

Non corrigé
Uncorrected

CR 2025/6

International Court
of Justice

THE HAGUE

Cour internationale
de Justice

LA HAYE

YEAR 2025

Public sitting

held on Tuesday 29 April 2025, at 3 p.m., at the Peace Palace,

President Iwasawa presiding,

***on 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***

(Request for advisory opinion submitted by the General Assembly of the United Nations)

VERBATIM RECORD

ANNÉE 2025

Audience publique

tenue le mardi 29 avril 2025, à 15 heures, au Palais de la Paix,

sous la présidence de M. Iwasawa, président,

***sur les Obligations d'Israël en ce qui concerne la présence et les activités de l'Organisation
des Nations Unies, d'autres organisations internationales et d'États tiers dans
le Territoire palestinien occupé et en lien avec celui-ci***

(Demande d'avis consultatif soumise par l'Assemblée générale des Nations Unies)

Present: President Iwasawa
Vice-President Sebutinde
Judges Tomka
Abraham
Xue
Bhandari
Nolte
Charlesworth
Brant
Gómez Robledo
Cleveland
Tladi

Registrar Gautier

Présents : M. Iwasawa, président
M^{me} Sebutinde, vice-présidente
MM. Tomka
Abraham
M^{me} Xue
MM. Bhandari
Nolte
M^{me} Charlesworth
MM. Brant
Gómez Robledo
M^{me} Cleveland
M. Tladi, juges

M. Gautier, greffier

The Government of the Plurinational State of Bolivia is represented by:

HE Mr Roberto Calzadilla Sarmiento, Ambassador of the Plurinational State of Bolivia to the Kingdom of the Netherlands,

Ms Fabiola Cruz Moreno, Second Secretary, Embassy of the Plurinational State of Bolivia in the Kingdom of the Netherlands,

Mr Ralph Wilde, Professor of International Law, University College London, University of London,

Mr Niccolò Ridi, Senior Lecturer in Public International Law, King's College London,

Mr Christopher Ward, SC, Barrister, 6 St James Hall Chambers, associate member, 3 Verulam Buildings Barristers, member of the Bar of New South Wales,

Ms Ludovica Chiussi Curzi, Associate Professor of International Law, University of Bologna,

Mr Lorenzo Gasbarri, Assistant Professor of International Law, Sant'Anna School of Advanced Studies, Pisa.

The Government of the Federative Republic of Brazil is represented by:

HE Mr Fernando Simas Magalhães, Ambassador of the Federative Republic of Brazil to the Kingdom of the Netherlands,

Mr Marcelo Marotta Viegas, Director, Department of International Organizations, Ministry of Foreign Affairs,

Mr Juliano Rojas Maia, Minister Counsellor,

Mr Frederico Bauer, Counsellor,

Mr Gaétan Spielmann Moura, Secretary,

Ms Ana Beatriz Schwanck Fernandes, Legal Assistant.

The Government of the Republic of Chile is represented by:

HE Mr Jorge Carvajal San Martín, Ambassador of the Republic of Chile to the Kingdom of the Netherlands,

Mr Claudio Troncoso Repetto, General Director of Legal Affairs, Ministry of Foreign Affairs, Professor of International Law, University of Chile,

Ms Valeria Chiappini Koscina, Legal Adviser, International Law, Treaties and Legislative Affairs Division, Ministry of Foreign Affairs,

Ms Paula Monsalve Espinoza, First Secretary and Legal Adviser, Embassy of the Republic of Chile in the Kingdom of the Netherlands.

Le Gouvernement de l'État plurinational de Bolivie est représenté par :

S. Exc. M. Roberto Calzadilla Sarmiento, ambassadeur de l'État plurinational de Bolivie auprès du Royaume des Pays-Bas,

M^{me} Fabiola Cruz Moreno, deuxième secrétaire, ambassade de l'État plurinational de Bolivie au Royaume des Pays-Bas,

M. Ralph Wilde, professeur de droit international à la University College London, Université de Londres,

M. Niccolò Ridi, maître de conférences en droit international public au King's College London,

M. Christopher Ward SC, *barrister*, 6 St James Hall Chambers, membre associé au cabinet 3 Verulam Buildings Barristers, membre du barreau de Nouvelle-Galles du Sud,

M^{me} Ludovica Chiussi Curzi, professeure associée de droit international à l'Université de Bologne,

M. Lorenzo Gasbarri, professeur adjoint de droit international à l'école supérieure de Sainte-Anne de Pise.

Le Gouvernement de la République fédérative du Brésil est représenté par :

S. Exc. M. Fernando Simas Magalhães, ambassadeur de la République fédérative du Brésil auprès du Royaume des Pays-Bas,

M. Marcelo Marotta Viegas, directeur du département des organisations internationales, ministère des affaires étrangères,

M. Juliano Rojas Maia, ministre conseiller,

M. Frederico Bauer, conseiller,

M. Gaétan Spielmann Moura, secrétaire,

M^{me} Ana Beatriz Schwanck Fernandes, assistante juridique.

Le Gouvernement de la République du Chili est représenté par :

S. Exc. M. Jorge Carvajal San Martín, ambassadeur de la République du Chili auprès du Royaume des Pays-Bas,

M. Claudio Troncoso Repetto, directeur général des affaires juridiques, ministère des affaires étrangères, professeur de droit international à l'Université du Chili,

M^{me} Valeria Chiappini Koscina, conseillère juridique en droit international, division des traités et des affaires législatives, ministère des affaires étrangères,

M^{me} Paula Monsalve Espinoza, première secrétaire et conseillère juridique, ambassade de la République du Chili au Royaume des Pays-Bas.

The Government of the Kingdom of Spain is represented by:

HE Ms María Consuelo Femenía Guardiola, Ambassador of the Kingdom of Spain to the Kingdom of the Netherlands,

Ms. Elisabet Jiménez Perdigones, assistant, Embassy of the Kingdom of Spain in the Kingdom of the Netherlands.

Le Gouvernement du Royaume d'Espagne est représenté par :

S. Exc. M^{me} María Consuelo Femenía Guardiola, ambassadrice du Royaume d'Espagne auprès du Royaume des Pays-Bas,

M^{me} Elisabet Jiménez Perdigones, assistante, ambassade du Royaume d'Espagne au Royaume des Pays-Bas.

The PRESIDENT: Please be seated. Good afternoon. The sitting is now open.

The Court meets this afternoon to hear Bolivia, Brazil, Chile and Spain on the question submitted by the General Assembly. Each of the delegations has 30 minutes at its disposal for its presentation. The Court will observe a short coffee break after Brazil's presentation.

I shall now give the floor to the delegation of Bolivia. I call His Excellency Roberto Calzadilla to the podium. You have the floor, Sir.

Mr CALZADILLA SARMIENTO:

I. INTRODUCTION

1. Mr President, Members of the Court, it is an honour to appear before you today on behalf of the Plurinational State of Bolivia.

2. The request before you is brought by the General Assembly in the context of a situation of the utmost gravity and undeniable urgency¹. For decades, the Palestinian people have endured an occupation found by the Court to be unlawful. Today, that unlawful situation is compounded by a humanitarian catastrophe, particularly in Gaza, marked by devastating loss of life, widespread destruction and the systematic obstruction of essential life-saving aid, which is desperately required as a direct consequence of Israel's colonial and genocidal actions.

3. The Court's recent pronouncements highlight the severity of the situation. In its 2024 Advisory Opinion, the Court determined the illegality of Israel's occupation.

4. Separately, addressing the immediate crisis, the binding provisional measures ordered in the *South Africa v. Israel* case considering the Genocide Convention demand the cessation of any further impediments to the "unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance".

¹ 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, UN doc. A/RES/79/232, 19 December 2024. The resolution was co-sponsored by Algeria, Belize, Bolivia, Brazil, Chile, Colombia, Egypt, Guyana, Indonesia, Ireland, Jordan, Kuwait, Libya, Malaysia, Namibia, Norway, Qatar, Saudi Arabia, Slovenia, South Africa, Spain, Yemen and the State of Palestine.

5. Yet, as numerous States, including Bolivia, can attest from their own efforts to deliver humanitarian assistance to the Palestinians in Gaza, Israel continues to impose severe and deliberate impediments of the delivery of essential aid and the vital work of the United Nations.

6. These actions have included attempts to dismantle UNRWA, the very Agency the UN Secretary-General has described as the “irreplaceable backbone of humanitarian relief in Gaza”² — as well as other organizations and third States seeking to alleviate suffering and to uphold international law in the Occupied Palestinian Territory.

7. Mr President, Bolivia maintains all it has expressed in its written statement. Our position is clear and grounded on international law. The central, inescapable premise is the incontestable illegality of Israel’s prolonged presence in the OPT. Like the overwhelming majority of participants in these proceedings, we share a profound concern for the plight of the Palestinian people and the imperative to uphold international law.

8. Recognizing this, Bolivia, alongside others, recently established the Hague Group as an initiative to move beyond mere condemnation and toward co-ordinated and diplomatic measures, *inter alia*, to remove obstacles to the realization of the Palestinian people’s right to self-determination³. Its members are committed to upholding the findings and orders of international courts — including the Court’s 2024 Advisory Opinion and its provisional measures — and in supporting the essential work of the International Criminal Court in holding accountable those responsible for grave international crimes committed in Palestine, as well as co-operating to end Israel’s illegal occupation and ensuring respect for international humanitarian law.

9. Thus, Bolivia is also here because its own rights and obligations under international law are affected, including our duty to co-operate to end violations of *jus cogens* norms, and our right to support the Palestinian right to self-determination. Each is undermined by Israel’s persistent obstruction. We speak in defence of the legal framework that enables States and international organizations to act in solidarity, alleviate suffering and uphold fundamental rights.

² Secretary-General Remarks to the Committee on the Exercise of Inalienable Rights of the Palestinian People, 31 January 2024, available at <https://www.un.org/sg/en/content/sg/speeches/2024-01-31/secretary-generals-remarks-the-committee-the-exercise-of-the-inalienable-rights-of-the-palestinian-people>, (last accessed 27 April 2025).

³ See <https://thehaguegroup.org/> (last accessed 27 April 2025).

10. Our argument today will be presented as follows. First, I will briefly address the Court's jurisdiction and discretion. Second, I will outline the applicable legal framework.

11. I will be followed by Dr Niccolò Ridi, who will cover Israel's specific obligations regarding assistance to and co-operation with the United Nations, as well as the insufficiency of Israel's security justifications. Professor Ralph Wilde will then address the foundational illegality of Israel's presence and its direct consequences for Israel's authority to restrict international actors.

II. JURISDICTION AND DISCRETION

12. Mr President, Bolivia joins with the substantial majority of participants in these proceedings to submit that the Court has jurisdiction to give the advisory opinion requested by the General Assembly, and that no compelling reasons exist for the Court to decline to exercise this jurisdiction. The Court's advisory jurisdiction is clearly established under Article 65, paragraph 1, of its Statute and Article 96, paragraph 1, of the UN Charter. The request originates from the General Assembly, an organ duly authorized to seek such opinions on legal questions arising within the scope of its activities.

13. The question is undeniably legal in character⁴, and the presence of political aspects does not deprive the question of that legal character, as the Court has consistently held.

14. Moreover, there are no compelling reasons, consistent with the Court's jurisprudence, to decline the request⁵.

15. In fact, an advisory opinion would provide valuable legal clarification to UN organs, assisting them in relation to the discharge of their functions concerning the long-standing question of Palestine and the current humanitarian crisis⁶.

⁴ See, among others, written statement of Bolivia, para. 12; written statement of Egypt, para. 26; written statement of Indonesia, para. 12; written statement of Ireland, para. 11; written statement of Jordan, para. 2.9; written statement of Mexico, para. 8; written statement of Norway, para. 30; written statement of Pakistan, para. 18; written statement of Poland, para. 10; written statement of Slovenia, para. 11.

⁵ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, ICJ Reports 2019 (II)*, p. 110, para. 44.

⁶ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 281.

16. It would also clarify whether obstructing or failing to facilitate aid amounts to a violation of international law, as well as the rights of third States urgently seeking to alleviate a humanitarian crisis in an occupied territory and uphold the right of civilians to receive humanitarian assistance.

III. THE SCOPE OF THE QUESTION AND THE LEGAL FRAMEWORK

17. Mr President, I now turn to the applicable legal framework.

18. The request asks the Court to identify Israel's obligations under international law concerning the presence and activities of the United Nations, international organizations and third States in relation to the Occupied Palestinian Territory.

19. As the General Assembly itself indicated in its request, answering it requires considering multiple areas of international law⁷. These include the UN Charter; international humanitarian law, particularly the law of occupation; international human rights law; and the specific rules governing privileges and immunities of international organizations. The Assembly also pointed to the relevant UN resolutions, including binding Security Council resolutions⁸, and the Court's prior advisory opinions as essential interpretive context.

20. But, Mr President, the crucial starting-point cannot be ignored or wished away. As the Court affirmed, and the General Assembly reiterated in its request, this is the foundational illegality of Israel's presence and exercise of authority in the Occupied Palestinian Territory. The Court found 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"⁹.

21. Israel's presence, found by the Court to be illegal, is rooted in the violation of the most fundamental norms of international law — the prohibition on the acquisition of territory by force and the right of the Palestinian people to self-determination¹⁰.

22. This foundational illegality shapes the entire question before the Court. Israel, due to its *de facto* control, remains bound by the obligations relating to the protection of the population. But

⁷ See *supra*, note 1.

⁸ These include resolutions 2728 (2024), 2712 (2023), and 2720 (2023). As to the binding effect of these resolutions, see *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, pp. 53-54, para. 116.

⁹ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 254.

¹⁰ Bolivia's written statement, paras. 254, 257, 261, 233.

its ability to invoke the qualifications, discretions or rights sometimes associated with an occupying Power to justify actions maintaining that illegal presence or furthering its unlawful aims is fundamentally negated. One cannot legitimately exercise powers derived from an illegal situation to manage or perpetuate the same illegality.

23. Mr President, this concludes my remarks. I thank you for your attention. May I ask you, Mr President, that you invite Dr Niccolò Ridi to the podium.

The PRESIDENT: I thank Ambassador Calzadilla. I now give the floor to Dr Niccolò Ridi. You have the floor.

Mr RIDI:

IV. OBLIGATIONS OF ISRAEL OF ASSISTANCE AND CO-OPERATION AND THE INSIGNIFICANCE OF ITS SECURITY CONCERNS

1. Mr President, Members of the Court, it is a privilege to appear before you on behalf of the Plurinational State of Bolivia.

2. I address two points: first, Israel's duty under the United Nations Charter to provide assistance and cooperate in good faith with the United Nations; second, the futility of Israel's invocation of security concerns, which are incapable of relieving it from or modifying its obligations.

A. Israel's duty to provide assistance and co-operate with the United Nations and its mandated activities

3. Mr President, Israel is, as a Member of the United Nations, bound by Article 2, paragraph 2, of the United Nations Charter to fulfil its Charter obligations in good faith. It is bound by Article 2, paragraph 5 of the United Nations Charter to give the United Nations "every assistance in any action it takes in accordance with" the Charter.

4. The scope of the duty to give "every assistance" under Article 2, paragraph 5, is broad¹¹. In the *Reparation for Injuries* Advisory Opinion, the Court underscored the importance of this duty for

¹¹ See, among others, written statement of Egypt, para. 114; written statement of Norway, para. 161, written statement of the League of Arab States, para. 167.

the “effective working of the Organization” and the “independence and effectiveness of the work of its agents”¹². The only requirement is that any “action” be taken “in accordance with” the Charter.

5. A United Nations Member may not, unilaterally, decide that United Nations action is not in conformity with the Charter.

6. In the *Certain Expenses Advisory Opinion* the Court noted that when a principal organ like the General Assembly takes “action which warrants the assertion that it was appropriate for the fulfilment of one of the stated purposes” of the United Nations, as it has consistently done with UNRWA, there is a strong presumption that the mandate itself is *intra vires* the Organization — and thus conforms with the Charter¹³. The Court also stressed that each United Nations organ “must, in the first place at least, determine its own jurisdiction”¹⁴.

7. It follows that, in respect of the duty to “give every assistance”, Israel cannot substitute its own assessment for that of the General Assembly regarding the fundamental validity and continuation of UNRWA’s mandate, nor can it override UNRWA’s operational competence within that mandate, simply by asserting that the Agency’s actions are not “in accordance with the Charter”. All the more so where the United Nations has properly investigated and responded to Israel’s assertions of wrongdoing by UNRWA employees and contractors.

8. Above all, Israel cannot legislate UNRWA’s operations or immunities away, in contravention of the Charter duties and the mandates given by the General Assembly. That would mean evading its Charter obligations unilaterally.

9. Mr President, the duty to “give every assistance” in Article 2, paragraph 5, demands concrete action and must be performed in good faith. It requires both facilitating United Nations mandates and refraining from actions that impede them.

10. Far from upholding this duty, Israel has engaged in obstruction: imposing arbitrary bureaucratic hurdles to the delivery of aid; denying or delaying essential visas and permits for

¹² *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949*, p. 183.

¹³ *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962*, p. 168.

¹⁴ *Ibid.*

United Nations staff; imposing restrictions on the movement of personnel and essential goods; and even attacking United Nations personnel and facilities.

11. The character of the obligations breached by Israel, as well as the seriousness of the breaches, engage the duty of all States. That is the position under customary international law. States must co-operate through lawful means to bring serious breaches of peremptory norms to an end¹⁵.

12. Supporting UNRWA — politically, financially, logistically — is the essential and legitimate means by which States discharge their duty to co-operate, acting collectively through the United Nations to provide essential humanitarian assistance and uphold Palestinian rights¹⁶.

13. Thus, when Israel attempts to dismantle UNRWA or hinders its life-saving work, it frustrates the lawful efforts of the international community to fulfil that duty.

B. The insignificance of security justifications

14. Mr President, I turn to Israel's invocation of security concerns.

15. Security is not a free-standing justification. It cannot displace obligations unless the law itself specifically allows for it — a condition not met here. And it cannot — not ever — serve to counterbalance obligations arising from peremptory norms of international law¹⁷.

16. Even setting aside the illegality of Israel's presence, to which we will return, Israel's security claims fail when assessed against other standards of applicable international law, for the following reasons.

17. First, security concerns cannot override absolute prohibitions stemming from what the Court, in the *Nuclear Weapons Advisory Opinion*, referred to as “intransgressible principles”¹⁸. These include absolute prohibitions under international humanitarian law against collective punishment, deliberate starvation, attacks on objects indispensable to survival, and respect for non-derogable human rights. Widespread denial of essential aid amounts to a breach of these fundamental rules.

¹⁵ ARSIWA, Article 41.

¹⁶ See General Assembly resolution 2625 (XXV), “Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations”, which refers to “[t]he duty of States to co-operate with one another in accordance with the Charter”.

¹⁷ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, declaration of Judge Tladi, para. 44.

¹⁸ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 257, para. 79.

18. Second, even where international humanitarian law permits security exceptions, these exceptions are narrowly defined and strictly conditioned. The obligation under Article 59 of the Fourth Geneva Convention to agree to and facilitate relief contains no explicit security exception allowing refusal or systematic obstruction of relief schemes undertaken by States or impartial organizations. In any event, its requirements relating to populations under occupation are distinct from the limited ability of a State to control access to third-party aid within its territory¹⁹.

19. Third, Israel's security concerns cannot displace the specific and generally absolute nature of the privileges and immunities of the United Nations. UNRWA, as a United Nations organ, benefits from these protections under the Charter and the General Convention²⁰.

20. Article 105 of the Charter obliges all Members to grant the Organization and its officials the privileges and immunities "necessary for the fulfilment of its purposes" and "necessary for the independent exercise of their functions". The General Convention implements this Charter duty without replacing it or superseding it²¹. These protections cannot be overridden by any security exceptions stemming from international humanitarian law²².

21. Specifically, the inviolability of United Nations premises under Article II, Section 3, of the General Convention is absolute. It admits no exception, whether because of alleged misuse or security concerns asserted unilaterally by the occupying Power, or any other basis²³.

22. As to the functional immunities of United Nations personnel, Israel cannot unilaterally decide whether specific conduct falls outside of the official functions. That determination lies with the Secretary-General or his delegate, UNRWA's Commissioner-General. And concerns about

¹⁹ ICRC Commentary to the Fourth Geneva Convention, p. 323.

²⁰ Convention on the Privileges and Immunities of the United Nations (adopted 13 February 1946, entered into force 17 September 1946), 1 *UNTS* 15 (hereinafter "General Convention").

²¹ Written statement of Pakistan, para 109; See Andreas Ziegler, "Article 105", in Bruno Simma et al. (eds.), *The Charter of the United Nations: A Commentary* (Oxford University Press, 2024), para. 5.

²² *UN Juridical Yearbook* 2003, p. 522, para. 11; Summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry into certain incidents in the Gaza Strip between 27 December 2008 and 19 January 2009, UN doc. A /63/855– S /2009/250, 15 May 2009.

²³ See, among others, written statement of Maldives, para. 48; written statement of Egypt, para. 67. See also R. Higgins and others, *Oppenheim's International Law: United Nations* (Oxford University Press, 2018) 574; August Reinisch (ed.), *The Conventions on the Privileges and Immunities of the United Nations and its Specialized Agencies: A Commentary* (Oxford University Press, 2016), p. 133.

individuals must be addressed through established United Nations channels, including, where appropriate, through seeking a waiver²⁴.

23. Finally, even if security measures were permitted, they would have to be applied in good faith, consistent with Article 2, paragraph 2, of the Charter, and customary international law. Israel's invocation of security is undermined by the disproportionate and systematic nature of its actions.

24. Mr President, Members of the Court, this concludes my presentation. I thank you for your attention. May I ask you, Mr President, that you call Professor Ralph Wilde to the podium.

The PRESIDENT: I thank Dr Ridi. I now invite Professor Ralph Wilde to address the Court. You have the floor, Sir.

Mr WILDE:

V. THE ILLEGALITY OF THE PRESENCE OF ISRAEL IN THE PALESTINIAN GAZA STRIP AND WEST BANK, INCLUDING EAST JERUSALEM

1. Mr President, distinguished Members of the Court, it is a great honour and privilege to appear before you again, and represent the Plurinational State of Bolivia.

2. As the Court held in its 2024 Advisory Opinion, Israel's presence in the Palestinian Gaza Strip and West Bank, including East Jerusalem, is, in and of itself, illegal²⁵. It is a violation of the legal right of self-determination of the Palestinian people²⁶. It is conducted for the unlawful purpose of purported annexation²⁷. It must, in the words of the Court, end "as rapidly as possible"²⁸.

3. These findings presuppose that Israel has no valid legal basis to maintain the presence. Had there been a valid legal basis, the Court would not have called for the presence to end. The Court characterized the presence as a use of force, the legality of which is determined by the law on the use

²⁴ General Convention, Article V, section 17.

²⁵ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, paras. 261-262, and operative paragraph (3) at page 78. See also GA res. A/ES-10/L.31, 13 September 2024, paras. 1 and 2.

²⁶ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, paras. 230-243, 255-257.

²⁷ *Ibid.*, paras. 157-179.

²⁸ *Ibid.*, para. 267 and operative paragraph (4) at page 78. See also GA res. A/ES-10/L.31, 13 September 2024, para. 2.

of force²⁹. Since using force without a valid legal basis is a breach of the *jus ad bellum*, the implication of the Court's finding that the presence should end, is that the presence is an unlawful use of force, an aggression³⁰.

4. Only the State of Palestine, and the Palestinian people, have the legal right to exercise authority in the Gaza Strip and West Bank, including East Jerusalem.

5. In consequence, only they have the legal right to decide who can enter and be present there, and which activities those present can engage in.

6. Conversely, as its presence is illegal, Israel necessarily lacks a valid entitlement to do anything there. In so far, then, as the presence continues, every activity performed is itself illegal, as an integral part of an illegal presence.

7. In consequence, Israel has no legal right to take any action in the OPT restricting the entry, presence and activities of other actors.

8. Any such action, on whatever basis, is, therefore, illegal.

9. That said, in particular circumstances, the rules regulating the conduct of the Israeli presence, including occupation law, do not prevent, and even permit and require, certain restrictions on the entry, presence and activities of other actors.

10. Given this, it might be suggested that international law creates a paradoxical, perverse situation. On the one hand, as the Court determined, the presence is unlawful and should, therefore, end "as rapidly as possible". On the other hand, because Israel defies the Court, and continues its illegal presence, obligations are then triggered permitting it to decide on the presence of other actors, and do so against the wishes of the only legal persons entitled to do this.

11. This suggestion would be to misunderstand the relative significance of the two areas of law.

²⁹ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, paras. 109 and 253.

³⁰ See *ibid.*, declaration by President Salam, para. 13; see also Rome Statute of the International Criminal Court, 1998, Art. 8*bis*, para 2 (a); GA res. 3314 (XXIX), 14 December 1974, Annex, *Definition of Aggression*, Art. 3 (a); GA res. 41/162, 4 December 1986, A, para. 8; GA res. 43/54, 6 December 1988, A, para. 8.

12. As the Court held, the legal rules governing the conduct of the presence apply even though the presence is illegal³¹. However, because of that illegality, all Israel's actions performed as part of the presence will be illegal on this basis, including actions compliant with, and pursuant to, the rules regulating conduct. Thus, ultimately, restrictions that are lawful according to the rules regulating conduct remain unlawful according to the law of self-determination and the *jus ad bellum*, since they are performed as part of a presence that is, as a general, unqualified matter, illegal.

13. On this basis, then, Israeli restrictions in the OPT, on the entry, presence and activities of other actors, are breaches of Israel's obligations owed to the Palestinian people and the State of Palestine.

14. Moreover, such restrictions are also violations of other obligations Israel owes to States.

15. Many States are present in the OPT, on a profoundly different basis than Israel, conducting diplomatic relations with the State of Palestine and other Palestinian entities³². These and other States also provide material assistance to the Palestinian people there, directly, and by supporting provision by others, notably UNRWA.

16. As the Court held, because of the fundamental nature of the Palestinian right of self-determination violated by Israel in maintaining its presence in the OPT, all States bear a special legal duty to bring the violation to an end³³. States discharge this duty through activities seeking to mitigate the violation. Conducting diplomatic relations with Palestinian counterparts in the OPT repudiates Israel's unlawful claim to sovereignty, and implicitly or expressly recognizes Palestinian sovereignty. Providing assistance reduces the dependency of the Palestinian people on the State perpetuating its subjugation of them through its presence.

17. Israeli restrictions conducted in the OPT to the entry, presence and activities of States breach Israel's obligation of non-interference in the freedom of action of these States.

18. More specifically, such restrictions on States, and the other actors they support, such as UNRWA, impede their ability to perform activities benefiting the Palestinian people. As a result,

³¹ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 264.

³² https://www.mofa.pna.ps/portals/0/Diplomatic_List_September_2024.pdf.

³³ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 279.

they constitute an unlawful interference by Israel in these States' ability to discharge that special legal duty owed to the Palestinian people.

19. In sum, the consequence of the Court's finding in the 2024 Advisory Opinion — that Israel's presence in the OPT is — in and of itself — illegal, is as follows. Israel must end its presence. It has no legal right to take any action there restricting the entry, presence and activities of States and international organizations, including UNRWA. Any such action is illegal.

20. This is because it is part of a presence breaching the right of self-determination of the Palestinian people, and the *jus ad bellum*. Also, and in consequence, it violates Israel's obligation not to interfere in the sovereign freedom of action of the States concerned and, in particular, it violates Israel's obligation not to impede their action of solidarity — whether performed directly or through support given to other actors — discharging the special legal duty owed to the Palestinian people.

21. Mr President, distinguished Members of the Court, the peoples of the world are shocked at the continued failure of the international community to end the colonial subjugation and genocide of the Palestinian people. They ask: what is the use of international law?

22. Bolivia is here as one of the States seeking to answer this call based on the Court's determination that States must act, and not be bystanders. We respectfully request that the Court safeguard States' ability to discharge their special legal duty to act, by affirming Israel's obligation not to interfere in this.

23. Mr President, this concludes my presentation and the submissions of Bolivia. We thank you for your kind attention.

The PRESIDENT: I thank the representatives of Bolivia for their presentation. I now invite the delegation of Brazil to address the Court and I give the floor to Mr Marcelo Viegas.

Mr VIEGAS:

STATEMENT BY THE FEDERATIVE REPUBLIC OF BRAZIL

1. Mr President of the International Court of Justice, Judge Yuji Iwasawa. Allow me to start by congratulating you on your election to preside this Court and also to extend honour to Judges Juan Manuel Gómez Robledo and Leonardo Nemer Caldeira Brant, both of whom I had the honour and

privilege to meet and work with previously and whose presence amongst you only confirms the degree of excellence of this highest Court. Distinguished Members of the Court, it is an honour to speak on behalf of Brazil before the International Court of Justice, the principal judicial organ of the United Nations.

2. We are gathered in this chamber to fulfil yet another stage of the mandate entrusted to this Court by the United Nations General Assembly, which, through resolution 79/232 of 19 December 2024, requested this Court to render an advisory opinion on Israel's obligations regarding the presence and activities of the United Nations, other international organizations and third-party States in, and in relation to, the Occupied Palestinian Territory.

3. Brazil, alongside 52 other countries, co-sponsored the resolution and submitted a written statement to the Court on 28 February 2025, grounding our stance in our unwavering commitment to promoting international law and recognizing the crucial role of the International Court of Justice in fostering justice and peace.

4. In the first phase of the proceedings, over 40 countries and international organizations chose to participate and furnish elements to support the Court's deliberation. The widespread engagement highlights not only the importance of the matter at hand but also the grave concern that Israel's actions in Palestine (not only in Gaza but also in the West Bank, including East Jerusalem) have sparked within the international community.

5. The ongoing catastrophe in Gaza, now reaching 18 months, has already claimed over 51,000 lives, most of whom women and children. After a brief ceasefire, during which hostages were released and desperately needed humanitarian aid was temporarily allowed to reach the population of Gaza, Israel resumed blocking food, medicine, and other essential supplies from entering the territory, restarted its attacks, and launched a new ground offensive in Gaza.

6. In this troubling context, the present advisory opinion is sorely and urgently needed.

7. Mr President, the written statement submitted by Brazil expresses the view that the Court has jurisdiction to issue the requested advisory opinion, in accordance with Article 65 (1) of its Statute.

8. There is therefore no reason for the Court to refrain from issuing the requested advisory opinion. The issue before the Court does not constitute a bilateral dispute that would warrant the

non-exercise of its jurisdiction. On the contrary, it concerns legal obligations in a general sense, within the scope of multilateral agreements and treaties, which must be complied with and respected.

9. Distinguished judges, the right of the Palestinian people to self-determination has already been recognized by this Court. Self-determination is one of the essential principles of international law, explicitly enshrined in the United Nations Charter and considered by the General Assembly as an inseparable element of fundamental human rights. As stated by the Court, self-determination entails, among other elements, the right to territorial integrity and the right to freely determine its political status and to pursue its economic, social and cultural development.

10. Indeed, the General Assembly has repeatedly affirmed the Palestinian people's right to self-determination, including the right to an independent and sovereign State of Palestine. Other United Nations bodies, such as the Human Rights Council, have done the same. In its Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, this Court stated 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".

11. In this regard, Brazil contends, and hopes that the Court will acknowledge, that all the measures systematically adopted by Israel to impede or hinder the presence and activities of the United Nations, other international organizations and third-party States in the Occupied Palestinian Territory blatantly violate not only the Palestinian right to self-determination, but also other fundamental obligations under general international law.

12. Mr President, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was established by the General Assembly in 1949 to provide assistance to Palestinian refugees. Only the General Assembly has the authority to review or revoke its mandate, which cannot be subjected to restrictions imposed by any domestic legislation.

13. UNRWA is the backbone of the United Nations humanitarian operations in favour of Palestinian refugees, providing education, healthcare, social services, and emergency assistance. It provides aid for over six million people. Its presence and work are even more urgent in the current context of near-total destruction in Gaza, where it serves over two million people.

14. In 2024, contrary to international law, Israel passed two bills aimed at severely hindering UNRWA's operations within the Occupied Palestinian Territory, including East Jerusalem.

15. At the time, Brazil immediately expressed its grave concern regarding this measure. We emphasize that it constitutes a blatant violation of international law, in direct opposition to binding decisions of this Court related to the occupying Power's obligation to ensure humanitarian access to the citizens of the Occupied Palestinian Territory.

16. As a member of UNRWA's Advisory Commission, in which it currently holds one of the two vice-presidencies, Brazil urged the Israeli Government to refrain from implementing these provisions in order to allow UNRWA's work to continue in all the Occupied Palestinian Territory. We regret that Israel has not revisited this measure, having instead undertaken measures to prevent UNRWA from carrying out its activities, especially in East Jerusalem, and we hope that this Court will declare the absolute illegality of these actions.

17. There is no realistic alternative to UNRWA in providing services and assistance to the Palestinian refugees. Any attempt to obstruct UNRWA's operations whether through legislative, financial, or physical barriers does not alter the established rights of Palestinian refugees.

18. Hindering or undermining the ability of UNRWA to fulfil its mandate does not alter the established legal protections afforded to Palestinian refugees.

19. Both as the occupying Power as well as a Member of the United Nations, Israel is obligated to facilitate and enable UNRWA's operations in the Occupied Palestinian Territory. It cannot interfere with or obstruct the exercise of its mandate, which was established by the General Assembly.

20. Distinguished judges, I will now make specific remarks regarding Israel's obligations as an occupying Power.

21. In its *Wall* Advisory Opinion, the Court confirmed that the Fourth Geneva Convention applies to any territory occupied following an armed conflict between High Contracting Parties. Israel and Jordan were both parties to the Convention when the 1967 conflict broke out. Therefore, the Court found that the Convention applies to the Palestinian territory occupied by Israel since that time. This position had already been asserted by the Security Council in resolutions 636 and 641.

22. In its 2024 Advisory Opinion, the Court reaffirmed that the Occupied Palestinian Territory is a single territorial unit and that Gaza remains an integral part of the area occupied by Israel in 1967. Although Israel had withdrawn its military presence from Gaza in 2005, it continued to exercise control over the territory in key ways, including through restrictions on movement, border control, taxation and military operations in the buffer zone. This control has terrifyingly evolved since October 2023. As an occupying Power, Israel has legal obligations under the law of occupation. The occupying Power must administer the territory for the benefit of the local population while refraining from any acts of sovereignty.

23. The obligations of an occupying Power are clearly outlined in the relevant conventions and consistently restated in this Court's opinions and in pertinent resolutions of the United Nations General Assembly and Security Council. Israel must guarantee public order and safety while respecting local laws. It must also ensure access to essential services, including education, medical care, food and humanitarian aid. Any failure to meet these obligations constitutes a blatant violation of international law.

24. In other words, the international obligation to protect the civilian population is not limited to the duty of refraining from attacking civilians or international organizations or third States providing humanitarian assistance. It in fact embodies the obligation to "respect and ensure respect" — which, in any unbiased view, also entails the positive duty to facilitate such assistance, as provided for, for example, in Security Council resolution 2720 (2023), which demands the facilitation and enablement of the immediate, safe and unhindered delivery of humanitarian assistance.

25. In the proceedings instituted by South Africa against Israel concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip*, this Court issued, on 26 January 2024, provisional measures ordering Israel to allow the urgent provision of humanitarian aid. On 28 March 2024, the Court reinforced this obligation, ordering Israel to ensure the delivery of food, water, fuel, electricity, medical supplies and shelter, in full co-operation with the United Nations. Furthermore, the Court ruled that Israel's military must not obstruct humanitarian assistance or commit acts that violate the rights of Palestinians in Gaza under the Genocide Convention. Under Article 94 of the United Nations Charter, these measures are binding.

26. Beyond legal restrictions, physical barriers to humanitarian assistance such as border closures, travel restrictions and denial of re-entry are also unacceptable. These actions only deepen the suffering of the Palestinian people. Israel cannot prohibit, restrict or hinder the United Nations, other international organizations or third States from providing humanitarian assistance in the Occupied Palestinian Territory.

27. The situation in the Occupied Palestinian Territory is not only a humanitarian tragedy and a political disaster, but it also entails serious breaches of peremptory norms of international law. The principles at stake — self-determination, the prohibition of annexation and the protection of civilians under occupation — are at the core of international law. Compliance with the Fourth Geneva Convention and the rulings of this Court is not optional; it is a legal imperative.

28. Under these conditions, Israel cannot invoke domestic law to exempt itself from the responsibility arising from these obligations, in line with what this Court affirmed in its 1996 Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* (para. 79):

“a great many rules of humanitarian law applicable in armed conflict are so fundamental to the respect of the human person and ‘elementary considerations of humanity’, as the Court put it in its Judgment of 9 April 1949 in the *Corfu Channel* case . . . , that the Hague and Geneva Conventions have enjoyed a broad accession. Further these fundamental rules 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.”

29. Mr President, Brazil also wishes to highlight Israel’s obligations not only as an occupying Power and under international humanitarian law, but also as a Member of the United Nations. This encompasses obligations concerning the privileges and immunities of the United Nations and its agencies, particularly UNRWA.

30. The United Nations Charter, in Article 2 (3), establishes that all Member States must fulfil their obligations in good faith. Additionally, Article 2 (5) mandates that all States provide the United Nations with every assistance necessary for the implementation of its actions. Consequently, Israel is legally required to facilitate UNRWA’s operations in accordance with the relevant decisions of competent UN organs, including General Assembly resolution 302 (IV) and subsequent resolutions that have consistently renewed UNRWA’s mandate.

31. Furthermore, all UN Member States must respect the privileges and immunities granted to the Organization, its subsidiary bodies and specialized agencies. Article 105 of the Charter affirms that the United Nations shall enjoy, in the territory of each Member, the privileges and immunities necessary for the fulfilment of its purposes. This protection extends to representatives of Member States and officials of the Organization, ensuring their ability to exercise their functions independently.

32. 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, therefore, an integral part of the UN system.

33. The General Convention clearly stipulates in Section 3 that UN premises are inviolable, and that UN property and assets, regardless of location, are immune from search, requisition, confiscation, expropriation and any other form of interference whether by executive, administrative, judicial or legislative action. Additionally, the Organization and its property are exempt from all direct taxes under Section 7.

34. United Nations officials also benefit from specific protections under Section 18 of the General Convention, including immunity from legal proceedings regarding acts performed in their official capacity, exemption from taxation on their salaries and immunity from national service obligations. These officials, along with their families, are protected from immigration restrictions and granted privileges like those enjoyed by diplomatic personnel. Experts on UN missions are also granted necessary immunities to ensure the independent exercise of their functions, including immunity from arrest, detention and legal proceedings, as established in Section 22.

35. Additionally, the General Convention mandates that the United Nations *laissez-passer* be recognized as a valid travel document by all Member States (Section 24) and that visa applications from UN personnel travelling for official business be processed expeditiously (Section 25).

36. Israel has long recognized these obligations. The Exchange of Letters constituting the Provisional Agreement between UNRWA and Israel of 14 June 1967 — known as the Comay-Michelmores Agreement — explicitly confirmed that the General Convention governs the relationship between Israel and UNRWA. However, Israel’s obligations toward the United Nations and its agencies do not derive from this bilateral agreement. As established in the General

Convention, to which Israel is still a party, they exist independently under international law and remain binding regardless of the recent enactment, in the Israeli Knesset, of the unlawful piece of legislation aimed at ceasing UNRWA's operation.

37. Israel, therefore, cannot invoke the termination of the Comay-Michelmore Agreement as justification for failing to uphold its obligations under the United Nations Charter and the General Convention. Moreover, any alleged misconduct by UN personnel must be addressed exclusively through the mechanisms established in the General Convention. This does not alter Israel's duty to respect the inviolability of UN premises, as a principle of fundamental character already underscored by this Court. As such, military expediency cannot justify violations of UN privileges and immunities.

38. Brazil also underscores that Israel cannot rely on its domestic laws, including recent legislative measures, to evade compliance with its international commitments. Article 27 of the Vienna Convention on the Law of Treaties unequivocally affirms that States cannot invoke their national laws as a justification for failure to perform their international obligations. Israel, as a State party to the UN Charter, has a binding legal duty to facilitate UNRWA's work in the Occupied Palestinian Territory.

39. The issue is not merely one of technicalities or bureaucratic manoeuvring. The lives of millions of Palestinians depend on the provision of humanitarian assistance, and this Court's opinion is crucial in reaffirming Israel's legal obligations toward the United Nations and its agencies. Israel's failure to facilitate UNRWA's operations as a means of obstructing humanitarian assistance constitutes a direct violation of its international legal obligations.

40. Therefore, Brazil respectfully urges the International Court of Justice to affirm Israel's obligations under international law concerning the privileges and immunities of the United Nations and to demand that Israel cease all measures aimed at restricting the activities of UNRWA in the Occupied Palestinian Territory. Only through full co-operation with the United Nations can Israel comply with its obligations under the UN Charter, the Fourth Geneva Convention and other binding international legal instruments.

41. Distinguished Members of the Court, in recent weeks, new and severe incidents of direct attacks by Israel against staff of international organizations and humanitarian aid providers continued to occur.

42. On the 30 March, the bodies of 15 humanitarian workers from the Palestinian Red Crescent, Civil Defence and UNRWA were discovered in Rafah, buried in a mass grave, having been killed by Israeli forces while participating in rescue operations in the southern Gaza Strip the previous week.

43. In April, Israel bombed a building in the Jabalia refugee camp in the northern Gaza Strip, which housed a clinic operated by UNRWA. The clinic had been turned into an improvised shelter for Palestinians displaced by the conflict. The attack caused at least 19 deaths, including that of nine children.

44. Over 51,000 Palestinians have lost their lives in Gaza. Hundreds of humanitarian workers, whose work was solely aimed at saving lives or providing some relief to a desperate population, have also been killed. It is within this context that the present advisory opinion is framed.

45. For the reasons presented above, Brazil reaffirms and respectfully invites the Court to declare 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 sovereign 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; Israel is therefore under a non-derogable obligation not only to refrain from impeding or hindering the presence and activities of the United Nations, other international organizations and third-party States in the Occupied Palestinian Territory, but also to facilitate and enable the immediate, safe and unhindered delivery of humanitarian assistance at scale directly to the Palestinian civilian population in the Occupied Palestinian Territory;

(d) as a member of the United Nations, Israel must fulfil 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; and

(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.

46. We are confident that these are the inescapable conclusions that this Court will reach.

Thank you.

The PRESIDENT: I thank the representative of Brazil for his presentation. Before I invite the next delegation to take the floor, the Court will observe a coffee break of 15 minutes. The hearing is suspended.

The Court adjourned from 4 p.m. to 4.15 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now invite the next participating delegation, Chile, to address the Court and I call His Excellency Claudio Troncoso to the podium. You have the floor, Sir.

Mr TRONCOSO REPETTO:

1. Mr President, Members of the Court, it is an honour to appear before you in these advisory proceedings on behalf of the Republic of Chile.

2. The question submitted to the Court is urgent, and comes at a time when international law and the relevance of international organizations are as important as they have ever been. In Chile's view, an opinion of the Court on this matter is pivotal to affirming and upholding the rule of international law and reinforcing the legitimacy of international norms.

3. Chile recognizes that these proceedings are rooted in the context of the complex situation in the Occupied Palestinian Territory (OPT). Chile has continuously supported the self-determination of the Palestinian people, advocating for peace and recognizing the right of both States to exist, and the right of the people who inhabit them to live a dignified and safe life.

4. In this regard, Chile would like to stress its firm condemnation of all violations of international law by all parties to the conflict, including the attacks conducted by Hamas on 7 October 2023 and the kidnapping of individuals whose immediate and unconditional release Chile demands. When it comes to human suffering, each event is a tragedy.

5. In this presentation we will develop three key points: (i) first, I will address the jurisdiction of the Court to render an advisory opinion and, in particular, the absence of compelling reasons to decline it; (ii) second, I will address the scope of the question presented to the Court by the General Assembly and the applicability of the obligations that have already been noted by most delegations in the written phase of the proceedings; and (iii) lastly, Ms Valeria Chiappini will address the question of privileges and immunities of international organizations.

**I. JURISDICTION AND THE ABSENCE OF COMPELLING REASONS FOR THE
INTERNATIONAL COURT OF JUSTICE TO DECLINE
GIVING THE ADVISORY OPINION**

6. Moving to the first point, it is Chile's position that the Court has jurisdiction to give the requested advisory opinion and that there are no compelling reasons for the Court to refuse to do so.

7. Some States have argued in the present proceedings that an advisory opinion would prejudice essential elements relevant to a pending case before this Court. Namely, the proceedings brought by South Africa against Israel regarding the application of the Genocide Convention.

8. Chile recalls that this Court made clear in its *Interpretation of Peace Treaties* Advisory Opinion that the Court could decline to exercise its advisory jurisdiction in such cases where "the question put to it was directly related to the main point of a dispute actually pending between two States, so that answering the question would be substantially equivalent to deciding the dispute between the parties"³⁴.

9. As was the case in *Interpretation of Peace Treaties*, the question put to the Court in the present proceedings does not touch the merits of the aforementioned pending dispute, and therefore "the legal position of the parties to th[is] dispute[] cannot be in any way compromised by the answers that the Court may give to the Question[] put to it"³⁵.

³⁴ *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 72.

³⁵ *Ibid.*

10. In the pending dispute, South Africa is claiming that Israel is in breach of its obligations under the Genocide Convention³⁶. Thus, the relevant question for the Court is whether the acts and omissions by Israel complained of by South Africa are genocidal in character and are intended to bring about the destruction of a substantial part of the Palestinian national, racial and ethnical group³⁷.

11. On the other hand, the question raised here concerns the obligations of Israel in relation to the presence and activities of the United Nations, including its agencies and bodies, other international organizations and third States, which, as made clear by the delegations that have preceded me, encompass obligations that arise from several bodies of law, including international humanitarian law, international human rights law and the privileges and immunities of international organizations.

12. Therefore, although the provision of humanitarian assistance is an issue that arose in the case concerning the *Application of the Genocide Convention* in the context of provisional measures, and is also relevant to the present proceedings, Chile submits that it is not a question that *directly* relates to the core dispute of that case.

13. Indeed, by answering the question put before it, the Court would not be deciding any aspect of the dispute between the parties in the contentious proceeding, because there are no direct links between the questions raised in the case concerning the *Application of the Genocide Convention* and the question put to the Court in the present proceedings. Thus, rendering an advisory opinion would not compromise the legal positions of the parties to the dispute, nor the fairness of the proceedings. Consequently, there are no compelling reasons for the Court to refuse to render the advisory opinion.

II. THE SCOPE OF THE QUESTION PUT TO THE COURT AND THE RELEVANT APPLICABLE OBLIGATIONS

14. Mr President, Members of the Court, this leads me to my second point, regarding the scope of the question presented to the Court and the applicable rules.

15. The Court has had the opportunity to make findings in relation to the situation of the Occupied Palestinian Territory on two occasions. First, on 9 July 2004, in its Advisory Opinion

³⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Application instituting proceedings, 29 December 2023, p. 164.

³⁷ *Ibid.*, p. 6.

regarding the *Legal Consequences of the Construction of a Wall*, and second, 20 years later, on 19 July 2024, in its Advisory Opinion regarding the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*. In this context, the present proceedings are meant to complement the aforementioned Opinions by addressing questions that had not yet been put before the Court and, consequently, have not been answered.

16. In particular, while the previous Advisory Opinions addressed the obligations that Israel has in relation to the Palestinian people, the present question seeks to identify the obligations that Israel has towards other relevant actors operating in and in relation to the Occupied Palestinian Territory. More specifically, the question refers to the United Nations, including its agencies and bodies, other international organizations and third States.

17. The obligations that the Court was requested to identify relate to all international organizations and States operating in and in relation to the OPT. However, Chile requests that the Court take note of the grave concern expressed by the General Assembly in the preamble of its resolution 79/232, which informs the present request for an advisory opinion, in relation to “plans and measures, including legislation adopted, by Israel to interfere with or obstruct the presence and operations of the United Nations and United Nations entities and organizations, including the United Nations Relief and Works Agency for Palestine Refugees in the Near East”³⁸.

18. As was submitted in our written statement, it is Chile’s position that the relevant obligations arise from Israel’s dual role as both an occupying Power and a Member of the United Nations.

Obligations as an occupying Power

19. First, in its role as an occupying Power, Israel is bound by international humanitarian law (IHL), particularly by the law of occupation, and international human rights law, where applicable.

20. While it is true, as some have argued, that IHL does not directly focus on interactions between the occupying Power and international organizations or third States, it does focus on the

³⁸ UNGA res. 79/232 (19 December 2024), preambular para. 15.

protection of civilians and the occupied population. In that context, it establishes obligations to provide humanitarian relief³⁹ and basic services to the occupied population⁴⁰.

21. Furthermore, the Fourth Geneva Convention, to which Israel is a party, establishes a specific obligation for the occupying Power to grant any relief organization all facilities necessary for it to achieve its purpose, within the bounds set by military or security considerations⁴¹.

22. Chile notes that under Article 142 of the Fourth Geneva Convention the scope of the activities that may be undertaken by relief organizations is quite broad and would certainly encompass the activities of all 13 United Nations entities that maintain an ongoing presence in the OPT, as has been identified by the UN Secretariat in the present proceedings.

23. As clarified by the International Committee of the Red Cross in its 1958 commentary to Article 30 of the Fourth Geneva Convention, the obligation of the occupying Power to grant all facilities to relief organizations is not met by merely authorizing them to carry out their work. Rather, the occupying Power must facilitate and promote their task⁴². This means that it must “take all necessary steps to allow approved organizations to take rapid and effective action wherever they are asked to give assistance”⁴³.

24. While this obligation is certainly limited by military necessity and security needs, this reservation must be interpreted restrictively and should not be read as a *carte blanche* for completely prohibiting the activities of such organizations, especially when they have been given a mandate to address the occupied population of a particular area by the General Assembly.

25. Indeed, such limitations must only be imposed in good faith, and “shall not hinder the supply of effective and adequate relief to all protected persons”⁴⁴. For these reasons, the occupying Power should show moderation in their use of this reservation, applying it only in cases of real

³⁹ Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 *UNTS* 287 (GC IV), Arts. 59 to 62.

⁴⁰ *Ibid.*, Art. 50 and Art. 56.

⁴¹ *Ibid.*, Art. 30.

⁴² ICRC, Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. Commentary of 1958 (1958), commentary to Art. 30.

⁴³ *Ibid.*

⁴⁴ GC IV, Art. 142.

necessity in an exceptional and temporary manner⁴⁵. These measures can never result in the paralysis of the relief effort, and while they last, the occupying Power must make suitable arrangements on behalf of the protected population⁴⁶.

Obligations as a United Nations Member State

26. Turning next to Israel's second role as a UN Member State. Israel's obligations stem mainly from the UN Charter and the Convention on the Privileges and Immunities of the United Nations.

27. For the sake of time, Chile directs the Court's attention to its written submissions for the complete identification of all the relevant obligations that are applicable, and would like to highlight here the duty of all UN Member States to collaborate with the United Nations enshrined in Articles 2 (5) and 56 of the UN Charter.

28. It is Chile's position that this duty includes all bodies, agencies and subsidiary organs of the United Nations⁴⁷, and involves not only the observance and implementation of UN policies and decisions, but also an obligation to co-operate in good faith with the organizations and abstain from obstructing their mandate⁴⁸.

29. Your Excellencies, while this duty certainly applies in relation to binding Security Council decisions, contrary to what has been argued by some participants in the present proceedings, Chile submits that this duty does not exclusively apply to "action" taken by the Security Council in accordance with Chapter VII.

30. Indeed, this Court has contradicted such a narrow conception of the duty to collaborate in two ways. First, this Court made clear that the Security Council can make binding decisions in exercise of any of its powers, not only those concerning enforcement actions under Chapter VII⁴⁹; second, this Court affirmed that "the effective working of the Organization — the accomplishment

⁴⁵ ICRC, Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. Commentary of 1958 (1958), commentary to Art. 30.

⁴⁶ *Ibid.*

⁴⁷ Tobias Stoll, "Article 56" in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte (ed.) and Andreas Paulus (eds.), *The Charter of the United Nations: A Commentary* (4th edn., OUP, 2024), p. 2101.

⁴⁸ *Ibid.*, pp. 2101-2102.

⁴⁹ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 53, para. 113.

of its task, and the independence and effectiveness of the work of its agents —” requires the strict observance of the duty to co-operate under Article 2 (5) of the UN Charter⁵⁰.

31. Further, considering that the obligation contained in Article 2 (5) is one of the principles of the Organization under which Member States must act in order to achieve the purposes of the United Nations, it follows that this duty of co-operation applies to activities of the Organization and all its organs and agencies. A more restrictive interpretation would render this provision meaningless by limiting the scope of the principles of the Charter only to Article 25.

32. Nevertheless, even if the Court were to find that Article 2 (5) only refers to Security Council decisions, Chile submits that the Security Council has decided⁵¹ to vest Israel with specific obligations to allow, facilitate and enable the safe and unhindered delivery of humanitarian assistance in the OPT⁵², and to “ensure the safety and security of United Nations and associated personnel, those of its specialized agencies, and all other personnel engaged in humanitarian relief activities consistent with international humanitarian law, without prejudice to their freedom of movement and access”⁵³.

33. Mr President, with this I conclude the first part of Chile’s presentation and I kindly request that you give the floor to Ms Chiappini to address our last key point.

The PRESIDENT: I thank Mr Troncoso. I now give the floor to Ms Valeria Chiappini. You have the floor, Madam.

Ms CHIAPPINI KOSCINA:

III. PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANIZATIONS

1. Mr President, Members of the Court, it is an honour to appear before you on behalf of the Republic of Chile.

2. In the remaining time, I will address the general obligation of all UN Member States to accord to the United Nations “such privileges and immunities as are necessary for the fulfilment of

⁵⁰ *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949*, p. 183.

⁵¹ In its resolutions 2712 (2023), 2720 (2023) and 2728 (2024).

⁵² UNSC res. 2720 (2023) (22 December 2023), operative para. 2, and UNSC res. 2728 (2024) (25 March 2024), operative para. 2.

⁵³ UNSC res. 2720 (2023) (no. 145), operative para. 13.

its purposes” under Article 105 of the UN Charter. This obligation is further detailed in the Convention on the Privileges and Immunities of the United Nations, which I will herein refer to as the “General Convention”.

3. This obligation is broad in scope⁵⁴ and applies to “all principal and subsidiary organs of the United Nations”⁵⁵, whether or not Member States have entered into any further agreement specifying them⁵⁶, or even if they have terminated such agreements.

4. Concerning this obligation, Chile would like to emphasize that Member States have a duty to guarantee immunity of jurisdiction and execution for the United Nations and its staff, and the inviolability of its premises, archives and documents, in a similar manner as those granted to diplomatic missions⁵⁷. To put it differently, these privileges and immunities are not subject to any qualification whatsoever.

5. Nevertheless, some participants in the present proceedings have argued that these obligations would not be applicable where legitimate security concerns of a Member State are undermined by an abuse of the agency’s privileges and immunities. This, however, is not correct.

6. The object and purpose of these privileges and immunities is to ensure the independence of the Organization, and to guarantee that it carries out its mandate without any undue interference or financial gain by the host State. Indeed, these privileges and immunities are only limited by that which is necessary for the Organization’s proper functioning. In short, United Nations Member States are bound to accord the privileges and immunities that are necessary for the Organization to perform its functions independently, effectively and impartially.

7. In this regard, while Chile condemns any abuse of these privileges and immunities that may occur, Chile recalls that Member States are not allowed to take unilateral action against the privileges and immunities of the Organization, its bodies, agencies and staff, in the presence of a perceived abuse⁵⁸.

⁵⁴ *Ibid.*, p. 2809.

⁵⁵ Andreas R Ziegler, “Article 105” in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte (ed.) and Andreas Paulus (eds.), *The Charter of the United Nations: A Commentary* (4th ed., OUP, 2024), p. 2813.

⁵⁶ Rosalyn Higgins and others, *Oppenheim’s International Law: United Nations* (OUP, 2017), pp. 546-547.

⁵⁷ Ziegler (no. 39), pp. 2813-18.

⁵⁸ Ana Sofia Barros and Cedric Ryngaert, “Abuse of Privileges and Immunities (Art. VII Sections 24-25

8. A specific provision to this effect was included in the Convention on the Privileges and Immunities of the Specialized Agencies, adopted one year after the General Convention. Section 24 of the Convention of the Specialized Agencies provides a mechanism for State parties to resolve a situation in which they consider there has been an abuse of a privilege or immunity, mandating them to engage in consultations with the concerned agency. If such consultations fail, it is this very Court who needs to determine, through an advisory opinion, whether such an abuse has occurred, before any measure can be taken by the host State.

9. The original proposal of Sub-Committee 1 of the Sixth Committee of the General Assembly was granting State parties to that Convention, in the event of such an abuse, the right to denounce it and terminate any obligation to give privileges and immunities to the specialized agencies of which it would still remain a member⁵⁹.

10. However, that proposal was met with several objections, including: (i) if such a provision were to be incorporated, the Specialized Agencies Convention would diverge considerably from the General Convention which does not grant such right of denunciation; (ii) the provision would contradict the already accepted principle that specialized agencies should receive appropriate privileges and immunities, as necessary to carry out their mandate; and (iii) it seemed wrong in principle to permit a State to have the advantages of being a member of a specialized agency while denying it privileges and immunities necessary for its operations⁶⁰.

11. To be sure, Your Excellencies, while there is no similar provision contained in the General Convention, the same considerations still stand. Namely, permitting a Member State to unilaterally strip the Organization and its officials of their necessary privileges and immunities would defeat their very object and purpose.

12. Indeed, in the *United States Diplomatic and Consular Staff in Tehran* case the Court affirmed the fundamental character of the principle of inviolability⁶¹, and consequently found that

Specialized Agencies Convention)” in August Reinisch (ed.), *The Conventions on the Privileges and Immunities of the United Nations and its Specialized Agencies: A Commentary*, p. 469.

⁵⁹ Final Report of Sub-Committee 1 of the Sixth Committee of the General Assembly of the United Nations on “Co-ordination of the Privileges and Immunities of the United Nations and of the Specialized Agencies”, UN doc. A/C.6/191 (15 November 1947), pp. 10-11, para. 28.

⁶⁰ *Ibid.*

⁶¹ *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, Judgment, *I.C.J. Reports 1980*, p. 41, para. 86.

the conduct of Iran would have been unjustified even if the alleged criminal activities of the United States had been established⁶², mainly because the Vienna Conventions on Diplomatic and Consular Relations contained express provisions to address the abuse of privileges and immunities⁶³.

13. Similarly, the General Convention offers sufficient assurances against the abuse of privileges and immunities. Sections 20 and 23 clearly establish that “[p]rivileges and immunities are granted to officials [and experts] in the interests of the United Nations and not for the personal benefit of the individuals themselves” and provide the Secretary-General with the right and duty to waive the immunity of any official or expert in mission where such immunity would impede the course of justice.

14. In addition, Section 21 of the General Convention provides an obligation to the United Nations to “co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities”.

15. Mr President, Members of the Court, Chile further recalls that under international law measures of self-help are strictly limited to measures of retorsion, countermeasures and self-defence, and where tolerated are always deemed a measure of last resort.

16. In this regard, it is a well-established rule of international law that countermeasures cannot be exercised against privileges and immunities of any kind, including the inviolability of organs or agents of an international organization and of its premises, archives and documents⁶⁴.

17. Lastly, Chile notes, as explained by the UN Secretariat, that any concerns regarding the abuse of privileges and immunities of the Organization must be properly brought to its attention to be considered in the context of its legal framework. In this connection, Chile stresses the importance that the relevant UN organs, including the General Assembly, strengthen its control over its agencies and subsidiary organs. If, however, after the appropriate intervention of the relevant organs, any issue

⁶² *Ibid.*, p. 39, para. 83.

⁶³ *Ibid.*, para. 84

⁶⁴ *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 30, Draft articles on responsibility of States for internationally wrongful acts, Art. 50, and *Yearbook of the International Law Commission*, 2011, Vol. II, Part Two, p. 94, Draft articles on the responsibility of international organizations, Art. 53.

remains unresolved, the proper dispute resolution mechanism is already established in Section 30 of the General Convention.

18. Your Excellencies, the régime of privileges and immunities of international organizations is indispensable for the independent and effective functioning of all UN organs, including this very Court. The erosion of these norms through unilateral action not only undermines legal certainty, but jeopardizes the very fabric of multilateral co-operation upon which the international order rests.

19. Mr President, Members of the Court, this concludes Chile's presentation. Thank you for your kind attention.

The PRESIDENT: I thank the representatives of Chile for their presentation. I now invite the next participating delegation, Spain, to address the Court and I call upon Her Excellency Ambassador Consuelo Femenía to take the floor. Madam, you have the floor.

Ms FEMENÍA GUARDIOLA:

PRELIMINARY CONSIDERATIONS

1. Mr President, distinguished Members of the Court, it is an honour to address this Court on behalf of the Kingdom of Spain. Spain is participating in these advisory proceedings in order to co-operate with the International Court of Justice in the exercise of its advisory powers.

2. Spain's oral statement will follow the same structure as the written observations submitted in February. It will therefore make a distinction between Israel's obligations regarding the presence and activities of the United Nations, other international organizations and third States in the Occupied Palestinian Territory and with respect to that territory, as a Member State of the United Nations, on the one hand, and as an occupying Power, on the other.

3. This distinction is to some extent a formal one, made for illustrative purposes, since the legal questions raised are inextricably intertwined. However, this formal distinction — which is a direct response to the question asked by the General Assembly — is useful in this context, as it calls for the obligations at stake of the Member States of the United Nations pursuant to the Charter of the United Nations and to international law to be considered separately.

4. Certainly, the obligations to be examined are comprised in the following:

- Rules in the Charter of the United Nations, directly tied to the activities of the United Nations to maintain international peace and security;
- Rules in the Convention on the Privileges and Immunities of the United Nations of 1946, which form part of a wider body of diplomatic law;
- Rules that determine the extent of the obligations assumed freely and in writing between subjects of international law; and
- Rules that refer to the protection of people and their property in the context of armed conflict and periods of crisis, which therefore aim to safeguard human dignity.

5. In other words, these rules either regulate vital aspects of international law, and require States to act in a certain way in relation to the protection of central legal principles of international law (such as sovereignty, sustaining peace and elementary considerations of humanity) or are of a markedly instrumental or procedural nature, and aim to safeguard and facilitate relations between subjects of international law (in the form of treaties or immunities) even — or especially — in crisis situations. Because of this, they are rules that go beyond the interests of a single State, and presuppose the existence of a world community based on multilateralism and compliance with international law.

6. Spain's statement will have the following structure: in the first part, I will address Israel's obligations as a Member State of the United Nations. In the second part, we will examine Israel's obligations as an occupying Power.

I. OBLIGATIONS OF ISRAEL DIRECTLY RELATING TO ITS STATUS AS A MEMBER STATE OF THE UNITED NATIONS

1. The obligation to assist the United Nations in carrying out its activities, respecting its independence and autonomy

7. Israel was admitted as a Member State of the United Nations under General Assembly resolution 273 (III) on 11 May 1949.

8. As a Member State, Israel must respect the independence and autonomy of the United Nations and assist it in carrying out its activities. Article 2 (5) of the Charter sets out this obligation in general terms: "All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter".

9. This obligation is necessarily linked to the principle of autonomy and independence of the United Nations, contained in Articles 100 and 104 of the Charter, which is a logical consequence of the recognition of the international legal personality of the United Nations.

10. In accordance with this principle of autonomy and independence, the United Nations is responsible for: (1) determining the matters that fall within its mandate; (2) selecting the most appropriate means of addressing those matters; and (3) if appropriate, establishing the organs, programmes and agencies it considers best suited to perform the related functions.

11. In exercising these responsibilities, the United Nations must follow the established procedures. Member States — which participate in the decision-making process of the Organization — must co-operate in good faith with the United Nations.

12. Nothing prevents States from exercising their rights as Member States of the United Nations and calling for amendments to previous decisions adopted by its bodies. They may do so with the sole limit of always acting in accordance with the Charter and pursuant to the decision-making procedures of the competent bodies and therefore not by means of a unilateral decision.

2. The obligation of Israel to co-operate with the United Nations

13. In resolution 79/81, Peaceful settlement of the question of Palestine, which was adopted on 3 December 2024, the General Assembly reaffirmed “the permanent responsibility of the United Nations with regard to the question of Palestine until it is resolved in all its aspects in accordance with international law and relevant resolutions”. Said responsibility was assumed by the United Nations early in its existence.

14. The duty of Member States of the United Nations to assist the Organization, which we have described in general terms, crystallizes here as two obligations: (1) to co-operate in good faith with the agencies and bodies of the United Nations, including UNRWA; and (2) to not prevent them from carrying out their activities.

15. In this context, we must highlight the central role that the United Nations has attributed to UNRWA, which was created by virtue of General Assembly resolution 302 (IV) on 8 December 1949, on Assistance to Palestine Refugees, and whose mandate has been continuously renewed to

date. This mandate was established by the General Assembly in accordance with applicable procedure and may only be modified by the General Assembly; no State may unilaterally change or cancel it.

3. Israel's obligation to respect the privileges and immunities of the United Nations

16. As a Member State of the United Nations and a State party to the Convention of 1946, Israel is not only required to respect the privileges and immunities of the United Nations agencies, funds and programmes, especially UNRWA, both in the Occupied Palestinian Territory and in Israel, but also to abstain from carrying out any executive, administrative, judicial or legislative action that curtails, prevents or impedes the effective enjoyment of the privileges and immunities accorded to the United Nations and its staff.

17. The extent and content of these privileges and immunities should be understood in functional terms. This functional nature does not empower States to unilaterally determine the extent of the recognized privileges and immunities of the Organization, or to apply the Convention to a specific situation, or to unilaterally decide which organs, programmes and agencies are protected by the Convention, or to decide who falls within the categories of officials or experts on missions. Lastly, this functional nature does not authorize States to assess the conduct of staff and agents in the performance of their mandates. These functions are primary competencies of the Secretary-General. This was established by the Court in paragraph 33 of its Advisory Opinion on *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*.

On the other hand, the Convention includes a number of measures to guarantee good faith and mutual trust between the Organization and its Member States. For instance, “the right and the duty” recognized to the Secretary-General in Article 5 (Section 20) and Article 6 (Section 23) “to waive the immunity” of any official or expert “in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations”. And the obligation of the United Nations to co-operate with the authorities of Member States to ensure the law is followed, as set out in Article 5 (Section 21). Similarly, Article 8 (Sections 29 and 30) establish a system for settlement of any disputes that may arise between the Organization and a Member State regarding application of the privileges and immunities.

18. These mechanisms allow States parties to protect their legitimate interests and rights and to call attention to alleged non-fulfilment of mandates by organs, agencies and officials of the United Nations, and even to advise of potential abuse of privileges and immunities. However, the mechanisms do not enable States to unilaterally judge the actions of the organs, agencies and officials, or to unilaterally deprive them of their recognized privileges and immunities; either of these actions would go against the obligations incumbent upon States.

II. ISRAEL'S OBLIGATIONS UNDER THE LAW OF OCCUPATION

19. Mr President, I will now set forth Spain's position regarding Israel's obligations with respect to the subjects of public international law deriving from its status as an occupying Power.

1. Israel's obligations under the law of occupation

20. We will examine Israel's obligations under the international law of occupation. These obligations which are part of relevant international treaties and customary international law have been already referred to by the International Court of Justice in its Advisory Opinions of 2004 and 2024. These obligations are:

(a) As the occupying Power, Israel has no sovereignty over the Occupied Palestinian Territory and is legally obliged to refrain from exercising any acts of sovereignty.

The enactment of the cessation laws and any measures taken by Israel in the Occupied Palestinian Territory on the basis of those laws and other applicable Israeli legislation appear to constitute an exercise of sovereign powers and are therefore inconsistent with Israel's obligations under international law.

(b) Israel has the obligation to administer the Occupied Palestinian Territory for the benefit of the local population.

In its Advisory Opinion of 19 July 2024, the Court affirms 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. . . . [T]he nature and scope of these powers and duties are always premised on the same assumption: that occupation is a temporary situation to respond to military necessity, and it cannot transfer title of sovereignty to the occupying Power.”
(para. 105.)

While Article 43 of the Hague Regulations does not, as such, specify the means by which the occupying Power is required to fulfil this general duty, other more specific rules of international humanitarian law give effect to this obligation.

(c) Israel has the obligation to ensure that the local population's basic needs are met.

Paragraph 1 of Article 55 of the Fourth Geneva Convention imposes on the occupying Power the obligation to meet the basic needs of the population:

“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”.

Paragraph 1 of Article 69 of the Protocol Additional to the Geneva Conventions complements and expands on the concept of basic needs, stating:

“In addition to the duties specified in Article 55 of the Fourth Convention concerning food and medical supplies, 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.”

(d) Israel has the obligation to accept or allow the provision of humanitarian assistance to the civilian population.

Article 59 of the Fourth Geneva Convention imposes on the occupying Power the obligation not only to agree to but also to facilitate the necessary relief schemes undertaken by other States or by impartial humanitarian organizations.

This obligation is recalled by the Court in the Order of 26 January 2024 indicating provisional measures (paras. 80 and 86 (4)), in which it affirms that “Israel must take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance”. Moreover, international humanitarian law places limitations on a State's discretion to withhold consent in situations of occupation. In case of necessity, the occupying Power must agree to humanitarian assistance from other States or from international organizations.

(e) Israel has the obligation to co-operate with the United Nations, international organizations, other States and local authorities.

The International Court of Justice reaffirmed this obligation in the specific case of Israel in its Order of 28 March 2024 indicating provisional measures in the case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip*, where the Court stated that Israel shall:

“[t]ake 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, including by increasing the capacity and number of land crossing points and maintaining them open for as long as necessary”. (para. 51 (2) (a).)

Even if the fulfilment of the obligation to facilitate the provision of humanitarian assistance is subject to limitations for reasons of security, this right of objection must be interpreted in the light of the principles of proportionality and humanity.

In addition, said right of objection must be interpreted in accordance with Article 47 of the Fourth Geneva Convention, which establishes that:

“Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory.”

2. On consent by an occupying Power to the presence and activities of humanitarian organizations and other States

21. Lastly, we must examine the withdrawal by the occupying Power of consent to the presence and activities of humanitarian organizations and other States.

22. The Law for the Cessation of UNRWA Activities adopted by the Knesset unilaterally provided for the termination of the agreement constituted in the Exchange of Letters between Israel and UNRWA on 14 June 1967.

23. Pursuant to international law, Israel does not have the right to unilaterally revoke the agreement with UNRWA constituted by means of the aforementioned exchange of letters. Moreover, the general principle of the consent of States must not be considered in isolation, but in conjunction with other international obligations to which the State of Israel is subject.

24. The obligations of an occupying Power are relevant in determining whether a refusal or withdrawal of consent is in compliance with an occupying Power's obligations under international law.

25. In this regard, 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.

26. Israel's obligations concerning the presence and activities of United Nations agencies, including UNRWA, draw their original legal basis from all the aforementioned conventions and obligations under international law.

III. FINAL CONCLUSION

27. Mr President, distinguished Members of the Court, I shall now conclude by summarizing Spain's position regarding the questions put to the Court in a context in which the Secretary-General of the United Nations recalled, on 14 April⁶⁵, that "under international humanitarian law, 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". The Secretary-General also recalled that "under international humanitarian law, wounded and sick, medical personnel and medical facilities, including hospitals, must be respected and protected".

1. On Israel's obligations as a Member State of the United Nations

28. Article 2 (5) of the Charter of the United Nations provides that "[a]ll Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter".

29. In resolution 79/81, the General Assembly reaffirmed the "permanent responsibility of the United Nations with regard to the question of Palestine". It was in the context of such responsibility that UNRWA was created, with a clearly humanitarian and development-related mandate which has been consistently renewed until the present day, and which cannot be unilaterally amended or cancelled by a Member State.

⁶⁵ The statement was issued on 14 April by the Spokesman for United Nations Secretary-General António Guterres.

30. UNRWA is being prevented from fulfilling its mandate by the laws adopted by the Knesset on 28 October 2024, which entered into force on 30 January 2025. These laws and any subsequent measures to implement them must be considered incompatible with the obligations of Israel to provide assistance to the Agency in the performance of its functions and the fulfilment of its mandate in Palestine.

31. Moreover, Israel, as a Member State of the United Nations and as a State party to the Convention on the Privileges and Immunities of the United Nations of 1946, is obliged to respect the privileges and immunities of the United Nations as regards the presence of the agencies, funds and programmes of the United Nations, in particular UNRWA, both in the Occupied Palestinian Territory and in Israel. Certain actions attributable to Israel may be in conflict with said privileges and immunities.

2. On the obligations of Israel as an occupying Power

32. Israel has occupied the Palestinian Territory since 1967. In the words of the Court, “[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”. The illegality of the occupation does not release Israel from its obligations and responsibilities under international law towards the Palestinian population and towards other States.

33. The powers and obligations of Israel with respect to the Occupied Palestinian Territory are governed by international humanitarian law.

34. Articles 50, 55, 56, 59 and 60 of the Fourth Geneva Convention establish Israel’s obligations to ensure and facilitate the fulfilment of the basic needs of the local civilian population as previously stated by the Court.

35. In the event that Israel fails to fulfil the aforementioned obligations, Israel has the obligation to accept humanitarian assistance for the civilian population.

36. This obligation, provided for in Article 59 of the Fourth Geneva Convention, is well established in general international law. Fulfilment of the aforementioned obligations to facilitate humanitarian assistance may indeed be subject to limitations for reasons of security; however, this

right of objection must be interpreted in the light of the principles of proportionality and humanity. Moreover, as assessed by the Court, such reasons do not exist in the present case.

37. The laws adopted by the Knesset in October 2024 constitute an arbitrary withholding of consent to humanitarian organizations, and in particular to UNRWA, to provide humanitarian assistance, and therefore a breach of international humanitarian law applicable to all occupying Powers.

38. In view of the above, it can be concluded that the prevention of the presence and activities of the United Nations, other international organizations and other States in and in relation to the Occupied Palestinian Territory is a violation of both the norms of international human rights law applicable to Israel and of the right to self-determination.

39. Thank you very much for your attention and your interest.

The PRESIDENT: I thank the representative of Spain for her presentation. This concludes this afternoon's sitting. The oral proceedings will resume tomorrow at 10 a.m., in order for the Court to hear the presentations of the United States of America, the Russian Federation, France, Hungary and Indonesia. The sitting is closed.

The Court rose at 5.15 p.m.
