



**AMICUS BRIEF BY
THE CENTER FOR CONSTITUTIONAL RIGHTS
IN SUPPORT OF AL HAQ AND ELEVEN ORGANIZATIONS
AGAINST THE DUTCH STATE**

**In the District Court of The Hague
Prins Clauslaan 60
2595 AJ Den Haag**

Scheduled for Hearing: 09:00, 22 November 2024

Interest of the Center for Constitutional Rights

Founded in 1966, the Center for Constitutional Rights (“CCR”) is a U.S.-based not-for-profit legal, educational, and advocacy organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and international law.¹ CCR has a long history of litigating cases on behalf of those with the least access to legal resources, including victims and survivors of torture, war crimes, crimes against humanity, and genocide. As part of its work to uphold universal rights, CCR also has a longstanding commitment to supporting efforts to end Israel’s impunity, and has pursued accountability for Israeli violations, as well as against those complicit in such violations, in United States courts and international venues. As such, CCR has an interest in the proper resolution of the legal claims in this case, whereby the Dutch State upholds its obligations under customary international law and treaty law to respect, and ensure respect, for the Genocide Convention and the Fourth Geneva Convention, and therefore cease all acts and omissions that further Israel’s violations of international law in the occupied Palestinian territory. This includes, but is not limited to, ending arms trade, military cooperation as well as trade and investment in, with or that otherwise support Israel’s unlawful activity including settlements in the West Bank including East Jerusalem.

Since Israel’s latest assault in Gaza started, CCR has highlighted third States’ obligations under the Genocide Convention to prevent, and not be complicit in, Israel’s genocide against the Palestinian people in Gaza. In November 2023, CCR filed a federal lawsuit, *Defense for Children International – Palestine, et al. v. Biden, et al.*, in California on behalf of Palestinian human rights organizations (including Al Haq), Palestinians in Gaza and U.S. citizens against U.S. President Joseph Biden, Secretary of State Antony Blinken, and Defense Secretary Lloyd Austin for their failure to prevent, and complicity in, the Israeli government’s genocide against them, their families, and the 2.2 million Palestinians in Gaza. The case against the three high-level U.S. officials argues that, through their acts and omissions, each is violating customary international law, including the laws codified in the 1948 Genocide Convention and the corresponding domestic legislation. After a hearing on a preliminary injunction in January 2024, a U.S. district court judge found that Israel is plausibly committing genocide of the Palestinian people in Gaza, and that the United States is providing “unflagging support” for the massive attacks on Palestinian civilians in contravention of international law. 714 F. Supp. 3d 1160, 1167 (N.D. Cal. 2024). Nevertheless, the court dismissed the case on jurisdictional grounds, and the dismissal was upheld by a three-judge panel of the Ninth Circuit Court of Appeals.

CCR’s efforts to advance Palestinian human rights long predate its case against the Biden administration. CCR attorneys currently represent Palestinian victims at the International Criminal Court. CCR has also brought several cases against Israeli officials for their serious violations of international law or corporations complicit in human rights violations in Palestine, including *Matar v. Dichter*; *Belhas v. Ya'alon*; and *Corrie et al v. Caterpillar*. CCR also

¹ For more information on CCR, visit: <https://ccrjustice.org/home/who-we-are/mission-and-vision>.

frequently files amicus briefs in cases involving Israeli international law violations and third state responsibilities, including in [*Doğan v. Barak*](#), and [*Jesner v. Arab Bank*](#).

Although it generally litigates before regional and international bodies, CCR believes national courts have an indispensable role to play in providing accountability, justice and remedy for victims of human rights abuses. CCR brought the landmark case that, for the first time in the modern era, recognized that causes of action exist under the Alien Tort Statute (“ATS”) to remedy human rights violations, *Filártiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980), a decision ultimately endorsed by the U.S. Supreme Court in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004). CCR also brought cases that recognized that the ATS applies to non-state actors, *Kadić v. Karadžić*, 70 F.3d 232 (2d Cir. 1995), cert. denied, 518 U.S. 1005 (1996), and to corporations, *Doe v. Unocal Corp.*, 395 F.3d 932 (9th Cir. 2002), dismissed by stipulation pending reh’g en banc, 403 F.3d 708 (9th Cir 2005), and recently secured a \$42 million judgment on behalf of Iraqi Abu Ghraib torture survivors in [*Al Shimari v. CACI Premier Technology, Inc.*](#), No. 1:08-cv-00827 (E.D. Va. filed June 30, 2008). CCR has frequently served as counsel for *amicus curiae* before the U.S. Supreme Court, including in *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013). In the aftermath of 11 September 2001, CCR litigated dozens of cases challenging violations of international and domestic human rights law committed by U.S. officials. CCR twice successfully litigated Guantánamo detainee cases to the U.S. Supreme Court, in *Rasul v. Bush*, 542 U.S. 466 (2004), and in *Boumediene v. Bush*, 553 U.S. 723 (2008).

CCR has also represented plaintiffs or provided expert opinions in foreign national proceedings in Spain, France, Switzerland, Germany and Canada, seeking to enforce international law obligations, including under the principle of universal jurisdiction.

Finally, CCR has been granted special consultative status with the Economic and Social Council of the United Nations (“ECOSOC”) and is a member of numerous coalitions, networks and federations that seek to advance civil, political, economic, social and cultural rights for all, including the International Federation for Human Rights (FIDH), the International Network for Economic, Social and Cultural Rights (ESCR-Net), and the Global Network of Movement Lawyers.

For these reasons, CCR should be accepted as *amicus curiae* in support of the plaintiffs in these proceedings and stands ready to provide further assistance or argument to the Court should it so request.

I. Introduction

1. There is a credible basis, and indeed, an emerging global consensus, for finding that Israel is committing international law violations of the highest order in Gaza and across the occupied Palestinian territory, including violations of the Genocide Convention and the Fourth Geneva Convention. In multiple unprecedented rulings over the last year in three different cases, the International Court of Justice (“ICJ”) found that Palestinians’ fundamental rights are being, or are at serious risk of being, violated by Israel. This includes Palestinians’ right to be free from genocide, the right to self-determination, the right to life, and the prohibition of the acquisition of territory by force. In those rulings, the Court reiterated the obligations all States have to protect against the commission of such violations.² There have likewise been numerous reports issued by various bodies and mandate holders within the United Nations finding that Israel is committing serious violations of international law in the occupied Palestinian territory against the Palestinian population.³

2. These violations did not begin on 8 October 2023 but rather result from Israel’s prolonged, belligerent and *unlawful* occupation of the Gaza Strip (which has also been subjected to a 17 year blockade and four major military assaults in that time) and the West Bank including East Jerusalem, and assault and total siege on Gaza. This has led to greater loss of life with more than 43,000 people confirmed killed in Gaza alone, the majority being children and women; mass displacement including an estimated 1.7 million in the Gaza Strip and continual forced displacement in the West Bank; widespread destruction of civilian property and infrastructure, including medical facilities and attacks on medical professionals; denial of access to basic necessities for life in Gaza including food, water, electricity and fuel; mass starvation and risk of famine; arbitrary detention leading to the highest number of imprisoned Palestinians ever; persecution leading to the denial of nearly all fundamental rights; and widespread torture.

² [Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem](#), Advisory Opinion (19 July 2024) (“Legal Consequences Advisory Opinion”); [Application of Convention on Prevention and Punishment of Crime of Genocide in the Gaza Strip](#) (*S. Afr. v. Isr.*), Order (26 Jan. 2024); [Alleged Breaches of Certain International Obligations in Respect of the Occupied Palestinian Territory](#) (*Nicar. v. Ger.*), Order (30 Apr. 2024) (“*Nicaragua v. Germany* Opinion”). See also [Alleged Breaches of Certain International Obligations in Respect of the Occupied Palestinian Territory](#) (*Nicar. v. Ger.*), [Declaration of Judge Cleveland](#) (30 Apr. 2024).

³ See, e.g., [Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories](#), U.N. Doc. A/79/363 (20 Sept. 2024) (“Special Committee September Report”); U.N. Office of the High Commissioner for Human Rights, [UPDATE REPORT: Six-month update report on the human rights situation in Gaza: 1 November 2023 to 30 April 2024](#) (8 Nov. 2024) (“OHCHR Update Report”); Francesca Albanese (Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967), [Report: Genocide as colonial erasure](#), U.N. Doc. A/79/384 (1 Oct. 2024) (“Special Rapporteur Report: Genocide as Colonial Erasure”); U.N. Office of the High Commissioner, [Report, Indiscriminate and Disproportionate Attacks During the Conflict in Gaza \(October – December 2023\)](#) (June 2024);); [Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel](#), U.N. Doc. A/79/232 (11 Sept. 2024). See also *Defense for Children International-Palestine v. Biden*, [Complaint](#) (N.D. Cal. Nov. 13, 2023).

3. The situation in the occupied Palestinian territory is catastrophic, but it was not inevitable; it is the result of long-standing impunity *and* a failure of the international community of States to take individual and collective action to demand and compel Israel to cease its violations. It is imperative that this Court enforce international law requiring third States to take such action vis-à-vis Israel to stave off further violations against the Palestinian people – and to save lives.

4. Israel’s international law violations in Palestine and against Palestinians give rise to international legal responsibility not only for Israel as the direct perpetrator, but for all States, including the Netherlands.⁴ These legal responsibilities are heightened when the violations in question are of *jus cogens* or peremptory norms that trigger obligations *erga omnes partes*, as is the case here. The Netherlands has a non-derogable obligation to respect and ensure respect for the Genocide Convention and the 1949 Geneva Conventions.⁵ Concretely, these legal responsibilities include an obligation to cease involvement in the supply of weapon parts and dual-use items to Israel, to not recognize as legal the situation arising from the unlawful presence of the State of Israel in the occupied Palestinian territory, and to not render aid or assistance in maintaining the situation.

5. As set forth in detail in the plaintiffs’ Summons,⁶ through its acts and omissions, The Netherlands is failing to meet its obligation under treaty and customary international law to cease support for Israel and its unlawful military assault and belligerent occupation. Without delay, it must shift its policies and take measures to protect the lives and rights of the Palestinian people as required by international law. Notably, in its Legal Consequences Advisory Opinion regarding Israel’s unlawful occupation, the ICJ determined that all States have the obligation to prevent and abstain from economic dealings that assist Israel’s unlawful policies and practices in the occupied Palestinian territory. The Netherlands has failed to take the positive and negative actions necessary to comply with the ICJ’s Legal Consequences Advisory Opinion, and is instead continuing to provide unwavering diplomatic and material support to Israel including through export of weapon parts and military cooperation.

⁴ [Responsibility of States for Internationally Wrongful Acts](#), UN Doc. A/RES/56/83 (2001), Arts. 16, 41. See also International Law Commission (“ILC”), [Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries](#), adopted by the ILC at its fifty-third session, Report of the International Law Commission on the work of its Fifty-third Session, UN GAOR, 56th Sess., Supp. No. 10, at 43, U.N. Doc. A/56/10 (2001), reproduced in Yearbook of the International Law Commission 2001, vol. II (2) (“Draft Articles on State Responsibility” or “ARSIWA”).

⁵ [Convention on the Prevention and Punishment of the Crime of Genocide](#) (“Genocide Convention”), 9 Dec. 1948, 78 U.N.T.S. 277, art. 1; [1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War](#) (“Fourth Geneva Convention”), 12 Aug. 1949, 75 U.N.T.S. 287, art. 1.

⁶ See Summons, Section 5 (Dutch Policy and Practice). Plaintiffs are a coalition of Palestinian and Dutch civil society organizations: Al-Haq, Al Mezan Centre for Human Rights, the Palestinian Center for Human Rights (PCHR), Stichting Onderzoek Multinationale Ondemeringen (“SOMO”), Stichting European Legal Support Center, Stichting Groningen Jabalya, Stichting Kifaia, Stichting Een Ander Joods Geluid, Stichting Nederlands Palestina Comité and Stichting Palestina. Erev Rav and Stichting Plant een Olijfboom are supporting the case.

6. Accordingly, *amicus curiae* CCR request that this Court order the State to come into compliance with its international law obligations and grant plaintiffs the relief they seek via a preliminary injunction banning export and transit of weapons, weapon parts, and dual-use items to Israel, as well as a ban on all Dutch trade and investment relations that help maintain Israel's unlawful occupation of Palestinian territory. *Amicus curiae* CCR also consider it appropriate for this Court to render a declaratory judgment of the Dutch State's breach of its international obligations to respect and ensure respect for the Genocide Convention and the Fourth Geneva Convention, thereby requiring the State to conform its behavior to that judicial declaration of legal duties, including by robust monitoring of economic and military cooperation.

II. Argument

A. *Israel is Committing Widespread Violations of Peremptory Norms of International Law, the Genocide Convention and the Fourth Geneva Convention in the Occupied Palestinian Territory.*

7. Israel is currently committing violations of international law of the most serious nature, including genocide and grave breaches of the Fourth Geneva Convention in the occupied Palestinian territory. These are violations of *jus cogens* norms that trigger international obligations. With regard to genocide, it is recalled that Israeli officials made their intent to destroy the Palestinian population clear to all – including to Dutch officials – when on 9 October 2023 Israeli Minister of Defense Yoav Gallant referred to Palestinians as “human animals” and declared that Palestinians in Gaza would be denied basic necessities for life: “I have ordered a complete siege on the Gaza Strip. There will be no electricity, no food, no fuel, everything is closed.”⁷ Indeed, Israel's violations of peremptory norms of international law are widespread, systematic – and notorious. The plaintiffs' summons sets out international crimes being committed against the Palestinian population in detail. *Amicus curiae* CCR therefore draw the Court's attention to just a sampling of the credible reporting on the current situation in the occupied Palestinian territory and key judicial findings, which are particularly instructive when assessing whether, through its acts, omissions and policies, the State is meeting its international law obligations.

8. With regard to the occupied Palestinian territory as a whole, and in particular the West Bank including East Jerusalem, the ICJ made a number of key findings in the Legal Consequences Advisory Opinion that must guide the policies and practices of the Netherlands, particularly in relation to its conduct towards Israel, including:

- The Palestinian territory occupied by Israel encompasses the West Bank, East Jerusalem, and the Gaza Strip, which constitute a single, territorial unit,

⁷ Israeli Defence Minister Orders ‘complete Siege’ on Gaza, Al Jazeera (Oct. 9, 2023), <https://www.aljazeera.com/program/newsfeed/2023/10/9/israeli-defence-minister-orders-complete-siege-on-gaza>.

the unity, continuity and integrity of which are to be preserved and respected;

- Israel's continued presence in the occupied Palestinian territory is unlawful, and impairs Palestinians' right to self-determination;
- Israel is under an obligation to bring its unlawful presence in the occupied Palestinian territory to an end as rapidly as possible;
- Israel is under an obligation to immediately cease all new settlement activity and to evacuate all settlers from the occupied Palestinian territory;
- Israel has the obligation to make reparation for the damage caused to all natural or legal persons concerned in the occupied Palestinian territory; and
- All States are under an obligation not to recognize as legal the situation arising from the unlawful presence of Israel in the occupied Palestinian territory, and not to render aid or assistance in maintaining the situation created by Israel's continued presence in there.⁸

9. With regard to the occupied Palestinian territory as a whole, and in particular in the context of the assault on Gaza, United Nations experts and bodies have made fact-based findings that must guide the policies and practices of the Netherlands, particularly in relation to its conduct towards Israel, including:

- Due to Israel's actions, the situation across the occupied Palestinian territory is rapidly deteriorating, with widespread killing and injuring of civilians, mass destruction of civilian infrastructure and mass displacement in a Gaza that Israel has rendered "unliveable," alongside settlement expansion; mass detentions, arrests, torture and ill-treatment; movement restrictions; increased settler attacks displacing communities; the excessive use of force by the Israeli security forces; and economic strangulation through restrictive policies, harming Palestinians' economic, social and cultural rights;⁹
- The genocidal conduct of Israel must be viewed within a broader context, as numerous actions (totality of conduct) jointly targeting the Palestinians as such (totality of a people) across the entire territory (totality of the land), in furtherance of the political ambitions of Israel for sovereignty over the whole of former Mandatory Palestine; the genocide of the Palestinians appears to be the means to an end: the complete removal or eradication of Palestinians from the land so integral to their identity, and which is illegally and openly coveted by Israel.¹⁰

⁸ Legal Consequences Advisory Opinion, paras. 78, 267–69 and 279; *see also id.* para. 243. *See* Diakonia Int'l Humanitarian Law Centre, [*Summary of the International Court of Justice's 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*](#), July 2024.

⁹ Special Committee September Report, paras. 8–13, and 16.

¹⁰ Special Rapporteur Report: Genocide as Colonial Erasure, para. 84.

10. With regard specifically to Gaza, United Nations experts and bodies have made fact-based findings that must guide the policies and practices of the Netherlands, particularly in relation to its conduct towards Israel, including:

- Israel's warfare in Gaza is consistent with the characteristics of genocide, with mass civilian casualties and life-threatening conditions intentionally imposed on Palestinians there;
- Israeli officials have publicly supported policies that strip Palestinians of the very necessities required to sustain life – food, water, and fuel – and through their statements, along with the systematic and unlawful interference with humanitarian aid, make clear Israel's intent to instrumentalize life-saving supplies for political and military gains;
- Through its siege over Gaza, obstruction of humanitarian aid, targeted attacks and killings of civilians and aid workers, and despite repeated UN appeals, binding ICJ orders and Security Council resolutions, Israel is intentionally causing death, starvation and serious injury, using starvation as a method of war and inflicting collective punishment on the Palestinian population;
- Israel's extensive bombing campaign in Gaza has decimated essential services and unleashed an environmental catastrophe that will have lasting health impacts; and
- By destroying vital water, sanitation and food systems, and by contaminating the environment, Israel has created a lethal mix of crises that will inflict severe harm on generations to come; and
- All U.N. Member States must uphold their legal obligations to prevent and stop Israel's violations of international law and hold it accountable.¹¹

B. Third States Have the Obligation to Respect and Ensure Respect for International Law.

11. Under customary international law, treaty law and general principles of law, States have the legal obligation to respect and ensure respect for international law, and to remedy violations arising out of their acts or omissions, as well as certain violations committed by other States.¹²

¹¹ Special Committee September Report, paras. 22, 29, 33, 35, 69 and 71; Francesca Albanese (Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967), [Report: Anatomy of a genocide](#), U.N. Doc. A/HRC/55/73 (1 July 2024), generally, and para. 7 (“there are reasonable grounds to believe that the threshold indicating the commission of genocide by Israel has been met”).

¹² International Law Commission (“ILC”), [Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries](#), adopted by the ILC at its fifty-third session, Report of the International Law Commission on the work of its Fifty-third Session, UN GAOR, 56th Sess., Supp. No. 10, at 43, U.N. Doc. A/56/10 (2001), reproduced in Yearbook of the International Law Commission 2001, vol. II(2) (“Draft Articles on State Responsibility” or “ARSIWA”), Arts. 1, 2, 28. See also *id.*, Art. 12, Commentary (3) (“International obligations may be established by a customary rule of international law, by a treaty or by a

The ICJ made clear in the seminal *Barcelona Traction* case that these include obligations *erga omnes* because the importance of the rights implicated thereby are of concern to all States.¹³ The right to self-determination, the right to be free from genocide, and the prohibition against grave breaches of the Geneva Conventions – which include wilful killing, torture, and unlawful deportation or transfer – trigger *erga omnes* obligations and such breaches constitute violations of *jus cogens* or peremptory norms.¹⁴ As the ICJ reaffirmed when assessing the legal consequences from Israel’s breach of such norms, “all States can be held to have a legal interest in their protection.”¹⁵

i. Third State Responsibility Under International Law

12. The ILC’s Draft Articles on Responsibility on States for Internationally Wrongful Acts make clear that legal consequences flow to third States for serious breaches of peremptory norms of general international law, or *jus cogens*.¹⁶ All States are mandated – “shall” – to “cooperate to bring to an end through lawful means” any serious breach of a peremptory norm.¹⁷ This is a positive or affirmative duty on all States, including through “joint and coordinated effort[s],” with the specific form of “cooperation” dependent on the circumstances of the serious breach.¹⁸

13. Equally binding is the requirement that “[n]o State shall recognize as lawful a situation created by a serious breach [...] nor render aid or assistance in maintaining that situation.”¹⁹ These place the duty to abstain, or a negative duty, on all States.²⁰ The duty of non-recognition is both the individual responsibility of all States and a collective responsibility of the international community.²¹ Notably, the ILC cited “attempted acquisition of sovereignty over territory through the denial of the right of self-determination of peoples” – the precise finding made against Israel vis-à-vis the Palestinian people by the ICJ in its Legal Consequences Advisory Opinion – as a circumstance which requires such non-recognition, including by

general principle applicable within the international legal order.”). Additionally, States have responsibility for internationally wrongful acts that they aid and abet or otherwise further. *Id.*, Arts. 16-18.

¹³ See *Barcelona Traction, Light and Power Company, Limited* (New Application: 1962) (*Belg. v. Spain*), Second Phase, Judgment, I.C.J. Reports 1970, p. 32, para. 33. See also ARSIWA, Art. 1, Commentary (4): “Every State, by virtue of its membership in the international community, has a legal interest in the protection of certain basic rights and the fulfilment of certain essential obligations. Among these the Court instanced “the outlawing of acts of aggression, and of genocide, as also ... the principles and rules concerning the basic rights of the human person [...]”.

¹⁴ With regard to the right to self-determination having an *erga omnes* character, see *East Timor (Port. v. Austl.)*, Judgment, I.C.J. Reports 1995, p. 90, at p. 102, para. 29.

¹⁵ Legal Consequences Advisory Opinion, para. 274 (citations omitted). See generally, Diakonia Int’l Humanitarian Law Centre, [Responsibility of Third States and International Organisations Emanating from the Findings of the ICJ’s Advisory Opinion of 19 July 2024](#), Oct. 2024.

¹⁶ See ARSIWA, Part II, Ch. III (Serious Breaches of Obligations under Peremptory Norms of General International Law). Breaches are considered “serious” if “it involves a gross or systemic failure by the responsible State to fulfil its obligation.” *Id.*, Art. 40(2).

¹⁷ ARSIWA, Art. 41(1).

¹⁸ ARSIWA, Art. 41, Commentary (3).

¹⁹ ARSIWA, Art. 41(2).

²⁰ ARSIWA, Art. 41, Commentary (4).

²¹ ARSIWA, Art. 41, Commentary (5).

prohibiting any acts which would imply recognition.²² Indeed, there is significant practice of, and ICJ decisions supporting, the obligation of non-recognition.²³ As regards the obligation to abstain from rendering aid or assistance to maintain the situation created by the serious breach, the ILC confirmed that the obligation extends beyond not being complicit in, or otherwise aiding and abetting a violation, but *also* covers acts or omissions that do not rise to the level of complicity.²⁴ Notably, the Security Council has enforced this negative obligation with regard to aiding and abetting or otherwise maintaining an unlawful apartheid regime (in that case, South Africa).²⁵

ii. Third State Responsibility vis-à-vis Breaches of the Genocide Convention

14. Genocide is a *jus cogens* norm in customary international law, which is binding on all states at all times with obligations *erga omnes*, i.e., obligations on all States, through their officials, to prevent and punish it. Because genocide is considered so grave and serious that it harms the international community as a whole, Article I of the Genocide Convention, to which the Netherlands is a party, imposes an obligation on all parties to prevent genocide.²⁶ This duty to prevent genocide is not a passive obligation, but rather “is one of conduct and not one of result” where States are obligated “to employ all means reasonably available to them . . . to prevent genocide.”²⁷ This obligation reflects the international community’s collective commitment to ensure that no human beings and groups are targeted for destruction because of their identity or affiliation with a group or collectivity.

15. As the principle judicial organ of the United Nations, the ICJ has made clear that “a State’s obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed.”²⁸ That risk – and indeed actual commission – is now well known for the

²² *Id.* For ICJ case law regarding the denial of self-determination of peoples, 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, p. 16, at p. 56, para. 126 (holding that “the termination of the Mandate and the declaration of the illegality of South Africa’s presence in Namibia are opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law”). See also ARSIWA, Art. 41, Commentary (8) (providing examples of practice by the Security Council and General Assembly to affirm the principle of non-recognition following denial of the right of self-determination of peoples).

²³ For examples of Security Council, General Assembly practice and ICJ decisions, see ARSIWA, Art. 41, Commentary (6-7).

²⁴ ARSIWA, Art. 41, Commentary (11).

²⁵ See ARSIWA, Art. 41, Commentary (12).

²⁶ Article I of the Genocide Convention provides: “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”

²⁷ *Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro)*, Judgment, 2007 I.C.J. 43, 221 ¶ 430 (Feb. 26).

²⁸ *Id.* at 222, ¶ 431.

Palestinian population in Gaza, and has resulted in the ICJ issuing three sets of provisional measures in the ongoing *South Africa v. Israel* genocide case.²⁹

iii. Third State Responsibility vis-à-vis Breaches of the Geneva Conventions

16. Common Article I of the 1949 Geneva Conventions also explicitly mandates the High Contracting Parties to “respect and to *ensure respect* for the present Convention *in all circumstances*.” (emphasis added). This includes the obligation to actively take steps to endeavor that other Contracting Parties respect the rules of international humanitarian law and prevent violations, including in the context of occupation. As the ICRC 2016 Commentary makes clear, this “negative and positive” obligation also has an “external dimension” that requires States “must do everything reasonably in their power to ensure respect for the Conventions by others that are Party to a conflict,” including to abstain from encouraging, aiding or assisting in violations of the Convention.³⁰ These obligations were recently reaffirmed in relation to arms transfers by the ICJ in the *Nicaragua v. Germany* case.³¹

iv. The Netherlands’ Responsibility vis-à-vis Israel’s Wrongful Conduct under International Law

17. Against this binding legal framework for *erga omnes* obligations and peremptory norms of international law, as well as its treaty obligations, the Netherlands must take concrete actions, and refrain from taking other actions, in regards to *inter alia* arms trade and diplomatic relations to be in compliance with its international law obligations. The ICJ set forth the following obligations for Third States in its Legal Consequences Advisory Opinion, by which the Netherlands must abide:

- Not to recognize any changes in the physical character or demographic composition, institutional structure or status of the territory occupied by Israel on 5 June 1967, including East Jerusalem, except as agreed by the parties through negotiations and to distinguish in their dealings with Israel between the territory of the State of Israel and the Palestinian territory occupied since 1967;
- To abstain from treaty relations with Israel in all cases in which it purports to act on behalf of the [oPt] or a part thereof on matters concerning the occupied Palestinian territory or a part of its territory;
- 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;

²⁹ See 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 Orders, at: <https://www.icj-cij.org/case/192/orders>.

³⁰ See ICRC, 2016 Commentary, paras. 153-54, 158.

³¹ *Nicaragua v. Germany* Opinion, para. 24. (“the Court considers it particularly important to remind all States of their international obligations relating to the transfer of arms to parties to an armed conflict, in order to avoid the risk that such arms might be used to violate the [Genocide and Geneva] Conventions.”)

- To abstain, in the establishment and maintenance of diplomatic missions in Israel, from any recognition of its illegal presence in the occupied Palestinian territory; 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.³²

18. Additionally, various U.N. bodies and mandate holders have explicitly called upon Third States to uphold these obligations to bring an end to, and not render aid or assistance to maintenance of, serious breaches of international law by Israel over the last year, and particularly following the ICJ rulings in the cases of *South Africa v. Israel*, *Nicaragua v. Germany*, and the Legal Consequences Advisory Opinion. Like the U.N. Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, which issued its own legal analysis and recommendations for the implementation of the ICJ’s Legal Consequences Advisory Opinion,³³ these bodies have named the review and cessation of arms sales or transfers; review and abstain from military as well as logistical or financial support; review of cultural relations; reviewing or leveraging political and diplomatic relations with Israel to end its breaches, and ending impunity; as among the steps States take to comply with their own legal obligations.³⁴

19. Similarly, in its resolution on the 19 July 2024 advisory opinion, the UN General Assembly called upon all States, consistent with their obligations under international law, “[t]o take steps towards ceasing . . . the provision or 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.”³⁵ Indeed, several States have already partially suspended weapons exports to Israel in light of Israel’s illegal conduct in Gaza.³⁶ International law requires States, including the Netherlands, to go further by both suspending weapons transfers to the extent such weapons may be used to enact genocide and other serious breaches of international law, and to put a mechanism in place for monitoring the destination and use of exports.

20. Indeed, already in late 2023, UN experts warned that any transfer of weapons to Israel that would be used in Gaza is likely to violate international humanitarian law and should cease. This Court should issue an injunction to ensure that the Netherlands complies with this, and all other obligations, under international law.

³² Legal Consequences Advisory Opinion, para. 278.

³³ Position Paper of the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, *Legal analysis and recommendations on implementation of the International Court of Justice, Advisory Opinion, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, 18 Oct. 2024, available at: https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiopt/2024-10-18-COI-position-paper_co-israel.pdf.

³⁴ See, e.g., Special Committee September Report, paras. 71(a-c); OHCHR Update Report, para. 72.

³⁵ UNGA Res ES-10/24 (n 56) ¶ 5(b).

³⁶ See Oliver Holmes, *Which Countries Have Banned or Restricted Arms Sales to Israel?*, The Guardian (Sept. 2024), <https://www.theguardian.com/world/article/2024/sep/03/which-countries-banned-or-restricted-arms-sales-to-israel-gaza-war>.

C. *Domestic Policies that Constitute International Wrongs or Undermine Erga Omnes Obligations and Jus Cogens Norms are Invalid.*

21. The Netherlands cannot invoke domestic law or policy to avoid its international legal responsibility to respect and ensure respect for *jus cogens* norms and *erga omnes* obligations. Under the Draft Articles on State Responsibility, “[t]he characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.”³⁷ Indeed, the Draft Articles deem internal or domestic law “irrelevant” and as providing no justification for failing to comply with a State’s obligations under international law.³⁸ The same would be true with respect to domestic policies and practices. Accordingly, “a State cannot, by pleading that its conduct conforms to the provisions of its internal law, escape the characterization of that conduct as wrongful by international law.”³⁹

22. The serious breaches being committed by Israel in the occupied Palestinian territory, including genocide and grave breaches of the Geneva Conventions, violate *jus cogens* norms binding on all states at all times, from which no derogation is possible. “The fact that a norm is non-derogable, by extension, means that it is applicable to all since States cannot derogate from it by creating their own special rules that conflict with it.”⁴⁰ Indeed, pursuant to Article 53 of the 1969 Vienna Convention on the Law of Treaties, a treaty that conflicts with a peremptory norm of general international law, or *jus cogens*, is void;⁴¹ domestic laws that conflict with such peremptory norms are likewise void. The non-derogability of *jus cogens* norms has been recognized by international and domestic courts, both of which have often referred to the hierarchical superiority of such norms. And, relevant to this case, the ICJ has referred to “the universal character [...] of the condemnation of genocide,” which arises from the fact that genocide “shocks the conscience of [hu]mankind and results in great losses to humanity, and which is contrary to moral law.”⁴²

23. Because *jus cogens* norms take precedence over “all other sources of law,” they necessarily take precedence over conflicting domestic law and policy choices. This is true even with respect to issues of foreign policy or national security, which may be seen as “political” in nature. Accordingly, any argument by the Netherlands that it has leeway to engage in arms trade, economic dealings or diplomatic exchanges that in any way fail to uphold its obligations

³⁷ ARSIWA, Art. 3.

³⁸ ARSIWA, Art. 32. *See also* 1969 Vienna Convention on the Law of Treaties, Art. 32.

³⁹ ARSIWA, Article 3, Commentary (1).

⁴⁰ Report of the International Law Commission, 71st Sess., A/74/10 (2019), Part V (Peremptory norms of general international law (*jus cogens*)), Conclusion 3, Commentary (12), p. 155.

⁴¹ Article 53 of the Vienna Convention provides: “A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”

⁴² *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, I.C.J. Reports 1951, p. 15, at p. 23, <https://www.icj-cij.org/case/12>. The ICJ has reaffirmed this language in recent judgments.

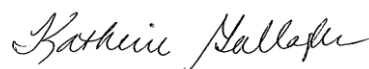
to respect and ensure respect for peremptory norms of international law as a matter of policy is invalid and must be rejected.

III. Conclusion

24. The Palestinian people are living – enduring – a nightmare, while the eyes of the world watch, and the international community fails to exercise its collective power to stop an ongoing genocide and an unlawful occupation. In the aftermath of World War II and the horrors of the Holocaust, the international community committed to “never again.” It adopted new binding legal instruments, including the Genocide Convention and the four Geneva Conventions of 1949, and created new international bodies, including the United Nations and the International Court of Justice, to prevent such grave crimes and moral injustices. In its first opinion examining the scope, purpose and obligations under the Genocide Convention, the ICJ found “its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality.”⁴³ Today, that system is failing to do either, in no small part because of the failure of individual member States to uphold their international legal obligations.

25. By granting the preliminary injunction sought by the plaintiffs and other relief mandated by their summons to require the Netherlands to uphold its international obligations in relation to its dealings with Israel, this Court can not only provide a critical and urgent measure of justice for the Palestinian people, but also serve as a beacon of hope at a time when the rule of law is under threat, if not attack, globally. It is respectfully requested that the Court do so, without delay.

Respectfully submitted,



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⁴³ *Id.*

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