

# State of Palestine

Permanent Observer Mission to the  
United Nations  
Geneva



# دولة فلسطين

البعثة المراقبة الدائمة لدى الأمم المتحدة  
جنيف

## The obligations of States' not to render military aid or assistance in situations of UN Charter violations and *jus cogens* norms

### Submitted by State of Palestine

**Introduction** This paper recalls that decisions on export, brokering and transit of conventional arms are governed by States' *erga omnes* obligations under the UN Charter its purpose and principles, including the prohibition of acquisition of territory by force<sup>1</sup> and the right of peoples to self-determination,<sup>2</sup> and international law including, UN resolutions and international treaties, such as the Arms Trade Treaty,<sup>3</sup> Convention on the Prevention and Punishment of Genocide,<sup>4</sup> International Convention on the Elimination of All Forms of Racial Discrimination,<sup>5</sup> International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>6</sup> International Convention on the Suppression and Punishment of the Crime of Apartheid,<sup>7</sup> the Laws of Armed Conflict, including the Geneva Conventions and its Additional Protocols<sup>8</sup>, and secondary obligations, in including as they relate to Articles Under State Responsibility.<sup>9</sup>

## International Legal Framework Governing the provision or transfer of arms, munitions and related equipment to Israel.

All States should consider the different rules of international law in deciding whether to deliver arms or other military equipment when there are reasons to believe that the provision or transfer of arms, munitions and related equipment may maintain or further entrench unlawful situations or be used in the commission of atrocity crimes or serious violation of international humanitarian law or international human rights law. These obligations arise both under treaty and customary international law and where applicable, engage preemptory norms binding on all States.

<sup>1</sup> Prohibition of acquisition of territory by force, Charter of the United Nations, Article 2(4), 26 June 1945.

<sup>2</sup> International Covenant on Civil and Political Rights, Article 1, 16 December 1966.

<sup>3</sup> Arms Trade Treaty, (in force 24 December 2014), especially Articles 6 and 7

<sup>4</sup> Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, (in force 12 January 1951).

<sup>5</sup> International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, (in force 4 January 1969)

<sup>6</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, (in force 26 June 1987).

<sup>7</sup> International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 November 1973, (in force 18 July 1976).

<sup>8</sup> Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950); Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950); Geneva Convention (III) relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950); Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (adopted 8 June 1977, entered into force 7 December 1978).

<sup>9</sup> International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Vol. II, Part Two (UN Doc. A/56/10).

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## **Advisory Opinion of the International Court of Justice (ICJ) of July 2024, titled: “Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem”<sup>10</sup>**

- In its advisory opinion, the ICJ found Israel to be in violation of the cardinal principles of the UN Charter, including the prohibition of acquisition of territory by force and the right of peoples to self-determination. The ICJ concluded that, “the sustained abuse by Israel of its position as an occupying Power, through annexation and an assertion of permanent control over the Occupied Palestinian Territory and continued frustration of the right of the Palestinian people to self-determination, violates fundamental principles of international law and renders Israel’s presence in the Occupied Palestinian Territory unlawful”<sup>11</sup> and that its unlawful presence must end “as rapidly as possible.”<sup>12</sup>
- The ICJ also concluded that Israel’s unlawful presence “constitutes a wrongful act entailing its international responsibility...it is a wrongful act of continuing character.”<sup>13</sup>
- The ICJ concluded that States were under an obligation “to distinguish in their dealings with Israel between the territory of the State of Israel and the Palestinian territory occupied since 1967”<sup>14</sup> including to “abstain from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof which may entrench its unlawful presence in the territory”<sup>15</sup> and “to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory.”<sup>16</sup> Moreover, the ICJ maintained that States have an “ obligation not to render aid or assistance in maintaining the situation created by Israel’s illegal presence in the Occupied Palestinian Territory”<sup>17</sup> and that “it is for all States, while respecting the Charter of the United Nations and international law, to ensure that any impediment resulting from the illegal presence of Israel in the Occupied Palestinian Territory to the exercise of the Palestinian people of its right to self-determination is brought to an end.”<sup>18</sup>

<sup>10</sup> Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, (19 July 2024)

<sup>11</sup> ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, para. 261.

<sup>12</sup> ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, p. 5

<sup>13</sup> ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, p. 6

<sup>14</sup> ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, para. 278.

<sup>15</sup> ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, para. 278.

<sup>16</sup> ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, para. 278.

<sup>17</sup> ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, para. 279.

<sup>18</sup> ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, para. 279.

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- As for IHL, the ICJ maintained that “States parties to the Fourth Geneva Convention have the obligation, while respecting the Charter of the United Nations and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.”<sup>19</sup>

### **United Nations General Assembly Resolution A/RES/ES-10/24 OF September 2024, titled: “Advisory opinion of the International Court of Justice on the legal consequences arising from Israel’s policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and from the illegality of Israel’s continued presence in the Occupied Palestinian Territory”<sup>20</sup>**

- In its resolution, the United Nations General Assembly overwhelmingly voted to affirm, in accordance with the ICJ advisory opinion, that the “The violations by Israel of the prohibition of the acquisition of territory by force and of the Palestinian people’s right to self-determination have a direct impact on the legality of the continued presence of Israel, as an occupying Power, in the Occupied Palestinian Territory, and that the sustained abuse by Israel of its position as an occupying Power, through annexation and an assertion of permanent control over the Occupied Palestinian Territory and continued frustration of the right of the Palestinian people to self-determination, violates fundamental principles of international law and renders Israel’s presence in the Occupied Palestinian Territory unlawful, and that this illegality relates to the entirety of the Palestinian territory occupied by Israel in 1967.”<sup>21</sup>
- The General Assembly stressed that the “obligations violated by Israel include certain obligations of an *erga omnes* character that are, by their very nature, “the concern of all States” and, in view of the importance of the rights involved, all States can be held to have a legal interest in their protection, among them the obligation to respect the right of the Palestinian people to self-determination and the obligation arising from the prohibition of the use of force to acquire territory as well as certain of its obligations under international humanitarian law and international human rights law.”<sup>22</sup>
- As a result, the General Assembly called on States to comply with their obligations under international law, including their obligations to “Not to render aid or assistance in maintaining the situation created by Israel’s illegal presence in the Territory,”<sup>23</sup> and to “take steps towards ceasing the importation of any products originating in the Israeli settlements, as well as the provision or

<sup>19</sup> ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, para. 191

<sup>20</sup> UN General Assembly, Resolution ES-10/24, ‘Advisory opinion of the International Court of Justice on the legal consequences arising from Israel’s policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and from the illegality of Israel’s continued presence in the Occupied Palestinian Territory’, UN Doc. A/RES/ES-10/24 (18 September 2024) (hereinafter ‘UNGA Res ES-10/24’).

<sup>21</sup> UNGA Res ES-10/24

<sup>22</sup> UNGA Res ES-10/24

<sup>23</sup> UNGA Res ES-10/24

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transfer of arms, munitions and related equipment to Israel, the occupying Power, in all cases where there are reasonable grounds to suspect that they may be used in the Occupied Palestinian Territory.”<sup>24</sup>

- The General Assembly also called on States to “ensure, as States parties to the Fourth Geneva Convention, compliance with international humanitarian law as embodied in that Convention, in particular pursuant to their obligations under articles 146, 147 and 148 regarding penal sanctions and grave breaches, while respecting the Charter of the United Nations and international law and underscoring the urgency of undertaking measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem.”<sup>25</sup>

### **Contentious case before the ICJ of December 2023, titled “Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)”<sup>26</sup>**

- In its Order of January 2024, the ICJ observed that, “it observed that all the States parties to the Convention have a common interest to ensure the prevention, suppression and punishment of genocide, by committing themselves to fulfilling the obligations contained in the Convention... Such a common interest implies that the obligations in question are owed by any State party to all the other. States parties to the relevant convention; they are obligations *erga omnes partes*, in the sense that each State party has an interest in compliance with them in any given case.”<sup>27</sup> The obligations of States Parties, include the duty to prevent genocide or complicity in genocide.
- It also found that “at least some of the rights Palestinian people” asserted by South Africa, mainly to be “protected from acts of genocide, attempted genocide, direct and public incitement to commit genocide, complicity in genocide and conspiracy to commit genocide”<sup>28</sup> to be plausible<sup>29</sup> and that there is “there is a real and imminent risk that irreparable prejudice will be caused to the rights found by the Court to be plausible.”<sup>30</sup>

### **International Humanitarian Law**

- High Contracting Party to the Geneva Conventions of 1949 are bound by these Conventions as well as by the intransgressible principles of international humanitarian law regarding any armed conflict, in particular obligation to ensure respect for humanitarian law as is mandated in common Article 1 of the four Geneva Conventions of 1949, and customary rules, including the obligation

<sup>24</sup> UNGA Res ES-10/24

<sup>25</sup> UNGA Res ES-10/24

<sup>26</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024,

<sup>27</sup> ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024, I.C.J. Reports 2024, para. 33.

<sup>28</sup> ICJ, South Africa v. Israel, Order of 26 January 2024, paras. 54–55

<sup>29</sup> ICJ, South Africa v. Israel, Order of 26 January 2024, para. 78

<sup>30</sup> ICJ, South Africa v. Israel, Order of 26 January 2024, para. 52

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not to encourage violations of international humanitarian law by parties to an armed conflict, and to exert its influence to the degree possible to stop such violations.<sup>31</sup>

### Arms Trade treaty (ATT)

- Articles 6<sup>32</sup> and 7<sup>33</sup> of ATT intersect with the relevant primary rules, including the prohibition of genocide and the criminalization of grave breaches of the Geneva Convention, war crimes, and crimes against humanity. They also provide specific expression to the overarching obligation of each State to respect and ensure respect for IHL and IHRL.
- Under ATT, it is not necessary to show that the violations of would occur only if the transfer has been made. It is sufficient to show that the arms in question would be used in the commission of these crimes.
- While knowledge of the circumstances of the internationally wrongful act is required to arrive at a finding of State responsibility for aid or assistance, the ATT provides that existence of a risk that such offences may take place and the knowledge thereof at the time when the transferring State authorizes the transfer would suffice for the finding of a breach.
- The ATT requires an assessment, prior to authorization of a transfer, whether the items being transferred could be used to commit or facilitate a crime or violation of international law. As such, a State, before transferring arms, shall carry out a risk assessment exercise, and that the risk of negative consequences must be “overriding”. Under the ATT, the obligations of States may be breached regardless of whether a crime occurred.

### Articles on States Responsibility

- Article 16 provides that “A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State.”<sup>34</sup>
- Article 41 provides that when there is serious breach of peremptory norms, all States are under an obligation not to render assistance to the maintenance of the situation flowing from that breach: “No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation”,<sup>35</sup> which applies regardless of whether the existence of a serious breach of peremptory norm has been ascertained by an international court or tribunal, the UN Security Council or General Assembly.

<sup>31</sup> Geneva Conventions of 12 August 1949, common Art. 1; see also Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p. 136, paras. 158–159.

<sup>32</sup> Arms Trade Treaty, Art. 6.

<sup>33</sup> Arms Trade Treaty, Art. 7

<sup>34</sup> International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, Art. 16.

<sup>35</sup> International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, Art. 41.

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### **Conclusions**

Military support which may facilitate, aid, assist, Israel in the commission of crimes or further entrench its unlawful presence in the occupied Palestinian territory and impede the right of the Palestinian people to self-determination violate the obligations of States under international law.

### **States Parties shall**

Refrain from entering into military agreements with Israel including the provision or transfer of arms, munitions and related equipment in all cases where there are reasonable grounds to suspect that they may be used in the Occupied Palestinian Territory. Furthermore, the obligation is one of due diligence and arises at the instant a State learns of, or should have normally learned of, violations of international law. The finding of war crimes, crimes against humanity, and/or plausible risk of genocide is sufficient to trigger the duty of prevention incumbent upon all States.