



Belgisch Genootschap voor Internationaal Recht

Société belge de droit international

INTERNATIONALE VERENIGING ZONDER WINSTOOGMERK | ASSOCIATION INTERNATIONALE SANS BUT LUCRATIF

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Mr Bart De Wever
Prime Minister

Mr Maxime Prévot
Minister of Foreign Affairs

Copy to the Deputy Prime Ministers
of the Belgian Federal Government

13 June 2025

Prime Minister,

Minister,

Re: Israel – Obligations of Belgium and the European Union under international law

We are writing in our capacity as members of the Belgian Society of International Law regarding the international obligations of the European Union and its Member States with respect to the State of Israel's actions in the Occupied Palestinian Territory (OPT).

Ahead of the European Council meeting later this month concerning the European Union's stand regarding the Association Agreement between the European Union and Israel, we draw your attention to the following.

A. Factual and legal findings regarding the policies and practices of Israel

1. In its Advisory Opinion of 19 July 2024 on the *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, the

International Court of Justice found that the continued presence of Israel in the OPT continues to violate the Palestinian people's right to self-determination. The Court added that "in cases of foreign occupation such as the present case, the right to self-determination constitutes a peremptory norm of international law" (§233). The Court also found that the forced displacement of the Palestinian population, the large-scale confiscation of land and deprivation of access to natural resources, the measures taken by Israeli military forces to induce departure of Palestinian population, the excessive use of force against Palestinians, and the conduct by Israel displaying intent to exercise permanent control over occupied territory, including numerous discriminatory measures adopted by Israel against the Palestinian population, violate the 1907 Hague Regulations, the Fourth 1949 Geneva Convention, and the 1966 International Covenant on Civil and Political Rights. Moreover, the Court found there to be systematic breaches of the prohibition against racial segregation and/or apartheid in the 1965 Convention on the Elimination of All Forms of Racial Discrimination.

2. Since then, numerous reports by competent United Nations (UN) bodies have found that Israel commits war crimes and crimes against humanity in Gaza, notably but not exclusively through the following acts:
 - *Unlawful detention, torture, sexual violence*: On 31 July 2024, the UN High Commissioner for Human Rights issued a Thematic Report on the "Detention in the context of the escalation of hostilities in Gaza", in which it found "reasonable grounds to believe that all duty bearers, and especially Israel and Palestinian armed groups as parties to the conflict in Gaza, have committed gross violations and abuses in the context of detentions on and since 7 October 2023 of the rights to life, liberty and freedom from torture and other ill-treatment as well as rape and other forms of sexual violence, all of which may also amount to war crimes" (§69).
 - *Attacks on medical personnel*: In its Report of 11 September 2024, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, notably found that there were corroborated sources showing Israeli attacks on medical facilities and personnel, among others (A/79/232, §§6 ff.). In its report of 20 September 2024, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories likewise reported on the arrests, incommunicado detention, and alleged ill-treatment of healthcare workers also condemned by the WHO (A/79/363, §§47 ff.).

- *Destruction of reproductive healthcare facilities*: In a Report of 13 March 2025, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, found, amongst others, that “[s]exual and reproductive healthcare facilities have been systematically destroyed across Gaza, including maternity hospitals and maternity wards of hospitals and Gaza’s main in-vitro fertility clinic” (A/HRC/58/CRP.6, §218).
- *Starvation*: In its report of 20 September 2024, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, found that Israel uses food (i.e., starvation) as a method of warfare (A/79/363, §§21 ff.). The same finding was repeatedly made by the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, including in its report of 13 March 2025 (e.g. A/HRC/58/CRP.6, §§59 ff). On 21 May 2025, the UN Committee on the Rights of the Child condemned mass starvation of children in Gaza. Early June 2025, the UN Food and Agricultural Organisation (FAO) reported that the lack of food entering Gaza caused by ongoing Israeli aid restrictions is leaving increasing numbers of Palestinians vulnerable to starvation, with daily energy intake well below what a human body needs to survive (FAO, “Food Pipeline Disruption and Declining Food Availability in the Gaza Strip: Implications under international humanitarian and human rights law – briefing note on the Occupied Palestinian Territory”).

3. The International Court of Justice ascribes great probative value to factual findings contained in reports of competent UN bodies such as those referred to above (e.g. *Armed activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda*, Judgment of 9 February 2022, §§308, 320; *Application of the Convention for the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, *Provisional Measures*, Order of 23 January 2020, §55; *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, §§112, 113, 120). The European Union and its Member States, who pledged under Articles 3(5) and 21 TEU to respect the principles of UN Charter and to uphold international law, must do no less.
4. From the above and numerous additional evidence, it should be uncontroversial that Israel has committed and continues to commit very serious violations of international humanitarian law and human rights law against the population of the OPT, Gaza in particular, and that its presence in the OPT must be brought to an end as soon as possible.

5. Moreover, in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, the International Court of Justice found in its Order of 26 January 2024 that there is “urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights found by the Court to be plausible, before it gives its final decision” (§74), these rights being “the right of Palestinians in the Gaza Strip to be protected from acts of genocide and related prohibited acts identified in Article III of the Genocide Convention and the right of South Africa to seek Israel’s compliance with the latter’s obligations under the Convention, are of such a nature that prejudice to them is capable of causing irreparable harm” (§66). After the State of Israel had reported to the Court on measures taken to comply with the Order, the Court issued two further Orders, on 28 March and 24 May 2024, indicating additional provisional measures. These Orders do not prejudge the question whether Israel effectively violates the Convention, but they do identify a grave and imminent threat of irreparable harm that would be caused by Israel’s acts.
6. Numerous reports by UN expert bodies have likewise found a substantial, imminent risk of genocide against the Palestinian population in Gaza, and some even opine that the facts at present amount to actual genocide being committed. This includes two statements by the UN Committee for the Elimination of All Forms of Racial Discrimination (CERD) of 27 October 2023 and 21 December 2023, a report of 25 March 2024 of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, entitled “Anatomy of a Genocide » (A/HRC/55/73), and a report of 20 September 2024 by the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, which notably found that “the policies and practices of Israel during the reporting period are consistent with the characteristics of genocide” (A/79/363, §69).

B. International obligations of Belgium and the European Union

7. In the light of these incontrovertible violations of peremptory norms of international law, Belgium is under the following international obligations.
8. *First*, as stated by the International Court of Justice in its Advisory Opinion on *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (§279), all the States parties to the Fourth Geneva Convention (which includes all the EU Member States) 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”. This necessarily includes the prohibition against war crimes.

9. *Second*, Belgium has an obligation to prevent and punish genocide, an obligation that extends to combatting all forms of incitement to genocide. As the International Court of Justice made clear in the 2007 *Bosnian Genocide* case, this obligation of conduct varies depending on the capacity of each given State, but no State is entitled to justify its inaction on the basis that its actions alone would not suffice to prevent the commission of genocide or that it has no certainty that a genocide is under way (*Case concerning the Application of the Convention on the Prevention and Punishment of Genocide (Bosnia-Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, §§430-432). Therefore, passivity is not an option.
10. *Third*, with respect to international human rights law, Belgium has the international obligation to “*respect and ensure respect* for international law, in all circumstances, including through measures of accountability, consistent with international law” (UN General Assembly resolution 74/11 (2019), §13.d, adopted with Belgium’s positive vote (A/74/pv.38, p. 14); also quoted by the ICJ in its Advisory Opinion of 2024 on *Legal consequences ...*, p. 75, §277). Such a finding is particularly appropriate in the light of the breaches of the right to self-determination of the Palestinians, as well as the finding of racial segregation and/or apartheid.
11. *Finally*, with respect to the obligation on all States to abstain from providing aid or assistance to States violating peremptory norms of international law, as well as under the 2013 Arms Trade Treaty (Article 6, §3), Belgium cannot authorise any transfer of arms if it has knowledge that such arms would be used in respect of the types of violations of international law (*inter alia*, war crimes, crimes against humanity, genocide, and attacks against civilians in breach of international humanitarian law) that Israel has committed and that remain ongoing. In addition Belgium must abstain from recognizing situations arising from such violations, and cooperate to bring these violations to and end through lawful means (ILC Articles on Responsibility of States for Internationally Wrongful Acts, Articles 16 and 41).
12. In conclusion, the positive obligation for Belgium to take all possible measures is by no means limited to the prevention of genocide. Belgium has the obligation to take all possible measures to prevent war crimes, crimes against humanity, and other serious violations of international law, in particular of international human rights law, and to ensure compliance with the international law rules at stake.

13. These international law obligations must also be respected by the European Union under the EU Treaties themselves.
14. Indeed, pursuant to Article 3, §5, of the Treaty on the European Union (TEU), the Union shall in its relations with the wider world “uphold and promote its values” and “contribute to ... the protection of human rights” and “to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.” Likewise, Article 21 TEU commands that the Union’s action on the international scene be “guided by ... the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law” (§1) and that the Union “shall respect” these principles “in the development and implementation of the different areas of the Union's external action” (§3).
15. In accordance with the principle of sincere co-operation, all Member States “shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives” (Article 4, §3, TEU). Therefore, as an EU Member State, Belgium must make sure that the Union respects and upholds the above constitutional principles, which limit the EU’s choices in international relations.
16. In conclusion, the EU as a whole has the obligation under EU law itself to take all possible measures to contribute to the protection of human rights in third States, and, to the extent that international law requires it (see above), to ensure respect for international law by third States. To that effect, Belgium and all other Member States have the obligation under EU law to cooperate and take all possible measures through the appropriate EU institutions and procedures.

C. Specific rules concerning the obligations of Belgium and the European Union

17. The scope of Belgium’s obligations is further borne out by the following specific rules.
18. *First*, the abovementioned obligations of Israel under international humanitarian law and human rights law are unconditional and cannot be subject to derogation. This means that neither the atrocious crimes committed by Hamas on 7 October 2023, nor Israel’s assertion of imperative security concerns, can legally excuse Israel’s non-compliance with its international obligations. As a consequence, neither can third States such as Belgium rely on Hamas’ crimes to refuse to take appropriate measures to ensure compliance with international law by Israel.

19. *Second*, as already stated, Belgium is not entitled to invoke its incapacity on its own to put an end to Israel's unlawful conduct. Neither can the EU assert any purported lack of effective leverage over Israel as an excuse for inaction.
20. *Third*, all States must take all reasonable measures within their capacities to bring Israel's unlawful acts to an end. What is considered 'reasonable' is notably determined by the seriousness of the violations of international law committed by Israel. In short: what can be done in accordance with international law, must be done.
21. *Fourth*, there is long-established practice, in line with EU sanctions practice and the case-law of the Court of Justice of the European Union (*RT France v. Council*, T-125/22, 27 July 2022, §§164 and 166), to support the proposition that Belgium and the EU have the right to take countermeasures to induce Israel into complying with its obligations under peremptory norms of international law. Such countermeasures could include, among others, the suspension or termination of treaties with Israel, even regardless of the provisions of these treaties regarding their own suspension or termination; as well as the suspension of financial programmes and policies that benefit Israel and Israeli entities and that assist Israel in its maintenance of its unlawful presence in the OPT, and other serious violations of international law.
22. It follows that the suspension of the EU-Israel Association Agreement, leading to the suspension of trade preferences without affecting the right of Israel to export goods and services to the EU, likely reflects the strict minimum of Belgium's and the EU's obligations under international law—all the more that such suspension would not constitute a countermeasure, but an 'appropriate measure' under Article 79 of the Association Agreement itself that would be entirely consistent with Israel's violations of the essential elements of EU-Israel relations as embodied in Article 2.

D. Consequences of non-compliance

23. Inaction and non-compliance with the above obligations bear legal consequences.
24. The obligation on third States such as Belgium to ensure compliance with international law is an obligation *erga omnes*, in the same manner as the primary obligations of Israel. It follows that any third State could invoke Belgium's responsibility for its failure to comply with its obligations that have arisen pursuant to Israel's violations. This is not unrealistic, as illustrated by the recent claim brought before the International Court of Justice by Nicaragua against Germany regarding its policy with respect to Israel (*Alleged Breaches of Certain*

International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)).

25. More fundamentally, the EU's failure to act in response to Israel's serious violations of international law gravely weakens the international legal system as a whole and fuels claims of 'double standards'. It is therefore gravely prejudicial to Belgium's and the EU's security and credibility.

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26. We remain at your disposal for any query you may have regarding the above.

This letter was prepared by members of the Board of the Belgian Society of International Law and submitted for approval to the members of the Society who are professors of international law at Belgian universities. These cosignatories are listed below. Some members of the Society are prevented from expressing their position due to their professional affiliations and/or for other professional reasons.



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