

INTERNATIONAL COURT OF JUSTICE

**REQUEST BY THE UNITED NATIONS GENERAL ASSEMBLY
FOR AN ADVISORY OPINION ON**

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

**WRITTEN STATEMENT OF
THE UNITED STATES OF AMERICA**

FEBRUARY 28, 2025

Introduction

1. The Court, in its Order dated December 23, 2024, invited United Nations Member States and others to submit written statements on the U.N. General Assembly's question referred in resolution 79/232 of December 19, 2024. The United States of America submits this Statement to assist the Court's consideration of the General Assembly's request.

2. The United States voted against this referral. The United States has strong interests in advancing peace and stability in the region in cooperation with Israel and other partners, including advancing the Abraham Accords, securing the return of the hostages and the ceasefire in Gaza, and resolving once and for all the Israeli-Palestinian conflict. The General Assembly should also be focusing its efforts on the ceasefire and hostage release, as well as supporting life-saving humanitarian assistance. It is unfortunate that the General Assembly prioritized singling out Israel instead.

3. The United States shares the significant concerns that Israel has raised about the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and supports Israel's decision to close UNRWA's offices and limit cooperation with it. Long before the October 7, 2023 atrocities, the United States called for reform and voiced concerns regarding UNRWA's neutrality, including because of its use of antisemitic and other inappropriate educational materials. UNRWA's work has been particularly tainted, and its credibility rightly called into question due to the terrorist ties to Hamas of UNRWA staff. Of particular note are the grave revelations that several UNRWA staff participated in Hamas's brutal terrorist attack on Israel on October 7, 2023, which killed both Israelis and numerous citizens of other U.N. Member States, including the United States. The United States is likewise deeply concerned about reports that returned Israeli hostages were held by Hamas in UNRWA facilities during their prolonged captivity. UNRWA is not, and never has been, the only option for providing humanitarian assistance in Gaza. Other agencies have demonstrated experience and expertise.

4. Against this backdrop, the question as framed by the General Assembly and before the Court in this proceeding is to identify "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, other international organizations, and third States "in and in relation to the Occupied

Palestinian Territory (OPT).”¹ Less than a year ago, the Court issued an advisory opinion on the legal consequences of a broad range of Israeli policies and practices in the OPT.² In contrast, here the General Assembly has requested the Court only to identify Israel’s obligations—not to address adherence to any such obligations. Exceeding that scope would risk prejudicing the ongoing contentious proceeding between South Africa and Israel.³

5. As set out in the next section, the branch of international humanitarian law (IHL) governing belligerent occupation, often referred to as occupation law, is found in treaties and customary international law. Occupation law governs the relationship between the Occupying Power and the inhabitants of occupied territory and generally does not impose obligations *vis-à-vis* the United Nations, other international organizations, or third States who may be present in, or seeking to engage in activities in, the territory. Even assuming *arguendo* that occupation law, including the provisions of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) applicable to occupied territory, applies here,⁴ an Occupying Power is not obliged to permit any particular third States or international organizations to conduct activities in occupied territory that would compromise its military and security interests. An Occupying Power is obliged to provide for the interests and welfare of the population in occupied territory. Occupation law also recognizes that the Occupying Power has rights and may take steps in occupied territory to support its military mission, subject to certain limitations.

6. As addressed in the subsequent section, given the absence of binding action by the United Nations specific to U.N. Member States, international organizations, or third States seeking to engage in activities within the OPT, the obligations accepted by U.N. Member States under the U.N. Charter do not, with respect to the question referred, extend beyond what is required under occupation law.

¹ G.A. Res. 79/232, Request for an advisory opinion of the International Court of Justice on the obligations of Israel in relation to the presence and activities of the United Nations, other international organizations and third States, U.N. Doc. A/RES/79/232 (Dec. 19, 2024) [Dossier No. 3].

² See *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem* [hereinafter *Israeli Practices*], *Advisory Opinion*, I.C.J. Reports 2024.

³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*.

⁴ The Court has twice before provided analysis of the application of occupation law to the OPT, most recently in its July 19, 2024 advisory opinion. See *Israeli Practices, Advisory Opinion*, 2024 I.C.J. at 28-31, ¶¶ 86-94; see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 167, ¶ 78.

The Rights and Duties of an Occupying Power in Relation to the Presence and Activities of the United Nations, Other International Organizations, and Third States

7. Assuming *arguendo* that the customary law of belligerent occupation and the provisions of the Fourth Geneva Convention applicable to occupied territory are applicable to Israel in these circumstances, there are few obligations to identify.⁵ Under customary international law, as reflected in Article 42 of the Hague IV Regulations, territory is considered occupied when it is actually placed under the authority of the hostile army and the occupation extends only to the territory where such authority has been established and can be exercised.⁶ Obligations under occupation law apply only with regard to territory that is occupied under this standard.⁷ The law of belligerent occupation, like other parts of IHL, applies (or does not apply) regardless of the identity of the State in question or whether the occupation is considered unjust or illegal under the *jus ad bellum*.⁸

8. Whether the standard for an occupation is met is a question of fact. Factually, it must be established, among other things, that organized resistance in the area has been overcome and that invading forces have taken measures to establish their authority over the area. Even as the Court deliberates, Hamas continues to assert elements of control in Gaza and the facts on the ground are further being affected by ongoing ceasefire negotiation and implementation. Israel itself has disputed, and not without reason, that the legal framework governing the hostilities in Gaza is the law of belligerent occupation.⁹

⁵ It is also worth noting that the question for the Court is what Israel's obligations are as, *arguendo*, an Occupying Power with respect to specified third parties. As noted *supra*, the General Assembly has not sought the Court's advice on whether those obligations have been respected in a particular situation, or more generally on the respective rights of the Israelis and Palestinians as to their own dispute. *Cf. Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 19, ¶ 42 (advising the General Assembly on the settlement of Morocco's rights at the time of colonization would not affect rights of Spain as administering power).

⁶ Regulations Respecting the Laws and Customs of War on Land, Annex to Convention (IV) Respecting the Laws and Customs of War on Land [hereinafter Hague IV Regulations], art. 42, Oct. 18, 1907, 36 Stat. 2277, 205 CTS 277.

⁷ Although Israel's obligations with regard to occupied territory only apply to such territory, Israel continues to have obligations as a belligerent with regard to the protection of civilians in non-occupied territory. This includes a responsibility to take feasible precautions for the protection of the civilian population under its control.

⁸ *See, e.g., United States v. List, et al. (The Hostage Case)*, Nuremberg Military Tribunal Case 7, Judgment of the Tribunal (Feb. 19, 1948) ("At the outset, we desire to point out that international law makes no distinction between a lawful and an unlawful occupant in dealing with the respective duties of occupant and population in occupied territory. There is no reciprocal connection between the manner of the military occupation of territory and the rights and duties of the occupant and population to each other after the relationship has in fact been established.").

⁹ *See, e.g., State of Israel, Ministry of Foreign Aff., Hamas-Israel Conflict 2023: Key Legal Aspects*, p. 7 (Nov. 3, 2023), available at www.gov.il/en/pages/hamas-israel-conflict2023-key-legal-aspects (last visited Feb. 25, 2025). Indeed, the facts on the ground today are different even from when the Court last took up the question of the application of occupation law to the OPT in its July 19, 2024 advisory opinion.

9. Occupation law primarily “involves a complicated, trilateral set of legal relations between the Occupying Power, the temporarily ousted sovereign authority, and the inhabitants of occupied territory”¹⁰; it does not focus on interactions between the Occupying Power and international organizations or third States. Occupation law establishes the rights and duties of an Occupying Power under IHL, taking into account both military and humanitarian considerations. Occupation law rules are reflected in treaties, in particular the Hague IV Regulations and the Fourth Geneva Convention.¹¹ Some of these rules can also apply as a matter of customary international law.

10. Further, the question presented to the Court is not specific to any particular agency of the United Nations but seeks general advice on obligations in relation to all U.N. agencies and bodies. To the extent that other participants in these proceedings may focus on obligations related to UNRWA, none of the legal rights and obligations under occupation law require that UNRWA specifically be permitted to continue to operate in the OPT or suggest that Israel cannot take steps to address its own security needs in its relations with UNRWA or other international organizations.

11. Occupation law includes core obligations for the Occupying Power with regard to the protection of the civilian population in occupied territory.¹² An Occupying Power has obligations with respect to the provision of basic services and humanitarian assistance. For example, Article 55 of the Fourth Geneva Convention provides in part that “[t]o 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”¹³ and Articles 59 to 62 of the Fourth Geneva Convention

¹⁰ See U.S. Dep’t of Defense, Law of War Manual, § 11.1 (July 2023), *available at* www.defense.gov/News/Releases/Release/Article/3477385/defense-department-updates-its-law-of-war-manual/ (last visited Feb. 25, 2025).

¹¹ The provisions of the Fourth Geneva Convention regarding occupation are supplementary to the provisions of the Hague IV Regulations regarding occupation. See Geneva Convention Relative to the Protection of Civilian Persons in Time of War [hereinafter “Fourth Geneva Convention”], art. 154, Aug. 12, 1949, 75 U.N.T.S. 287. Although Israel is not a party to the 1907 Hague Convention, core elements of the Hague IV Regulations reflect customary international law applicable to belligerent occupation.

¹² See Hague IV Regulations, *supra* note 5, art. 43. By the fact of occupation, the Occupying Power is conferred the authority to exercise some of the rights of sovereignty, although sovereignty is not vested in the Occupying Power. “Article 43, dealing with the general powers of the occupant, mentions both the obligations of the occupying power and its rights in the course of fulfilling these obligations. In this sense, Article 43 is a sort of miniconstitution for the occupation administration; its general guidelines permeate any prescriptive measures or other acts taken by the occupant.” EYAL BENVENISTI, THE INTERNATIONAL LAW OF OCCUPATION 69 (2d ed. 2012).

¹³ Fourth Geneva Convention, *supra* note 11, art. 55. According to the 1958 ICRC Commentary on the Fourth Geneva Convention, “to the fullest extent of the means available to it” was included to show that the authors “did

impose duties on the Occupying Power related to allowing and facilitating relief consignments on behalf of the population of occupied territory if the population is inadequately supplied. It is important to note, given the question referred to the Court, that even these provisions do not prescribe the specific methods by which the Occupying Power must fulfill its duties. The 1958 International Committee of the Red Cross (ICRC) Commentary on the Fourth Geneva Convention states with respect to Article 55:

The duty of ensuring supplies is reinforced by an obligation to bring in the necessary articles when the resources of the occupied territory are inadequate. It should be noted that the Convention does not lay down the method by which this is to be done. *The occupying authorities retain complete freedom of action in regard to this, and are thus in a position to take the circumstances of the moment into account.*

What is essential is that the Occupying Power should, in good time and with the means available to it, take measures to procure the necessary food for the population of the occupied territory; it does not matter whether it comes from its own national territory or from any other country – allied, neutral or even enemy.¹⁴

12. The Fourth Geneva Convention provides rules that relate to the presence and work of impartial humanitarian organizations and relief societies as the Occupying Power fulfills its duty of ensuring the food and medical supplies of the population of the occupied territory. Such rules still preserve discretion for the Occupying Power to address its military and security interests, rather than mandating that it accommodate all actors without condition. For example, Articles 59 and 61 of the Fourth Geneva Convention related to relief schemes refer specifically to the potential role of actors such as the ICRC, other impartial humanitarian organizations, and other States in providing humanitarian assistance.¹⁵ Article 59 provides that “[i]f the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.”¹⁶ It also specifies that such relief schemes may be undertaken

not wish to disregard the material difficulties with which the Occupying Power might be faced in war time (financial and transport problems, etc).” INT’L COMM. OF THE RED CROSS (ICRC), IV GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR: COMMENTARY 310 (Jean S. Pictet, ed. 1958) [hereinafter “Pictet”].

¹⁴ *Id.* (emphasis added).

¹⁵ See also Fourth Geneva Convention, *supra* note 11, art. 10.

¹⁶ *Id.* art. 59.

either by States or by “impartial humanitarian organizations such as the [ICRC].”¹⁷ Article 61 similarly provides that the supervision of the distribution of relief consignments by the Protecting Power may be delegated “by agreement between the Occupying Power and the Protecting Power, to a neutral Power, to the International Committee of the Red Cross or to any other impartial humanitarian body.” The 1958 ICRC Commentary provides further insight on the condition that humanitarian relief providers be impartial. The Commentary clarifies that only neutral States are capable of providing the essential guarantees of impartiality, and notes that the ICRC is mentioned “both on account of its own special qualifications and as an example of a humanitarian organization whose impartiality is assured.”¹⁸ These understandings are important to highlight in this context, given the apparent failure of UNRWA to maintain the impartiality of its facilities and members of its staff.

13. Article 63 of the Fourth Geneva Convention addresses the work of National Red Cross Societies, other relief societies, and “special organizations of a non-military character” established “for the purpose of ensuring the living conditions of the civilian population by the maintenance of the essential public utility services, by the distribution of relief and by the organization of rescues.” Similar to Article 59, Article 63 emphasizes that Red Cross Societies and other humanitarian actors must conduct their humanitarian activities in accordance with Red Cross principles (*e.g.*, impartiality and neutrality). Article 63 also permits the Occupying Power to impose measures on such actors for urgent reasons of security.¹⁹

14. These obligations for the protection of the population of occupied territory include consideration of the right of the Occupying Power to advance its military and security interests.

¹⁷ Although Israel is not a party to the 1977 Additional Protocol I to the Geneva Conventions and is therefore not bound by these restrictions, Articles 69 to 71 of Additional Protocol I also illustrate the flexibility retained by States Parties to that instrument. Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), arts. 69-71, June 8, 1977, 1125 U.N.T.S. 3. For example, Article 71 provides that only in case of imperative military necessity may the activities of relief personnel be limited or their movements temporarily restricted. Article 71 also states that relief personnel may not exceed the terms of their mission and “[i]n particular they shall take account of the security requirements of the Party in whose territory they are carrying out their duties. The mission of any of the personnel who do not respect these conditions may be terminated.”

¹⁸ Pictet, *supra* note 13, at 321.

¹⁹ Article 63 provides that “[s]ubject to temporary and exceptional measures imposed for urgent reasons of security by the Occupying Power, recognized National Red Cross Societies shall be able to pursue their activities in accordance with Red Cross Principles,” and that other relief societies and organizations “shall be permitted to continue their humanitarian activities under similar conditions” to those according with the principles of the National Red Cross Societies. Among these principles are impartiality and neutrality. As explained in the ICRC Commentary on Article 63, “[t]he protection granted to Red Cross Societies and other relief societies in occupied territory places the directors and staff of the societies under an obligation to observe strict neutrality and take the utmost care to abstain from any political or military activities.” Pictet, *supra* note 13, at 333.

They account for the security needs of the Occupying Power and do not impose unconditional obligations in relation to the presence or activities of the United Nations, other international organizations, or third States. And even though this Court is not asked to assess the application of such obligations, it is unquestionable that Israel has ample grounds to reject UNRWA's claims of impartiality.

The Obligations of U.N. Member States in Relation to the Presence and Activities of the United Nations, Other International Organizations, and Third States

15. As Parties to the U.N. Charter, U.N. Member States agree to act in accordance with the Principles set forth in Article 2 in pursuit of the Purposes stated in Article 1, as well as to abide by those provisions detailing the relationship between U.N. Member States and the United Nations as an international organization. The U.N. Charter further provides for the possibility of legally binding obligations arising from actions by the U.N. Security Council. It is also the case that the Security Council and General Assembly have long been involved in promoting an end to the conflict between Israel and the Palestinians. As a matter of international law, however, neither the U.N. Charter, nor those efforts by the Security Council or General Assembly have imposed additional obligations on Israel specific to the United Nations, international organizations, or third States seeking to engage in activities within the OPT.

16. Article 2(5) of the U.N. Charter states that “All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.” Since the Charter's inception, Article 2(5) has been interpreted to mean “that the Members will be obligated to give the Organization any assistance which their obligations under the Charter require of them.”²⁰ Consistent with the functions and powers of the principal organs set forth in the Charter, Article 2(5) is limited in that “action” can be taken only by the Security Council acting under Chapter VII.²¹

²⁰ U.S. DEP'T OF STATE, CHARTER OF THE UNITED NATIONS, REPORT TO THE PRESIDENT ON THE RESULTS OF THE SAN FRANCISCO CONFERENCE BY THE CHAIRMAN OF THE UNITED STATES DELEGATION 42 (1945) [hereinafter “Report on the Results of the San Francisco Conference”]; *see also* HANS Kelsen, LAW OF THE UNITED NATIONS: A CRITICAL ANALYSIS OF ITS FUNDAMENTAL PROBLEMS: WITH SUPPLEMENT 97 (1950, 2010 reprint) (observing that “[t]he obligation of the Members stipulated in Article 25 is a specification of the general obligation of the Members stipulated in Article 2, paragraph 5: to give the United Nations every assistance in any action it takes in accordance with the present Charter”).

²¹ Report on the Results of the San Francisco Conference at p. 44 (stating that “action under that Chapter (VII) of the Charter can be taken only after the Security Council has determined the existence of a threat to the peace, a breach of the peace, or an act of aggression”); *see also* Documents of the U.N. Conference on International Organization, vol. vi, San Francisco Conference Twelfth Meeting of Committee I/1, pp. 346-47, Doc. 810, I/1/30

17. Article 2(5) does not encompass recommendations issued by other organs of the United Nations, such as the General Assembly. To the contrary, interpreting Article 2(5) as imposing a positive obligation on U.N. Member States to assist the organization in connection with a resolution of any of its organs absent legally binding action by the Security Council would constitute a dramatic expansion of the powers of U.N. organs. Such an expansion is not reflected in the language of the Charter and would be inconsistent with the Security Council's primary responsibility for the maintenance of international peace and security.²²

Conclusion

18. As demonstrated, the universe of established legal obligations owed by an Occupying Power to third parties is limited—whether to UNRWA, other international organizations, or third States. And within that universe, the legal obligations that may pertain are not unconditional; they are premised on impartiality and discretion to consider military and security interests of the Occupying Power. Moreover, in this context, no additional legal obligations flow from Israel's status as a U.N. Member State. As such, the United States respectfully urges the Court approach the question referred accordingly.

(June 6, 1945) (statement by Norway during the San Francisco Conference noting that “the word ‘Organization’ as used in the paragraph referred to the Security Council,” which would be “the only organ of the Organization having authority to take action”).

²² Other articles of the U.N. Charter likewise do not impose additional, specific obligations in the absence of binding U.N. action. For example, Article 56 reflects a commitment by U.N. Member States to cooperate generally with the U.N. in pursuit of the goals set forth in Article 55 of the Charter but cannot be read to impose any binding duty to cooperate with the organization through a specific action. Similarly, with respect to the obligations of U.N. Member States regarding privileges and immunities of the U.N., the U.N. Convention on Privileges and Immunities provides mechanisms for resolving any disputes between the U.N. and a Member State related to the Convention's provisions and their application, including those providing detail with respect to the application of Articles 104 and 105 of the Charter.

Respectfully submitted,

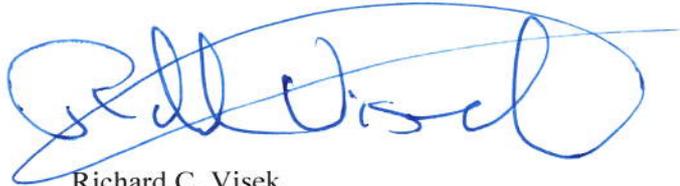
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Richard C. Visek
Acting Legal Adviser
United States Department of State

February 28, 2025

CERTIFICATION

I, Richard C. Vissek, representative of the United States of America, hereby certify that the copies of this statement are true copies of the originals.

A handwritten signature in blue ink, appearing to read "Richard C. Vissek", with a large, sweeping flourish underneath.

Richard C. Vissek
Acting Legal Adviser
United States Department of State

February 28, 2025