45).

64. According to article 94 of the United Nations Charter, such measures are binding upon the parties to the dispute and must be complied with by Israel, “in full co-operation with the United Nations”.

65. The aforementioned obligations must be taken into account should UNRWA be forced to cease its activities in the Occupied Palestinian Territory, considering the absence of a viable alternative to the Agency, and that the occupying Power is obligated to administer the territory for the benefit of the local population.

66. If Israel is unable to fulfill the needs of the population of the Occupied Palestinian Territory, in particular Palestinian refugees, it is required to allow and facilitate the operations of the United Nations, including UNRWA, as well as other humanitarian organizations, until the needs of the civilian population are comprehensively met.

67. In this context, Brazil reiterates that the General Assembly, in resolution ES-10/25 (“Support for the mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East”), recognized that “no organization can replace or substitute the Agency’s capacity and mandate to serve Palestine refugees and civilians in urgent need of life-saving humanitarian assistance.” Additionally, in resolution 79/232, the General Assembly called upon Israel “to uphold and comply with its obligations not to impede the Palestinian people from exercising its right to self-determination, including by rescinding any measures that obstruct the provision of basic services and humanitarian and development assistance to the Palestinian people.”

68. All Palestinians displaced during the occupation have the right to return to their original place of residence. Pursuant to Article 49(1) of the Fourth Geneva Convention, an occupying power may not, under any circumstances, deport protected persons from occupied territory to the territory of another State, including

its own territory, or forcibly transfer them within the occupied territory. Israel has not satisfied the necessary conditions for the evacuation of certain areas on a temporary basis for imperative military reasons or to ensure the safety of the occupied population, permitted under Article 49(2), since said evacuations did not take place under adequate conditions of safety, health, hygiene, food, and shelter.

69. In October 2024, Brazil condemned in the Security Council the decision in the Knesset to pass laws against UNRWA, hindering Agency activities and revoking the “Comay-Micheltmore Agreement”. By attempting to dismantle vital services for Palestinians, these laws deepen the suffering of an already devastated people and run counter to the request of the Court that Israel facilitates access to humanitarian assistance to Gazans. Furthermore, they violate Israel’s obligation not to exercise acts of sovereignty in the Occupied Palestinian Territory, in breach of Palestine’s rights to self-determination and territorial integrity. Efforts to undermine UNRWA are thus not only attacks on an institution, but on the Palestinian people.

70. Any deliberate actions that hinder or impede UNRWA's ability to fulfill its mandate should not alter the established legal protections afforded to Palestinian refugees under relevant UN General Assembly resolutions. If or when considering the conditions under which Palestinian refugees may become eligible for protection under the 1951 Refugee Convention, particularly through Article 1D(2), any legal or practical barriers erected for political gain, to the detriment of the rights of Palestinian refugees, cannot be condoned.

71. Not only legal barriers, but also obstacles that prevent access to the UNRWA area of operations, such as border closures, impediments to travel and transit, refusals of re-entry, or residence, are examples of actions incompatible with the needs of the Palestinian people.

72. Since October 2023, more than 330 humanitarian workers have been killed in the Gaza Strip. More than 270 of those were part of UNRWA.

73. There is no justification for violence against humanitarian workers or attacks on their premises and assets. Acknowledging the critical importance of this issue, Brazil, at the end of its most recent term on the Council, proposed a draft resolution on the protection of humanitarian assistance. Switzerland further advanced this initiative, culminating in the adoption of Resolution 2730 (2024).

74. In this resolution, the Security Council underlined “the obligations of all parties to armed conflict under international humanitarian law related to protecting civilians and civilian objects, which include humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, and their premises and assets, entitled to such protection, to meeting the basic needs of the civilian population within their territory or under their control, and allowing and facilitating the rapid, safe and unhindered passage of humanitarian relief to all those in need.”

75. The Council strongly condemned “attacks and all forms of violence, including sexual and gender-based violence, threats, and intimidation, against humanitarian

personnel and United Nations and associated personnel, including national and locally recruited personnel, and their premises and assets, including humanitarian supplies, facilities and transports, in violation of international humanitarian law.”

(V) OBLIGATIONS OF ISRAEL AS A MEMBER OF THE UNITED NATIONS

76. Article 2(3) of the Charter provides that “[a]ll Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.” Article 2(5) of the Charter further provides that “[a]ll Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter.”

77. It follows that Israel is obligated to provide UNRWA with all necessary assistance in carrying out actions in accordance with the relevant decisions of competent United Nations organs, including General Assembly resolution 302 (IV) and subsequent resolutions renewing UNRWA’s mandate.

78. Moreover, all Member States of the United Nations are required to respect the privileges and immunities of the United Nations and its agencies.

79. Article 105 of the Charter provides 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. Representatives 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.”

80. Since 1949, Israel has been a party to the Convention on the Privileges and Immunities of the United Nations (“the General Convention”), which applies to UNRWA as a subsidiary body of the General Assembly and thus an integral part of the United Nations.

81. The General Convention stipulates in its Section 3 that: “[t]he premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.” The United Nations, its assets, income and other property shall also be exempt from all direct taxes (section 7).

82. According to section 18 of the General Convention, “[o]fficials of the United Nations shall: (a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity; (b) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations; (c) Be immune from national service obligations; (d) Be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien

registration; (e) Be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned; (f) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys; (g) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.”

83. Section 22 of the General Convention also sets forth a number of privileges enjoyed by experts performing missions for the United Nations, who “shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions”, including “immunity from personal arrest or detention and from seizure of their personal baggage.” and “[i]n respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations”

84. The General Convention further provides that the laissez-passer issued by the United Nations “shall be recognized and accepted as valid travel documents by the authorities of Members” (section 24), and that “[a]pplications for visas (where required) from the holders of United Nations laissez-passer, when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel” (section 25).

85. The Exchange of Letters constituting a Provisional Agreement between UNRWA and Israel concerning Assistance to Palestine Refugees of 14 June 1967 (the “Comay-Micheltmore Agreement”) recognized that the General Convention shall govern the relations between Israel and UNRWA in all that concerns the Agency’s functions (para g).

86. However, Israel’s obligations toward the United Nations and its Relief and Works Agency for Palestine Refugees precede and are not contingent upon the validity of the bilateral agreement, which is set to expire under the recently adopted “Law to Cease UNRWA Operations”.

87. Therefore, Israel remains bound by the obligations enshrined in the Charter of the United Nations and the General Convention, irrespective of the status of the “Comay-Micheltmore Agreement”.

88. In this respect, it should be emphasized that any alleged misconduct by United Nations personnel could only be legally answered by the means provided in the General Convention. This would constitute no exception to the duties of abstention and protection that necessarily derive from inviolability, a principle whose

fundamental character has already been underscored by the Court.¹⁷ Failure to respect the inviolability of UN premises is thus not justified on grounds of military expediency.

89. Brazil further emphasizes that Israel cannot invoke its domestic laws, including those recently passed by the Knesset, as justification for failing to fulfill these obligations.

90. According to article 27 of the Vienna Convention on the Law of Treaties, “[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” As held by the Court, this article reflects customary law.¹⁸

91. Failure to comply with these obligations entails international responsibility. In this context, it is worth recalling draft article 3 on the responsibility of States for internationally wrongful acts, adopted by the International Law Commission in 2001, which confirms that “[t]he characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.” A similar provision pertaining to acts of international organizations can be found in draft article 5 on the responsibility of international organizations, adopted by the ILC in 2011.

92. In this context, Brazil believes the Court should assess whether the provisions of the recently adopted Israeli laws and their implementation are consistent with the obligations established under the UN Charter and the General Convention.

(VI) CONCLUSION

For the reasons presented above, Brazil submits that:

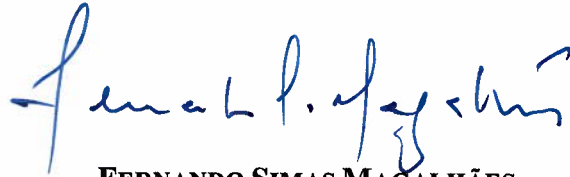
- (a) the Court has and should exercise its advisory jurisdiction;
- (b) the Palestinian people have the inalienable right to self-determination and to their independent State, which includes the right to freely establish diplomatic relations and permanent diplomatic missions without external interference;
- (c) as the occupying Power, Israel must comply with international humanitarian law, including the Hague Regulations and the Fourth Geneva Convention;
- (d) as a member of the United Nations, Israel must fulfill in good faith the obligations assumed by it in accordance with the Charter, including the obligation to give the United Nations and its agencies every assistance in any action it takes in accordance with the Charter;

¹⁷ United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), I.C.J. Reports 1980, p. 40, para 86.

¹⁸ Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012, p. 422, para. 113.

(e) Israel is under the obligation to respect the privileges and immunities of the United Nations and its agencies in accordance with the Charter and the General Convention on the Privileges and Immunities of the United Nations.

The Federative Republic of Brazil reserves its right to further participate in the coming hearings, as set by the Court.



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