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Strengthening of the United Nations system

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 in and in relation to the Occupied Palestinian Territory

Note by the Secretary-General

Addendum

1. By my note of 22 October 2025 ([A/80/502](#)), I transmitted to the General Assembly the advisory opinion delivered on 22 October 2025 by 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 in and in relation to the Occupied Palestinian Territory, in response to the request made by the Assembly in its resolution [79/232](#) of 19 December 2024.
2. I hereby transmit to the General Assembly the separate opinions and declarations appended to that advisory opinion.



SEPARATE OPINION OF VICE-PRESIDENT SEBUTINDE

Compelling reasons warrant a measured approach by the Court, which avoids revisiting previously adjudicated issues, or prejudging contentious matters pending before the Court or circumventing the principle of State consent — There are challenges in verifying the accuracy and authenticity of information presented regarding the humanitarian situation in Gaza — It is imperative that the root causes and bottlenecks obstructing aid delivery be identified — The question posed by the General Assembly is narrowly framed — The obligations owed by United Nations Member States hosting United Nations agencies are not absolute and may be qualified by specific agreements concluded between United Nations agencies and host States — UNRWA's presence and operations within the territory of Israel are subject to Israeli consent — Israel is obligated under international counter-terrorism conventions and binding Security Council resolutions to take appropriate action against terrorism, which is relevant to its prohibition of UNRWA's continued operations within its territory — Even occupying Powers enjoy a degree of discretion in implementing their legal obligations — Israel's decision to restrict UNRWA's presence and operations on its territory for reasons of national security is justified under international law — Israel's national security concerns regarding UNRWA warrant thorough, impartial investigation and resolution by competent authorities — Where a United Nations agency acts manifestly contrary to the principles of the Charter to the detriment of the United Nations Member's interests or security, that Member is not obliged to assist that United Nations agency in perpetuating such conduct — The obligation of assistance stipulated in Article 2, paragraph 5, of the Charter is limited to enforcement action undertaken by the Security Council under Chapter VII of the Charter — Where specific legal provisions require an occupying Power to facilitate relief for the civilian population, such obligations do not negate its inherent right to ensure its own security — A lasting peace and a sustainable resolution to the Israeli-Palestinian conflict can only be achieved through the facilitation of meaningful dialogue between the parties by the international community.

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INTRODUCTION

1. I preface this separate opinion by shedding light on why I have in some instances voted with the majority, whilst in other instances I have not. *First*, I agree with the majority that the Court unquestionably has jurisdiction to render the requested advisory opinion.

2. *Secondly*, while I have voted in favour of the Court answering the question posed by the General Assembly, I am of the firm view that, in order to preserve the integrity of its judicial function, the Court should, in responding to that question, have taken into account the compelling reasons outlined below in this separate opinion¹. Regrettably, that is not the case. Taken individually and collectively, the reasons I outline in this separate opinion warrant a measured approach that appropriately limits the scope of the Court's answer.

3. *Thirdly*, while I have voted in favour of paragraph 223 (3) (a) of the present Advisory Opinion, I would emphasize that Israel's obligations under international humanitarian law to ensure that the Palestinian population — including Palestinians in the Gaza Strip — has an adequate supply of essentials for daily life, as the Court itself has affirmed, "have remained commensurate with the degree of its effective control" exercised over the territory². In my respectful view, given the fluid and evolving nature of the situation on the ground in Gaza, the Court lacks a sufficiently reliable evidentiary basis to accurately assess the current degree of effective control exercised by Israel over the Gaza Strip. It is therefore difficult to sustain the conclusion of the majority that such control has "increased significantly" since the Court's previous Advisory Opinion³.

4. Crucially, Israel's humanitarian obligations must be discharged in a manner that does not unduly compromise its legitimate security interests. Yet, the Court's reasoning appears to accord insufficient weight to Israel's stated concerns, including Israel's assertion that members of Hamas have infiltrated the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (hereinafter "UNRWA" or the "Agency"), thereby potentially undermining the neutrality of that humanitarian organization. Furthermore, the Court appears to cast doubt on the bona fides of Israel's invocation of such concerns and questions the relevance of those security concerns to the fulfilment of Israel's obligations under international law⁴.

5. *Fourthly*, in my view, the acknowledgment that the State of Israel bears responsibilities under international humanitarian law — including those set out in paragraph 232 (3) (c) to (f) of the present Advisory Opinion — should neither be interpreted as casting doubt on Israel's compliance with those obligations, nor as diminishing the parallel responsibilities borne by other parties to the conflict.

6. Moreover, as the Court itself has recognized, "the intensity of the hostilities could affect the implementation of certain obligations under the law of occupation, and therefore the particular conduct required of the occupying Power"⁵. Regrettably, the Court in its reasoning disregards the complex realities of urban warfare, including the exceptionally high population density of Gaza, the use by Hamas of Palestinian civilians and Israeli hostages as human shields and its militarization of civilian infrastructure such as hospitals and schools. When substantiated by credible and verifiable evidence, these factors are materially relevant to the assessment of both the scope and the implementation of Israel's obligations under international humanitarian law and international human rights law. I remain unconvinced that the evidentiary threshold required for such verification can be adequately met within the confines of these advisory proceedings.

I. PRELIMINARY ISSUES

A. The Court's advisory jurisdiction

7. Article 65, paragraph 1, of the Statute of the Court empowers the International Court of Justice to render advisory opinions on any legal question, upon request from any body authorized under, or in accordance with,

¹ See paragraphs 9-16 of this separate opinion.

² See paragraph 85 of the present Advisory Opinion; *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. 93-94.

³ See paragraph 86 of the present Advisory Opinion.

⁴ Paragraphs 88-90 of the present Advisory Opinion.

⁵ Paragraph 87 of the present Advisory Opinion.

the Charter of the United Nations. Article 96 of the Charter further clarifies that the General Assembly and the Security Council are expressly entitled to request such opinions. The Court has previously affirmed that the legal questions submitted must fall within the scope of the requesting body's activities, and that "it is for the Court to satisfy itself that the request for an advisory opinion comes from an organ or agency having competence to make it"⁶.

8. The General Assembly has requested an advisory opinion on Israel's legal obligations in the Occupied Palestinian Territory (hereinafter the "OPT"), both as the occupying Power and as a United Nations Member State. These issues fall within the Assembly's mandate to uphold international peace and security and concern the legal status of United Nations entities, including UNRWA. As the questions are legal in nature, the Court has jurisdiction to respond. In the present instance, all the above criteria are fulfilled, and no participant has contested the Court's jurisdiction to issue the requested advisory opinion.

B. Discretion

9. Where the Court's advisory jurisdiction is established, it retains discretion to decline to render an opinion if compelling reasons justify such a course⁷, or to adopt a measured approach that limits the scope of its opinion in order to preserve the integrity of its judicial function⁸. The Court has consistently affirmed that, as a general principle, it should not refuse to respond to a request for an advisory opinion⁹, except if doing so is necessary to safeguarding the integrity of its role as the principal judicial organ of the United Nations¹⁰. In the present case, the following compelling considerations — both individually and cumulatively — warrant a measured approach, requiring the Court to limit the scope of its opinion in order to preserve the integrity of its judicial function.

(i) Revisiting previously adjudicated issues constitutes a clear abuse of the Court's advisory jurisdiction and politicizes its judicial function

10. It will be recalled that the General Assembly adopted resolution [79/232](#) barely five months after the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion* (hereinafter the "OPT Opinion")¹¹. Both in that Opinion and in the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (hereinafter the "Wall Opinion")¹², the Court has, in those two prior advisory opinions, already given its opinion regarding the applicable rules and principles of international law and expounded on its understanding of Israel's specific obligations in the Occupied Palestinian Territory as an "occupying Power", including in relation to the right to self-determination of the Palestinian people. In my view, revisiting issues already adjudicated in prior advisory opinions constitutes a clear misuse of the Court's advisory jurisdiction and undermines the sound administration of international justice. Such repetition lacks legitimate judicial purpose and risks politicizing the Court's proceedings, thereby diminishing the authority and impartiality of its advisory function. The following examples illustrate my point:

⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 145, para. 15.

⁷ *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 20, para. 19.

⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 157, para. 45.

⁹ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 19.

¹⁰ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 9 (I)*, p. 113, para. 64.

¹¹ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*.

¹² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 136.

- A central issue in the present case concerns the applicability of international humanitarian law (IHL) in the Occupied Palestinian Territory, particularly the Gaza Strip. In both the *Wall* Opinion and the *OPT* Opinion, the Court affirmed that the West Bank, including East Jerusalem, is under Israeli occupation¹³ and that the Fourth Geneva Convention and customary rules of IHL are applicable in the OPT¹⁴. In the *OPT* Opinion the Court further held that the law of occupation remains applicable to Gaza, concluding that Israel’s 2005 disengagement did not absolve it of its obligations under the law of occupation and that Israel’s obligations persist to the extent that it retains effective control over the Gaza Strip¹⁵. Consequently, the Court found in both opinions that IHL applies in the OPT and that Israel is bound by its obligations under that body of law. The Court unnecessarily repeats this point in paragraphs 83-90 of the present Advisory Opinion.
- The existence of Israel’s obligations under Article 59 of the Fourth Geneva Convention is a key issue in the present case. However, in the *Wall* Opinion, the Court already specified that Israel is bound in the OPT by Article 59 of the Fourth Geneva Convention, which requires that “[i]f the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal”¹⁶. This point is rehearsed in, *inter alia*, paragraphs 92-98 and 127 of the present Opinion.
- Many participants in these proceedings have asked the Court to find that Israel is bound by its obligations under international human rights law in the OPT. However, in both the *Wall* Opinion and the *OPT* Opinion, the Court already found that international human rights law is applicable in the OPT and that Israel is bound to respect its obligations under the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination in that territory¹⁷. In the *Wall* Opinion, the Court also explicitly noted that issues of Palestinian access to food and other essentials of life were relevant in the context of Israel’s human rights obligations in the OPT¹⁸. The Court unnecessarily repeats these points at length in paragraphs 146-160 of the present Advisory Opinion.
- An aspect of the present case concerns Israel’s authority to exercise legal authority in East Jerusalem. In the *OPT* Opinion, the Court already found unlawful certain extensions of Israeli law into East Jerusalem, finding that they amounted to annexation¹⁹. The Court repeats this point in paragraphs 63-65 of the present Advisory Opinion without analysing binding United Nations Security Council resolution 2334 (2016), which makes clear that “all final status issues in the Middle East peace process” should be resolved through negotiations. As the resolution points out, this includes the possibility of changes to the 4 June 1967 lines through negotiations, “including with regard to Jerusalem”²⁰.

¹³ *Ibid.*, p. 167, para. 78; *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. 87.

¹⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 177, para. 101; *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. 96.

¹⁵ *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. 93-94.

¹⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 187, para. 126.

¹⁷ *Ibid.*, pp. 180-181, paras. 111-113; *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. 100.

¹⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 192, para. 134.

¹⁹ *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. 173.

²⁰ While United Nations Security Council resolution 2334 (2016) demands that Israel halts its settlement activities in the OPT, including East Jerusalem, it emphasizes that the status of East Jerusalem ultimately remains part of the broader issue of the OPT that must be resolved through negotiations. That resolution did not settle the issue of the status of Jerusalem.

- The rules of international law applicable to the population of an occupied territory were extensively addressed by the Court in its *OPT* Advisory Opinion²¹ and need not be revisited when addressing Israel’s obligations “in relation to the presence and activities of the United Nations . . . , other international organizations and third States”. Yet the Court has in Part IV of the present Opinion done just that.
- The present request involves legal questions surrounding the interaction between humanitarian assistance and the Palestinian right to self-determination. In *OPT*, as part of its assessment of Israel’s obligations in respect of the Palestinian right of self-determination, the Court examined the issue of humanitarian aid, finding that “[t]he dependence of the West Bank, East Jerusalem, and especially of the Gaza Strip, on Israel for the provision of basic goods and services impairs the enjoyment of fundamental human rights, in particular the right to self-determination”²². Indeed, many participants in these proceedings quoted paragraph 241 of the *OPT* Opinion in their submissions. Yet the Court could not resist repeating this point in Part VI of the present Opinion.

11. Accordingly, in responding to the question posed by the General Assembly, the Court should have refrained from revisiting matters already addressed in previous advisory opinions. Doing so serves no constructive purpose and risks undermining the integrity of the judicial process. In my respectful view, and in the interest of judicial economy, the focus of the present Advisory Opinion should have been on issues not previously examined.

(ii) Addressing “alleged violations” of certain legal obligations at this stage risks prejudging issues currently before the Court in ongoing contentious proceedings.

12. Two contentious cases currently before the Court address the ongoing humanitarian situation in the Gaza Strip amid the continuing armed conflict between Hamas and Israel. The respondent States in each of these proceedings risk suffering irreparable prejudice should the Court exercise its advisory jurisdiction over substantially overlapping issues. The two cases in question are: *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* and *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*. These cases were instituted on 29 December 2023 and 1 March 2024, respectively, in the aftermath of the 7 October 2023 attack against Israel by Hamas and the subsequent hostilities. Fifteen States have sought to intervene in the *South Africa v. Israel* case, including Belize, Bolivia, Brazil, Chile, Colombia, Ireland, Libya, Spain, Palestine, Nicaragua, Mexico, the Maldives, Türkiye and Cuba — several of which also have participated in the current advisory proceedings. Many of these States have alleged in the present advisory proceedings that Israel has violated obligations under the provisional measures indicated by the Court in one of the contentious cases — a matter that is properly reserved for determination at the merits stage of that contentious case.

13. In particular, the provisional measures indicated by the Court in *South Africa v. Israel* already impose binding obligations on Israel concerning the provision of humanitarian assistance in Gaza, pending the final determination of the case.

- In its Order of 26 January 2024, the Court stated that “[t]he State of Israel shall take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip”²³.

²¹ *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. 84-102.

²² *Ibid.*, para. 241.

²³ *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 (I)*, p. 31, para. 86 (4).

- In its Order of 28 March 2024, the Court stated that “[t]he State of 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”²⁴.
- In its Order of 24 May 2024, the Court stated that “[t]he State of Israel shall . . . [m]aintain open the Rafah crossing for unhindered provision at scale of urgently needed basic services and humanitarian assistance”²⁵.

14. The advisory opinion requested by the General Assembly substantially overlaps with issues currently under judicial consideration, particularly regarding the scope, content, and applicability of humanitarian obligations. Central to both the *South Africa v. Israel* case and the present advisory proceedings is the controversy surrounding the delivery of humanitarian aid, which directly informs the assessment of alleged breaches of the Convention on the Prevention and Punishment of the Crime of Genocide. Related questions are also at issue in the pending *Nicaragua v. Germany* case. General Assembly resolution 79/232 asks the Court to provide an opinion on Israel’s legal obligations “to ensure and facilitate the unhindered provision of urgently needed supplies essential to the survival of the Palestinian civilian population as well as of basic services and humanitarian and development assistance”. Issuing an advisory opinion before the parties in these contentious cases have completed their submissions and before the Court has rendered judgments in the contentious proceedings risks prejudging those issues and risks causing irreparable prejudice to the rights of the respondents in both cases. Accordingly, the Court should refrain from addressing any aspects of the question that intersect with matters currently under judicial consideration.

(iii) The question potentially circumvents the existing international negotiation framework, and the principle of State consent to judicial settlement of inter-State disputes

15. Once again, the United Nations General Assembly has asked the Court to render a one-sided opinion on the legal obligations of one of the parties to the conflict (Israel), thereby shielding the other party to the conflict (Palestine) and its allies from judicial scrutiny of their policies and practices. As I cautioned in my dissenting opinion in 2024, this lopsided approach to the situation “is likely to exacerbate rather than de-escalate tensions in the Middle East”²⁶. Furthermore, by involving once again the principal judicial organ of the United Nations in a lopsided scrutiny of the obligations of Israel, whilst completely ignoring or downplaying its legitimate territorial claims and security concerns or the corresponding obligations of the United Nations and third States operating in the OPT, the Court is not only asked to circumvent the existing international negotiation framework²⁷, but also the principle of State consent as elaborated in my aforesaid dissenting opinion²⁸.

16. For all the above reasons I am of the view that the Court should have adopted a measured approach in answering the question posed by the General Assembly and have limited the scope of its opinion in order to preserve the integrity of its judicial function.

²⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the Modification of the Order Indicating Provisional Measures of 26 January 2024, Order of 28 March 2024, I.C.J. Reports 2024 (II)*, p. 527, para. 51 (2) (a).

²⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the Modification of the Order of 28 March 2024, Order of 24 May 2024, I.C.J. Reports 2024 (II)*, p. 666, para. 57 (2) (b).

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*, dissenting opinion of Vice-President Sebutinde, para. 42.

²⁷ *Ibid.*, paras. 43-45.

²⁸ *Ibid.*, paras. 46-48.

II. THE GEOPOLITICAL CONTEXT OF THE GENERAL ASSEMBLY'S QUESTION

17. Despite two prior advisory opinions addressing Israel's policies and practices in the OPT, the Israeli-Palestinian conflict remains unresolved and has resulted in extensive human suffering and loss of civilian life on both sides²⁹. The war triggered by the 7 October 2023 attack on Israel by Hamas has continued unabated for more than two years. In the face of international criticism and legal scrutiny, Israel maintains that its actions, whether military or legislative, are lawful under international law, characterizing them as legitimate acts of self-defence. To preserve the integrity of its judicial function, the Court must exercise great care in delivering its advisory opinion, ensuring that it remains impartial and does not become entangled in the political dimensions of the matter.

18. The tragic reality is that the ongoing conflict has produced two distinct categories of innocent victims. On one hand, hundreds of Israeli civilians were unlawfully held as hostages in the Gaza Strip by armed groups hostile to Israel, reportedly used as leverage to compel ceasefires, facilitate prisoner exchanges, influence diplomatic negotiations and exert political pressure both domestically and internationally. On the other hand, thousands of Palestinian civilians not engaged in hostilities remain in urgent need of essential humanitarian assistance — including food, water, shelter and medical care — while being exposed to the perils of intense urban warfare. This includes, in some instances, their deliberate placement in harm's way as human shields, in grave violation of international humanitarian law.

A. Irreconcilable goals and objectives

19. Both sides to the Israeli-Palestinian conflict remain firmly committed to their respective strategic goals and objectives, with little indication of compromise or de-escalation. This entrenched posture has significant legal implications, particularly in relation to the conduct of hostilities, the protection of civilians and compliance with international humanitarian law. On one hand, the publicly articulated objectives of Hamas³⁰ in the context of the Gaza conflict include: (i) the elimination of the State of Israel³¹; (ii) the establishment in its stead of an Islamic State governed by Sharia law across Gaza, the West Bank and the territory currently comprising Israel; (iii) the pursuit of armed resistance against Israeli occupation; (iv) the retention of political and military control over the Gaza Strip³²; and (v) the strategic use of hostages as leverage in negotiations³³.

20. On the other hand, the State of Israel, through official statements by government representatives including Prime Minister Benjamin Netanyahu³⁴, has articulated the following strategic objectives in the context of the Gaza conflict: (i) neutralization of Hamas' military and governance capabilities — aimed at dismantling Hamas' operational infrastructure and administrative control in Gaza to prevent future attacks and restore national security; (ii) securing the release and safe recovery of Israeli hostages from Gaza following the events of 7 October 2023; (iii) ensuring that Gaza no longer poses a strategic or security threat to Israeli territory or

²⁹ According to the Gaza Ministry of Health and the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) the number of Palestinian deaths resulting directly from the conflict to date, is estimated between 62,000 and 70,000 persons (inclusive of Hamas fighters). According to official Israeli sources, it is estimated that approximately 1,200 Israeli citizens (including civilians, soldiers and police officers) were killed during the 7 October 2023 attack, and an additional 410 members of the Israeli defense forces have since lost their lives.

³⁰ See the 1988 Hamas Charter (Covenant of the Islamic Resistance Movement); the 2017 Hamas Charter (Document of General Principles and Policies) and public statements made by Hamas leaders such as Ismail Haniyeh and Khaled Mashaal.

³¹ Hamas has historically maintained the objective of dismantling the State of Israel and establishing an Islamic Palestinian state encompassing the entirety of historic Palestine. This position is rooted in its original charter and reiterated in various official statements.

³² According to statements of its leaders, Hamas opposes the reintroduction of governance by the Palestinian Authority in Gaza and aims to preserve its own political and military dominance in the territory.

³³ The group has employed hostage-taking as a tool to extract concessions from Israel, including ceasefires, prisoner exchanges and political recognition. This tactic has been central to its operational strategy during the current conflict.

³⁴ See Israeli government and military statements; prime ministerial and cabinet declarations; and strategic policy Analyses.

population; (iv) termination of Hamas' authority in Gaza and promoting the development of a post-conflict administrative framework, potentially involving international or regional actors; and (v) restoration of Israel's deterrence posture and reinforcing public confidence in the State's capacity to defend its citizens against future aggression and cross-border attacks. Israel has consistently emphasized that its military operations are directed against designated terrorist organizations, specifically Hamas and Palestinian Islamic Jihad, and not against the civilian population of Gaza. This distinction is central to Israel's stated commitment to compliance with international humanitarian rights law, particularly the principles of distinction and proportionality.

B. Competing narratives regarding the humanitarian situation in Gaza

21. While the humanitarian situation in Gaza remains a matter of grave concern, the Court must be mindful of the challenges in verifying the accuracy and authenticity of information presented in these advisory proceedings. This is particularly important given the rapidly evolving conditions on the ground, the absence of independent verification mechanisms and the prevalence of disinformation and systematic propaganda surrounding the conflict. The integrity of the Court's assessment depends on its ability to distinguish between credible evidence and politically motivated narratives, in accordance with principles of procedural fairness and the objective application of international law. For instance, certain widely circulated images purporting to depict starving children in Gaza have been exposed as misleading or lacking critical context³⁵.

22. Particularly troubling is the documented misuse of photographs of children suffering from pre-existing medical conditions, which were erroneously disseminated by various media outlets as emblematic of famine-related suffering in Gaza³⁶. In one notable case, *The New York Times* and other major outlets issued corrections after it was revealed that a child portrayed as a victim of starvation was, in fact, afflicted by rare genetic disorders unrelated to malnutrition³⁷. Moreover, senior United Nations officials have, on occasion, retracted or revised public statements after the underlying claims were found to be inaccurate or unsubstantiated³⁸. These incidents underscore the prevalence of disinformation and propaganda in the current hostilities and highlight the need for the Court to exercise rigorous evidentiary scrutiny in assessing claims related to the humanitarian situation in the Gaza Strip³⁹.

23. Similarly, there are credible media reports indicating that, contrary to reports of shortages, a significant amount of humanitarian aid bound for Gaza has remained unutilized or undistributed at the Israeli border, with some of it spoiling due to prolonged delays in distribution. For example, over 1,000 aid trucks carrying food, water and medical supplies were reportedly left for weeks under the sun at the Kerem Shalom crossing, leading

³⁵ Recently, a German newspaper, *Süddeutsche Zeitung*, showed that a photo of Gazans holding empty pots was staged, with the civilians posing in front of a photographer — not in a queue for food aid. See N. Freund, “Wie echt sind die Bilder aus Gaza?” *Süddeutsche Zeitung* (3 Aug. 2025), <https://www.sueddeutsche.de/politik/gaza-hunger-bilder-experten-propaganda-hamas-Israel-li.3291720>.

³⁶ A recent article by The Free Press has uncovered that twelve individuals who were featured in viral photos actually suffered from serious, pre-existing health problems. In late July, *The New York Times* published a photo of 18-month-old boy, Mohammed Zakaria al-Mutawaq, for a story about hunger in Gaza. After details regarding al-Mutawaq's condition came to light, *The New York Times* was forced to publish a correction to the story stating that he suffered from “pre-existing health problems affecting his brain and his muscle development”: see, respectively, “They Became Symbols for Gazan Starvation. But All 12 Suffer from Other Health Problems”, *The Free Press* (18 Aug. 2025), <https://www.thefp.com/p/they-became-symbols-for-gazan-starvation>; and “Gazans Are Dying of Starvation”, *The New York Times* (24 July 2025), <https://www.nytimes.com/2025/07/24/world/middleeast/gaza-starvation.html>.

³⁷ *Ibid.*

³⁸ One noteworthy example is the statement by Tom Fletcher, the UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, who said on live television on 20 May 2025 that “there are 14,000 babies that will die in the next 48 hours” but was compelled to withdraw that statement as baseless. See “UN aid chief admits starving Gazan baby claim was amid ‘desperation’ to let aid in” *The Jerusalem Post* (30 May 2025), <https://www.jpost.com/israel-news/article-856073>.

³⁹ This has notoriously been the case, for example, regarding reports from the Integrated Food Security Phase Classification (IPC). Mention may also be made of the baseless claims made when Israel announced its intention to eliminate Hamas forces in the Rafah area.

to spoilage. Israeli officers admitted that some of the aid was buried or burned after it became unusable⁴⁰. Further media reports indicate that the distribution mechanism inside Gaza has broken down, with roads unusable and co-ordination lacking. As a result, even when trucks are allowed to enter, many are not unloaded or distributed effectively⁴¹.

24. Aid organizations such as MedGlobal and Mercy Corps have also confirmed that hundreds of truckloads of aid have been waiting at the border for months, including food kits, hygiene kits and shelter supplies⁴². *The Jerusalem Post* criticized a United States government analysis for allegedly ignoring extensive documentation of Hamas aid diversion. It cited testimonies and reports suggesting systematic theft and control of aid by Hamas in a “mafia-like” environment⁴³. The report alleges that militants redirected aid to undisclosed warehouses and sold it on the black market. The United Nations and other agencies have emphasized that the current flow of aid is far below what is needed, and logistical, security and political barriers are severely impeding delivery⁴⁴.

25. According to data provided by the Coordination of Government Activities in the Territories (COGAT), the State of Israel has facilitated the entry of over 1.3 million tonnes of humanitarian aid into the Gaza Strip over the past 15 months.

C. The real questions the Court and the international community should address

26. It is unequivocal that the United Nations plays a central and indispensable role in the humanitarian response to the Palestinian population in Gaza, particularly in the aftermath of 7 October 2023. Through its key agencies — UNRWA, the United Nations Office for the Coordination of Humanitarian Affairs, the United Nations International Children’s Emergency Fund (UNICEF), the World Food Programme (WFP) and the World Health Organization (WHO) — the United Nations delivers life-saving assistance, sustains critical infrastructure, co-ordinates large-scale relief operations and consistently advocates for the protection of civilians.

27. Despite formidable operational and political challenges, the United Nations remains the most trusted and capable actor in ensuring that aid reaches those in need. While the United Nations leads this response, however, other international organizations and third States serve as vital partners. Their contributions — ranging from aid delivery and logistical co-ordination to funding, diplomacy and advocacy — are essential to scaling operations, securing humanitarian access and sustaining the flow of assistance. Operating under often extreme constraints, these actors play a critical complementary role, reinforcing the broader humanitarian architecture in Gaza. The role of these actors is examined in greater detail in paragraphs 38-43 below.

28. Although the General Assembly in resolution 79/232 expresses “deep concern at measures taken by Israel that impede assistance to the Palestinian people, including through measures that affect the presence, activities and immunities of the United Nations, its agencies and bodies, and those of other international organizations, and the representation of third States in the Occupied Palestinian Territory”, the evidence before the Court indicates that this concern primarily relates to Israel’s cessation of co-operation with a single United Nations agency — the United Nations Relief and Works Agency for Palestine Refugees in the Near East. Accordingly, this separate opinion will focus on examining the legal relationship between the host State of Israel and UNRWA, with particular focus on whether Israel’s 2024 decision to terminate co-operation with the Agency was consistent with its obligations under international law.

⁴⁰ <https://www.middleeastmonitor.com/20250726-israeli-officers-admit-spoiling-aid-from-1000-trucks-at-southern-gazas-kerem-shalom-crossing/>.

⁴¹ <https://www.msn.com/en-us/news/world/what-aid-organizations-say-is-needed-in-gaza-amid-israel-hamas-ceasefire-plan/ar-AA1OcWcb>.

⁴² <https://www.yahoo.com/news/articles/un-says-170-000-tons-105419206.html?guccounter=1>.

⁴³ https://www.jpost.com/middle-east/article-862210#google_vignette.

⁴⁴ <https://news.un.org/en/story/2025/05/1163501>.

29. What then are the real questions that the Court and international community should be concerned with? In addressing the humanitarian crisis in Gaza, it is imperative that the international community clearly identify and confront the root causes of the bottlenecks obstructing the delivery of life-saving aid — particularly those arising within the Gaza Strip itself — and work collectively to develop practical and effective solutions. This urgency is underscored by credible, well-documented reports from United Nations agencies, humanitarian organizations and journalists on the ground, which indicate that trucks carrying substantial quantities of humanitarian supplies remain stalled at Gaza’s borders due to the absence of functioning distribution mechanisms or to the poor state of the infrastructure required to ensure aid reaches the civilian population.

30. Admittedly, the resolution of these operational challenges lies beyond the scope of the present advisory proceedings, which are confined to examining the legal obligations of Israel as the host State. In my respectful view, the Court is not the appropriate forum to propose or assess logistical or policy responses to the broader humanitarian crisis. That responsibility rests squarely with the international community, which must act with urgency, co-ordination, and resolve to address the situation effectively.

III. GENERAL ASSEMBLY RESOLUTION 79/232

31. It is against the above geopolitical background that on 19 December 2024, barely five months after the Court rendered its *OPT* Advisory Opinion, the United Nations General Assembly adopted resolution 79/232, yet again requesting the Court, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following question:

“What are the obligations of Israel, as an occupying Power and as a member of the United Nations, in relation to the presence and activities of the United Nations, including its agencies and bodies, other international organizations and third States, in and in relation to the Occupied Palestinian Territory, including to ensure and facilitate the unhindered provision of urgently needed supplies essential to the survival of the Palestinian civilian population as well as of basic services and humanitarian and development assistance, for the benefit of the Palestinian civilian population, and in support of the Palestinian people’s right to self-determination?”

A. Interpretation and scope of the question

32. Several key considerations arise in interpreting and responding to the question posed by the General Assembly. *First*, the question is narrowly framed: it seeks to identify the obligations incumbent upon Israel. The General Assembly did not request the Court to assess Israel’s compliance with those obligations, nor to pronounce on the legal consequences of any alleged non-compliance. This marks a significant departure from previous advisory opinion requests⁴⁵. While some participants have addressed Israel’s alleged violations and the legal consequences thereof in the context of the present request, including potential remedies, these matters fall outside the scope of the General Assembly’s question. This limitation is particularly pertinent given that the issue of alleged violations by Israel in the Gaza Strip, including pursuant to various provisional measures, is the subject of contentious proceedings — most notably *South Africa v. Israel*. It therefore would have been proper for the Court to have refrained from making factual or legal conclusions regarding the provision or distribution of humanitarian aid, especially in Gaza, that could prejudge issues in pending contentious cases as this would gravely undermine the integrity of the Court’s judicial function.

33. *Secondly*, the question posed by the General Assembly concerns Israel’s obligations in relation to a specific matter — “the presence and activities of the United Nations, including its agencies and bodies, other

⁴⁵ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 9 (I)*, p. 101, para. 1; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 139, para. 1; *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. 1.

international organizations and third States, in and in relation to the Occupied Palestinian Territory”. It does not invite a general assessment of Israel’s conduct in the Occupied Palestinian Territory — a matter that was comprehensively addressed in the Court’s *Wall* Opinion and the *OPT* Opinion. The present request calls for a focused assessment of Israel’s obligations regarding the presence and operations of external actors in the Occupied Palestinian Territory, particularly in relation to the provision of essential supplies, basic services and humanitarian and development assistance. At its core, the question concerns the legal framework governing such activities, including those of organizations like UNRWA explicitly mentioned in the request’s preamble. These obligations fall into two broad categories: (i) Israel’s obligations as an occupying Power and (ii) its responsibilities as a Member State of the United Nations.

34. *Thirdly*, the framing of the question appears to single out Israel as the sole belligerent in the Gaza conflict, despite the broader context involving Hamas, Islamic Jihad and other third States. This framing suggests a presumption that Israel alone bears responsibility for the deteriorating humanitarian situation in Gaza, which risks overlooking both Israel’s legitimate security concerns and the contributions of other actors — including armed groups and third States — to the crisis affecting the Occupied Palestinian Territory. In my view, this imbalance should be addressed by recognizing the complex and evolving nature of the conflict, which continues to unfold in the wake of the 7 October 2023 attack on Israel by Hamas. I aim to do so in this separate opinion.

35. *Fourthly*, the phrase “in and in relation to” in the General Assembly’s question carries a distinct legal and interpretive significance. The reference to activities “in the Occupied Palestinian Territory” pertains to those that occur physically within the geographic boundaries of the OPT. In contrast, “in relation to the Occupied Palestinian Territory” broadens the scope to encompass actions, policies or operations that, while taking place outside the OPT, are nonetheless connected to or have an impact on it. These may include, for example, visa and entry procedures conducted within the sovereign territory of Israel, diplomatic initiatives by third States, logistical support from neighbouring countries, international aid co-ordination from abroad, or other measures undertaken by States or international organizations that affect the OPT indirectly.

36. This language thus expands both the legal and factual ambit of the question, ensuring that the inquiry is not confined solely to activities within the OPT, but also includes external actions that influence conditions on the ground, including those carried out on Israeli territory. It reflects the inherently complex and transnational character of humanitarian and development assistance, which often requires cross-border co-ordination, funding and logistical facilitation. Legally, this formulation allows for a broader interpretation of Israel’s obligations — not only to refrain from obstructing activities within the OPT, but also to avoid impeding or undermining efforts related to the OPT, even when such efforts originate or occur beyond its territorial boundaries.

37. *Lastly*, it is important to note that the present request does not fall within the Court’s binding advisory jurisdiction as set out in the Convention on the Privileges and Immunities of the United Nations (hereinafter the “1946 Convention”). Under Section 30 of that Convention, disputes between the United Nations and a Member State concerning its interpretation or application may be referred to the Court, with the resulting decision accepted as binding by the parties. However, this mechanism has not been invoked in the current proceedings. The Court has previously clarified that, for Section 30 to apply, the request must explicitly reference it⁴⁶ — which is not the case here.

B. United Nations bodies and agencies operating in the Occupied Palestinian Territory

38. The question posed by the United Nations General Assembly assumes that the United Nations — including its agencies and bodies —, along with other international organizations and third States, are engaged in delivering essential services, as well as humanitarian and development assistance, to the civilian population in

⁴⁶ *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports 1989*, p. 190, para. 34.

the OPT. As highlighted in the United Nations' written statement,⁴⁷ numerous United Nations entities operate in the OPT under various mandates and play a key role in providing essential supplies and basic humanitarian and development aid to the Palestinian civilian population. These include OCHA; the Office of the High Commissioner for Human Rights (OHCHR); UNICEF; United Nations Development Programme (UNDP); the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women); the United Nations Human Settlements Programme (UN-Habitat); the United Nations Mine Action Service of the Department of Peace Operations (UNMAS); the United Nations Office for Project Services (UNOPS); the United Nations Office on Drugs and Crime (UNODC); the United Nations Fund for Population Activities (UNFPA); the United Nations Special Coordinator for the Middle East Process (UNSCO); the WFP. Particularly noteworthy are the operations of UNRWA, which are expressly referenced in General Assembly resolution 79/232.

39. These United Nations agencies play a crucial role in the OPT by providing essential services such as education, healthcare, social support and humanitarian aid, to Palestinian refugees, as well as advocating for human rights and supporting development. Until recently, these United Nations agencies (apart from UNRWA) have successfully fulfilled their mandates in the OPT, benefiting from the relevant immunities and privileges, albeit within the constraints imposed by the ongoing armed conflict.

C. States and organizations involved in the provision of humanitarian and development assistance in the Occupied Palestinian Territory

40. Several States and non-governmental organizations have undertaken humanitarian operations in the OPT. The States include Belgium, Brazil, Colombia, France, Jordan, Norway, Qatar, Russia, Saudi Arabia, South Africa and Türkiye⁴⁸. Many of these States maintain that their humanitarian aid efforts to the OPT have been severely hampered by Israel's restrictions on aid access.

41. In addition, the Observer State of Palestine identified several international organizations operating in the OPT, including the Food and Agriculture Organization (FAO); the International Fund for Agricultural Development (IFAD); the International Labour Organization (ILO); the International Trade Center (ITC); the UN Department of Safety and Security (UNDSS); the UNDP; the UN Educational, Scientific and Cultural Organization (UNESCO); the UN Environment Program (UNEP); the UN Industrial Development Organization (UNIDO); the OHCHR; the UN Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory; the UN Special Coordinator for the Middle East Peace Process; UN Trade and Development; the WHO; Acted; Action Against Hunger, ACF; Action Aid Australia — Palestine; Alianza Por La Solidaridad; ANERA; CARE International; Caritas Jerusalem; Catholic Relief Services; CESVI; Cooperazione Internazionale Sud Sud; Dan Church Aid/Norwegian Church Aid; the Danish Refugee Council; Diakonie Katastrophenhilfe; Global Communities; Humanity & Inclusion; International Medical Corps; the International Rescue Committee; the Lutheran World Federation; Médecins sans Frontières; Medical Aid for Palestinians; Mercy Corps; Middle East Children's Alliance; the Norwegian Aid Committee; Norwegian People's Aid; the Norwegian Refugee Council; Oxfam; Première Urgence Internationale; Project HOPE; Relief International; Save the Children; Solidarités International; Swiss Church Aid; Terre des Hommes; The Centre for Mind-Body Medicine; War Child; War Child Holland; We World-GVC.

42. Israel has justified its military operations in the OPT — including restrictions on access of aid to the Gaza Strip at various points in the conflict — primarily on security grounds, citing the need to neutralize threats posed by the Hamas administration, including alleged infiltration of UNRWA. It asserts that its campaign is aimed at protecting Israeli citizens, securing the release of hostages and preventing future attacks, including

⁴⁷ Written Statement of the United Nations, pp. 10-128.

⁴⁸ See Written Replies of these States to the question posed by the Vice-President at the conclusion of the public oral hearings in the advisory proceedings concerning the *Obligations of Israel in relation to the Presence and Activities of the United Nations and other International Organizations and Third States in and in relation to the Occupied Palestinian Territory*.

rocket fire and cross-border incursions. From Israel’s perspective, these operations are essential to dismantling Hamas’ infrastructure and ensuring national security, notwithstanding the significant humanitarian concerns and mounting international pressure for a ceasefire. According to Israel, the restrictions it placed on aid access between 2 March 2025 and 19 May 2025 were aimed at pressuring Hamas into accepting a proposed extension of the ceasefire, including the release of the remaining Israeli hostages then held by Hamas.

43. It is in the context of this tense and evolving situation that the Court has been requested to examine “Israel’s obligations as an occupying Power and as a member of the United Nations, in relation to the presence and activities of the United Nations, including its agencies and bodies, other international organizations and third States, in and in relation to the Occupied Palestinian Territory”, regarding the provision of urgently needed supplies as well as basic services and humanitarian development assistance in and in relation to the Occupied Palestinian Territory.

D. The unique status and role of UNRWA in the Occupied Palestinian Territory

44. UNRWA was established on 8 December 1949 by the General Assembly⁴⁹. It was originally intended to operate as a temporary organization to collaborate with local governments in the subregion with respect to direct relief and works for the Palestinian refugee population following the 1948 Arab-Israeli war (“War of Independence”). General Assembly resolution 302 (IV), which established UNRWA, did not specifically outline UNRWA’s immunities and privileges. Rather it simply called on States to grant UNRWA “the same privileges and immunities as its predecessor”, the United Nations Relief for Palestine Refugees (UNRPR)⁵⁰. This non-mandatory language, which stands in contrast to that used for the UNHCR and other comparable agencies, suggests that the scope of UNRWA’s privileges and immunities was envisaged to be voluntary and subject to its agreements with host States. The conditional nature of UNRWA’s immunity is reinforced by the fact that several States, including the United States⁵¹, Canada⁵², Jordan⁵³, Lebanon⁵⁴, Syria⁵⁵, Türkiye⁵⁶ and some European Union Member States⁵⁷, have each concluded their own unique and individual agreements with UNRWA to regulate the relations with each of those countries. In this regard, the State of Israel is not an exception and has concluded its own bilateral arrangement with UNRWA, as explained below.

⁴⁹ See UNGA resolution 302 (IV) of 8 December 1949.

⁵⁰ The UNRPR and its partners negotiated bilateral agreements with Arab states (e.g. Syria, Transjordan, Egypt) for the free admission, warehousing, and transportation of supplies. These arrangements implied a degree of functional immunity and facilitation, though not necessarily formalized in legal instruments. There is no clear evidence that the UNRPR or its personnel were granted formal diplomatic privileges and immunities during this interim period. Instead, the operation relied on *ad hoc* agreements and goodwill from host governments and voluntary co-operation from NGOs.

⁵¹ The USA has a formal *Framework for Cooperation with UNRWA*, most recently renewed for 2023–2024. This framework outlines shared goals in humanitarian assistance, education, protection, and digital learning, and includes policy commitments and operational co-ordination.

⁵² The *Framework for Cooperation with Global Affairs Canada* focuses on education, health, emergency assistance, and compliance with Canadian anti-terrorism requirements.

⁵³ Jordan hosts many Palestinian refugees and has a long-standing operational relationship with UNRWA, including co-ordination on education, health, and social services. While not always formalized in public documents, this co-operation is deeply institutionalized. Jordan is also a co-leader of a 2024 initiative supporting UNRWA.

⁵⁴ UNRWA operates extensively in Lebanon. Host country agreement facilitating UNRWA’s operations in refugee camps and urban areas.

⁵⁵ UNRWA operates extensively in Syria. Bilateral operational arrangements which regulate UNRWA’s presence and activities exist to allow that agency to provide services to Palestinian refugees, despite the complex security environment in the host country.

⁵⁶ The *Host Country Agreement (2025)* allows UNRWA to establish an office in Ankara, strengthening political and financial co-operation.

⁵⁷ While not all EU Member States have formal bilateral agreements, countries like Germany, France, Sweden, the Netherlands, and the UK are among UNRWA’s top donors and often engage in strategic partnerships that may include operational co-ordination. Germany, France, Japan, Australia, Sweden, Spain and Ireland have recently resumed financial and operational support, often under informal or strategic frameworks.

45. The mandate of UNRWA was subsequently expanded to cover all those displaced because of that war, and has been regularly renewed by the General Assembly, most recently on 12 December 2022, when the General Assembly extended the mandate of the Agency until 30 June 2026. Until the recent Israeli legislation affecting its operations, UNRWA has operated in the OPT from a West Bank Field Office located in East Jerusalem and a Gaza Field Office in the Gaza Strip. According to the United Nations Secretary-General, UNRWA provided and operated a significant part of the Palestinian health and educational infrastructure, especially in Gaza, including approximately 400 schools, 65 primary health clinics and one hospital, educating approximately 350,000 students and facilitating millions of healthcare consultations annually, as part of its operations. UNRWA has more than 17,000 personnel, comprising a small number of internationally recruited staff, and a much larger number of locally recruited staff, of which more than a third operate in the Gaza Strip.

E. The legal framework governing the relationship between UNRWA and Israel and the lawfulness of Israel's termination of co-operation

46. The majority opines that Israel owes certain obligations in relation to the operation of the United Nations, including the obligation not to “obstruct the functions of the United Nations”; to “provide every assistance in any action taken by the Organization in accordance with the Charter in and in relation to the Occupied Palestinian Territory”; and to “ensure full respect for the privileges and immunities accorded to the United Nations, including its entities and personnel, and to refrain from any interference with the performance of their functions”⁵⁸. The majority derives these obligations from the United Nations Charter and the 1946 Convention. I respectfully disagree with the Court's framing and understanding of these obligations, particularly in relation to UNRWA. As previously noted, the applicable legal framework is more nuanced. The scope of the protections afforded under these instruments is not absolute and is often qualified by specific agreements concluded between United Nations agencies and host States. In the present case, the host State of Israel concluded a bilateral agreement with UNRWA in 1967, as elaborated below.

(i) The “Comay-Michelmore Agreement of 14 June 1967” and the 1946 Convention

47. On 14 June 1967, following the Six-Day War after which the West Bank, the Gaza Strip, and East Jerusalem came under Israeli control, Israel and UNRWA concluded an “Exchange of Letters Constituting an Agreement Concerning Assistance to Palestine Refugees”⁵⁹ (also known as the “Comay-Michelmore Agreement of 14 June 1967”⁶⁰).

48. It is profoundly regrettable that, in its extensive analysis of Israel's obligations to co-operate with the United Nations (in particular, UNRWA) and to respect the privileges and immunities of the Organization and its personnel⁶¹, the majority disregards the Comay-Michelmore Agreement and its legal significance in defining Israel's relationship with UNRWA. This omission is glaring and leads to the erroneous conclusion that the privileges and immunities previously accorded to UNRWA in the host State derived not from their incorporation under that bilateral agreement, but rather directly from the Convention on the Privileges and Immunities of the United Nations⁶². The Court's approach effectively erases a foundational instrument governing the relationship between Israel and UNRWA, reducing the legal framework to just the United Nations Charter and the 1946 Convention. Such narrow and selective reading undermines the integrity of the Court's analysis and raises serious concerns about the completeness and credibility of its reasoning. In this separate opinion, I attempt to explore a

⁵⁸ See paragraphs 170-216 of the present Advisory Opinion.

⁵⁹ Exchange of Letters Constituting a Provisional Agreement concerning Assistance to Palestine Refugees, 14 June 1967, United Nations, *Treaty Series (UNTS)*, Vol. 620, p. 183.

⁶⁰ Mr Michael Comay, Political Adviser to the Foreign Affairs Minister and Ambassador-at-large signed on behalf of the State of Israel, while Dr Lawrence Michelmore, Commissioner-General, signed on behalf of UNRWA.

⁶¹ See paragraphs 170-216 of the present Advisory Opinion.

⁶² See paragraph 223 (7) and (8) of the present Advisory Opinion.

more balanced analysis of the legal framework governing the relationship between UNRWA and the host State of Israel, including this foundational instrument.

49. According to their text, the Letters of Exchange constituted “*a provisional agreement which [would] remain in force until replaced or cancelled*” (emphasis added). Recalling the verbal discussions held two days prior, both parties affirmed that, at the request of the Government of Israel, UNRWA would continue its assistance to Palestinian refugees in the West Bank and Gaza Strip, with the full co-operation of Israeli authorities. The Government of Israel further undertook to facilitate UNRWA’s operations to the best of its ability, “*subject only to regulations or arrangements which may be necessitated by considerations of military security*” (emphasis added). It also expressed its willingness, “*in principle . . . [t]o ensure the protection and security of the personnel, installations and property of UNRWA*”, “*[t]o permit the free movement of UNRWA vehicles*”, “*to permit the international staff of the Agency to move in, out and within Israel and the areas in question*” and “*[t]o permit the local staff of the Agency to move within the areas in question under arrangements made or to be made with the military authorities*” (emphasis added). Finally, it was agreed that the 1946 Convention would govern all matters pertaining to UNRWA’s operations.

50. The text of the Comay-Michelmores Agreement clearly reflects the mutual intent of the parties and contains several explicit and implicit limitations on the scope of co-operation. *First*, the designation of the Comay-Michelmores Agreement as “provisional” and subject to replacement or cancellation underscores its lack of permanence and legal certainty, allowing for unilateral termination. *Second*, Israel’s co-operation is based on its consent to the presence of UNRWA on Israeli territory and is expressly conditioned on “regulations or arrangements necessitated by considerations of military security”, granting Israel broad discretion to restrict UNRWA’s operations based on its security assessments. *Third*, the free movement of UNRWA personnel is contingent on security arrangements with Israeli military authorities, placing operational logistics under military control and potentially subjecting humanitarian activities to delay or obstruction.

(ii) Article 105(1) of the United Nations Charter must be interpreted subject to the principle of functional necessity:

51. Article 105 (1) of the United Nations Charter must be interpreted in light of the principle of functional necessity, which confines privileges and immunities to what is essential for the Organization to discharge its functions independently and effectively. While the provision admits of certain limitations, such restrictions must be exceptional, narrowly defined, and must not impair the Organization’s ability to fulfil its mandate.

52. The 1946 Convention affirms the principle of functional necessity, permitting limitations only under specific circumstances — such as access restrictions due to armed conflict, suspension of operations in response to credible terrorist threats, or termination of co-operation based on verified evidence of a United Nations agency’s involvement in harbouring individuals engaged in terrorism. In this regard, Israel’s termination of the Comay-Michelmores Agreement — if based on credible and verifiable evidence backing its security concerns — may constitute a lawful restriction. The Court’s failure to engage substantively with this issue represents a significant omission in its legal analysis. While such limitations are not inherently unlawful, their validity depends on whether they satisfy the criteria of necessity, proportionality and compatibility with the United Nations’ ability to carry out its mandate. Measures that fall short of these standards may be deemed inconsistent with a Member State’s obligations under the United Nations Charter and the 1946 Convention.

53. Israel asserts that the measures it has adopted in relation to UNRWA — including the cessation of UNRWA’s operations within Israeli territory and the termination of the Comay-Michelmores Agreement — are consistent with international law and meet the criteria of necessity and proportionality. Regarding necessity, Israel asserts that its measures are aimed at safeguarding Israel’s national security and the safety of its citizens, particularly in light of the 7 October 2023 attacks and subsequent threats by terrorist groups including Hamas and Islamic Jihad. It further asserts that the measures are considered necessary, as no less restrictive alternatives

are available that would adequately ensure Israel's security or protect its population from ongoing terrorist threats.

54. Second, Israel contends that the measures taken strike a fair balance between its security imperatives and the humanitarian needs of the Palestinian population in the OPT. Notably, Israel has stated that its measures do not impede the operations of other United Nations agencies, international organizations or third States that continue to provide essential humanitarian aid, basic services and development assistance to the Palestinian civilian population. The assertions advanced by Israel about the effect of its legislation have not been challenged in these proceedings. This uncontroverted record strongly supports the conclusion that Israel acted within the permissible limitations established under the applicable legal framework, and that its enactment of the two Israeli Parliament (Knesset) laws resulting in the unilateral termination of the Comay-Michelmores Agreement is consistent with international law.

(iii) UNRWA's presence and activities on Israeli territory are subject to the consent of the host State.

55. As noted by the majority⁶³, UNRWA's presence and operations within the territory of Israel are grounded in State consent. This is evident from the Comay-Michelmores Agreement and further supported by the legal opinion of the United Nations Office of Legal Affairs (OLA) dated 30 March 1968, concerning the extent to which UNRWA must conform to host-State law in implementing its educational programme⁶⁴. In paragraph 6 of that opinion, the OLA affirms that the legal basis for a United Nations agency's operations within a host State is consensual and that such consent may be subject to conditions and limitations mutually agreed upon.

56. Furthermore, the terms of the Comay-Michelmores Agreement to the effect that "the Israeli Government will facilitate the task of UNRWA to the best of its ability, subject only to regulations or arrangements which may be necessitated by considerations of military security" and that "the provisional agreement . . . will remain in force until replaced or cancelled" further reinforce the principle that privileges and immunities are not absolute but operate within the framework of host-State co-operation and agreement.

57. Although the United Nations and its organs benefit from immunity from domestic or international prosecution, such immunity does not prevent a host state from terminating its consent to the operation of a United Nations agency on its territory, as explained in the OLA's legal opinion referenced above. This is so, notwithstanding the alleged benefits such agency delivers to civilians in territories under the host State's jurisdiction or control.

58. There are precedents of host States lawfully terminating agreements with international organizations affiliated with the United Nations. Notably, in 2023, the Republic of Mali withdrew its consent for the continued presence of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) on its territory. In doing so, Mali's Foreign Minister, Abdoulaye Diop, invoked the State's sovereign right to revoke consent, citing MINUSMA's alleged role in exacerbating inter-community tensions and undermining national cohesion. As a result, the United Nations Security Council unanimously adopted resolution 2690 (2023) effectively terminating MINUSMA's mandate and requesting the transfer of its tasks to Malian civilian authorities and the safe and orderly withdrawal of the mission by 31 December 2023. The mission was withdrawn notwithstanding the fact that its mandate included "protecting civilians from attack" and "investigating allegations of grave human rights abuses"⁶⁵. This example underscores the principle that the presence of a United Nations entity within a host State is contingent upon ongoing consent, which may be lawfully withdrawn under certain circumstances.

⁶³ See paragraph 184 of the present Advisory Opinion.

⁶⁴ Opinion of the General Counsel of UNRWA on the "Question of the Extent to which UNRWA can be Expected to Conform to the Law of the Host State in the Implementation of its Educational Programme", 30 March 1968, p. 183.

⁶⁵ Human Rights Watch, "UN Peacekeeping Mission in Mali to End", 30 June 2023.

59. In 2020, the Government of Burundi expelled the WHO's expert coronavirus team, declaring its representatives "persona non grata" and ordering their departure from the country. The expulsion was based on allegations of "unacceptable interference" in the State's management of the COVID-19 pandemic. Notably, the decision was taken despite WHO's recognized role in supporting a fragile health system and infrastructure⁶⁶. This example illustrates that, under international law, the continued presence of international organizations within a host State is contingent upon the State's consent, which may be lawfully withdrawn — even in circumstances where the organization's assistance is deemed critical.

60. Similarly, in 2021 Ethiopia expelled seven United Nations officials, accusing them of "meddling in its internal affairs"⁶⁷. In none of the foregoing cases did the host States provide detailed evidence implicating United Nations personnel in the alleged misconduct. In at least one instance, no justification was offered for the expulsion at all. Moreover, several of these expulsions had cross-border repercussions. For example, Ethiopia's expulsion of seven senior United Nations officials during the Tigray conflict in 2021 adversely affected Somalia, which relied on United Nations regional food programmes. While some host States faced international criticism for these decisions, the expulsions and withdrawals nonetheless proceeded, underscoring the principle that the presence of United Nations personnel is contingent upon the host State's continuing consent. Each of these States invoked their sovereign right to terminate co-operation, irrespective of the broader operational impact. The majority argues that Israel possesses no such rights in the OPT⁶⁸. However, it provides no support for the extraordinary assertion that occupying Powers are obliged to consent to the operations of all United Nations organs in occupied territories. Although they do not exercise sovereignty, occupying Powers do possess authority and certain rights in the territories they occupy, including the right and obligation to ensure public order and safety⁶⁹. This includes the right to regulate the operations of international organizations in a manner consistent with international humanitarian law.

61. So long as Israel continues to ensure the provision of essential humanitarian aid and basic services to the Palestinian population through alternative channels — as it has consistently done throughout the ongoing military operation in the Gaza Strip — its decision to prohibit UNRWA's operations and presence within its territory falls squarely within its sovereign rights. The exercise of such sovereignty, particularly in the context of national security and public order, is recognized under international law and cannot be deemed unlawful merely because it affects a United Nations agency. Just as Caesar's wife must be above reproach, UNRWA — and any humanitarian organization operating in or in relation to the Occupied Palestinian Territory — must adhere to the highest standards of neutrality and impartiality. Only under such conditions can a host State be reasonably expected to extend the privileges and immunities afforded under the applicable legal framework. The integrity of these protections depends fundamentally on the perceived and actual neutrality of the organization in question.

(iv) Israel has competing international obligations to combat acts of terrorism on its territory:

62. Israel is subject to multiple, and at times competing, international obligations — including its duty to combat acts of terrorism within its territory. These obligations arise not only under international counter-terrorism conventions but also from binding resolutions of the United Nations Security Council. In fulfilling these obligations, Israel is required to take effective measures to prevent, suppress and respond to terrorist activity, even where such measures may intersect with its responsibilities under other international legal frameworks. Those obligations require it to prevent any organization, including UNRWA and its staff, from engaging in or facilitating terrorist activities on its territory. Israel is party to the 1997 International Convention for the Suppression of Terrorist Bombings, alongside 169 other States. Article 15 (a) of the Convention obliges States parties to take all practicable measures — including, where necessary, adapting their domestic

⁶⁶ "Burundi expels WHO Coronavirus team as election approaches", *The Guardian*, 14 May 2020.

⁶⁷ The Ethiopian authorities accused UN aid workers of favoring and arming Tigrayan forces, albeit no evidence was provided to back up the accusations.

⁶⁸ See paragraph 184 of the present Advisory Opinion.

⁶⁹ Hague Regulations, Article 43.

legislation — to prevent and counter preparations for the commission of offences defined in Article 2, whether within or outside their territories. These measures include prohibiting illegal activities by individuals, groups or organizations that encourage, instigate, organize, knowingly finance or engage in such offences.

63. The offences enumerated in Article 2 include the unlawful and intentional use of explosive or other lethal devices against public places, government facilities, transportation systems or infrastructure, with the intent to cause death, serious injury or extensive destruction. This framework reinforces the duty of States to act decisively against entities suspected of involvement in terrorist activity, including within the context of co-operation with international organizations.

64. Israel is a party to the 1999 International Convention for the Suppression of the Financing of Terrorism, alongside 189 other States. Article 18(1)(a) of the Convention imposes a binding obligation on States parties to co-operate in preventing the offences defined in Article 2 by taking all practicable measures, including, where necessary, adapting domestic legislation. Specifically, States must prohibit within their territories the unlawful activities of individuals or organizations that knowingly encourage, instigate, organize or engage in the commission of such offences. Article 2 defines these offences to include the direct or indirect, unlawful and wilful provision or collection of funds with the intent or knowledge that they will be used to carry out terrorist acts. This framework affirms not only the right but the duty of States to take preventive action against entities suspected of facilitating terrorism, including in the context of co-operation with international organizations.

65. Israel is also bound by a series of binding Security Council resolutions that require all Member States to take effective measures to combat terrorism and its financing⁷⁰. Accordingly, where credible information exists indicating that UNRWA premises and facilities are being used for terrorist activity; that UNRWA personnel are participating in such activity; or that terrorist organizations have infiltrated the agency, Israel is not only entitled but obligated under international counter-terrorism conventions and binding Security Council resolutions to take appropriate action. This includes the right to prohibit UNRWA's continued operations within its territory, consistent with its sovereign duty to prevent and suppress terrorism.

(v) The legal obligations imposed on occupying powers allow for a considerable degree of discretion in their implementation

66. Israel's designation as an "occupying Power" remains contested⁷¹. However, even assuming the applicability of international humanitarian law governing occupation, the legal obligations imposed on occupying powers allow for a considerable degree of discretion in their implementation. For example, while an occupying power is required to ensure the provision of food and medical supplies to the civilian population⁷², it retains discretion over the modalities of delivery. If capable, the occupying Power may provide such services directly. Where it lacks the capacity to fully meet the population's needs, it must allow and facilitate humanitarian relief by international organizations⁷³ — provided those organizations meet the requisite standards of neutrality, impartiality and independence.

67. Relief organizations operating in occupied territories are required to adhere strictly to the core humanitarian principles of impartiality, neutrality and independence. Article 59 of the Fourth Geneva Convention permits relief schemes to be undertaken by States or by impartial humanitarian organizations, such as the International Committee of the Red Cross (ICRC). The ICRC's Commentary to Article 59 clarifies that this provision encompasses "any institutions or organizations capable of acting effectively and worthy of trust"⁷⁴. The ICRC's Fundamental Principles further elaborate on what constitutes being "worthy of trust", emphasizing

⁷⁰ See United Nations Security Council resolutions [1373 \(2001\)](#), [2178 \(2014\)](#) and [2396 \(2017\)](#).

⁷¹ See *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, dissenting opinion of Vice-President Sebutinde.

⁷² Fourth Geneva Convention, Article 55.

⁷³ *Ibid.*; Article 59; ICRC, *Practice relating to rule 55: Access for Humanitarian Relief to Civilians in Need*.

⁷⁴ ICRC, *Fourth Geneva Convention, Commentary of 1958, Article 59*.

that to maintain the confidence of all parties, humanitarian actors must not take sides in hostilities or engage in political, racial, religious or ideological controversies⁷⁵. While these principles are articulated in the context of the ICRC, they are broadly applicable to all humanitarian organizations seeking to operate in sensitive or contested environments. Compliance with these standards is essential to justify the privileges and immunities afforded under international law.

68. Humanitarian organizations operating in occupied or conflict-affected territories must meet strict criteria of impartiality, neutrality and independence. Where an organization fails to meet these standards, the occupying Power or party to the conflict retains the right to deny or restrict access, provided such measures are grounded in legitimate security concerns. This principle applies not only to occupied territories but also to other areas under a State's control. Article 70 of Additional Protocol I to the Geneva Conventions extends this framework to territories under the control of a party to the conflict "other than occupied territory", requiring that humanitarian and impartial relief actions be permitted "without any adverse distinction".

69. The right to impose restrictions for imperative reasons of security or military necessity is reaffirmed across multiple provisions of international humanitarian law, including Articles 62 and 63 of the Fourth Geneva Convention, and Articles 54 and 71 of Additional Protocol I. These provisions recognize the balance between humanitarian access and the sovereign duty to safeguard national security.

70. Considering Israel's credible allegations outlined in this separate opinion, its decision to restrict UNRWA's presence and operations on its territory for reasons of national security is clearly justified under international humanitarian law. This is particularly so, given that Israel continues to facilitate the delivery of humanitarian aid and essential services to the civilian population through alternative channels, including capable international organizations and third States. International law does not impose an obligation on Israel to discharge its humanitarian responsibilities *exclusively* through UNRWA. The choice of implementing partners remains within the discretion of the State, provided humanitarian needs are adequately met.

71. Accordingly, Israel retains the sovereign right to deny international organizations — including the United Nations and its agencies and bodies — representation, service provision or operational activity within its territory, particularly where there are credible and substantiated concerns that such presence may pose a threat to its national security or sovereignty. In addition, Israel is under a binding obligation not to permit its territory to be used for terrorist activities, or for their financing or facilitation, as required under international counter-terrorism instruments and Security Council resolutions. Moreover, in fulfilling its humanitarian obligations toward the Palestinian population, Israel is entitled to determine the method and means by which aid is delivered.

72. There is no requirement under international law that such assistance be provided through UNRWA, nor that UNRWA be the exclusive conduit. Israel, along with donor States such as Italy, has expressed a preference for alternative mechanisms, including the WFP, which are capable of delivering aid effectively and in accordance with humanitarian principles.

F. Israel's security concerns that led to its withdrawal of co-operation with UNRWA

73. Israel's national security concerns, which prompted its withdrawal of co-operation with UNRWA, constitute a legitimate basis for its actions under international law. Where credible allegations exist regarding the infiltration of UNRWA by terrorist organizations, the misuse of its facilities or the involvement of its personnel in activities that threaten Israel's sovereignty and security, the host State is entitled — and indeed obligated — to take protective measures. Contrary to the majority views expressed in paragraphs 88 to 101 of the present Advisory Opinion, such concerns fall squarely within the scope of permissible grounds for restricting the

⁷⁵ ICRC, *The Fundamental Principles of the International Red Cross and Red Crescent Movement*.

presence and operations of international organizations on sovereign territory, under Article 59 of the Fourth Geneva Convention.

74. Israel, as a host State, has since 1967 co-operated with UNRWA in accordance with its undertakings outlined in the Comay-Michelmores Agreement. However, the Israeli Government has, over the last two decades, raised security concerns with the United Nations regarding what it sees as UNRWA's increasingly irreparable compromise and violation of the fundamental principles of neutrality, impartiality and independence in the discharge of its humanitarian mandate, including through infiltration of the organization by members of terrorist groups hostile to Israel, such as Hamas and Islamic Jihad. Several participants in these proceedings placed significant emphasis on these security concerns as a justification for Israel's conduct, arguing that the obligation to co-operate with the United Nations or its agencies is neither absolute nor unqualified⁷⁶.

75. In its Written Statement, Israel maintains that UNRWA's ties to terrorist organizations have long been documented, but scrutiny intensified following allegations that at least 12 UNRWA staff members actively participated in the 7 October 2023 attacks carried out by Hamas and Islamic Jihad on Israeli territory. These allegations, supported by Israeli intelligence and later investigated by the UN Office of Internal Oversight Services (OIOS), led to the termination of contracts of nine staff members whose involvement "could not be ruled out". In response, several donor States — including the United States, United Kingdom, and others — suspended funding to UNRWA.

76. Further claims by Israeli officials suggest that UNRWA facilities, including schools, have been used by Hamas and Islamic Jihad for storing weapons and launching attacks, raising concerns about the Agency's operational neutrality and complicity. Israel has argued that these developments undermine UNRWA's legitimacy and justify legislative and operational measures to prohibit its activities within Israeli territory⁷⁷. Examples of security concerns raised by Israel and supported, amongst others, by the United States of America, include the following:

- In November 2003, Israel submitted a letter to the Secretary-General of the United Nations alleging that terrorist organizations were exploiting UNRWA facilities in Ramallah, Qalqilya, Jebalia and other refugee camps as hideouts and places of refuge. According to the letter, this misuse posed a serious threat to the safety of individuals who genuinely relied on UNRWA's humanitarian services. Israel further claimed that violent activities were occurring within UNRWA-administered camps, in violation of Security Council resolution 1373 (2001). The letter also accused specific UNRWA staff members of misusing agency documents, vehicles and facilities to support terrorist organizations. Additionally, Israel expressed concern over inflammatory rhetoric and politically charged articles published by the UNRWA Commissioner-General and UNRWA schools, which it viewed not only as being hostile toward the State of Israel, but as also "undermining the structures established by the United Nations for the expression of opinions on specific situations" and as "undermin[ing] the Organization's own credibility and standing"⁷⁸.
- On 8 November 2005, Israel reported to the Chairman of the Special Political and Decolonization Committee (Fourth Committee) that a rocket-propelled grenade was launched on 30 September 2004 from within the

⁷⁶ See Written Statement of Israel, paras. 9-48, 71-76; Written Statement of Hungary, para. 23 ; Written Statement of the United States of America, paras. 15-17; CR 2025/7, pp. 11-12, paras. 17-19 (Simmons), and p. 42, paras. 34-35 (Kocsis).

⁷⁷ Numerous reports of UNRWA staff supporting terrorism and promoting antisemitism were made by the NGO, UN Watch, from 2015 onwards: <https://unwatch.org/tag/unrwa-report/page/2/>; <https://unwatch.org/tag/unrwa-report/>; <https://unwatch.org/tag/unrwa/page/20/> and subsequent pp. 1-19.

⁷⁸ Letter dated 6 November 2003 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General, UN doc. A/58/557 (7 Nov. 2003); see also Letter dated 2 February 2010 from Israel to the Commissioner-General of UNRWA; Letter dated 28 March 2012 from Israel to the Commissioner General of UNRWA; Letters from the Permanent Representative of Israel to the United Nations, UN doc. S/2017/517 (19 June 2017); Information submitted by Israel to the United Nations, UN doc. A/73/323 (14 August 2018).

premises of the UNRWA Jabalia Elementary “C” and Ayyobiya Boys School in Gaza targeting the Israeli Defense Forces (IDF)⁷⁹;

- In June 2017, Israel sent letters to the United Nations Secretary-General and the President of the Security Council calling upon the United Nations to investigate “the existence of a Hamas-built tunnel underneath UNRWA-run Maghazi Elementary Boys A & B School and the Maghazi Preparatory Boys School, in Gaza”, a development Israel asserted was “not an isolated incident” and evidenced Hama’s military build-up and use of children in military campaigns as “human shields”. Israel called upon the United Nations Secretary-General and the Chair of the Security Council to investigate UNRWA’s misinformation campaign against Israel conducted in the OPT including in its schools⁸⁰.
- In mid-2017, Israel complained to the United Nations regarding the fact that several UNRWA personnel were either members of Hamas or had strong connections to Hamas, thereby calling into question the political neutrality of the agency. Israel specifically noted the example of two UNRWA staff members, including the Chairman of the UNRWA Staff Union in Gaza, whom it alleged were elected to the political bureau of Hamas⁸¹;
- Israel asserts that in 2023 it found evidence of direct participation by UNRWA staff in the armed attack and atrocities perpetrated on 7 October of that year, including in abductions, murders and illegal detention of Israeli citizens, as well as further evidence of systematic infiltration of UNRWA by Hamas members⁸².
- In February 2024 Israel provided specific information on the participation of 12 UNRWA staff members in the attack and atrocities of 7 October 2023 and indicated, based on its intelligence, that another 30 UNRWA staff assisted or facilitated those crimes. According to Israel, a comparison of the list of 12,521 UNRWA employees in Gaza during 2023-2024 (provided to Israel by UNRWA in accordance with procedures established under the 1946 Convention), at least 1,462 of those employees (i.e. 12 per cent) are members of Hamas, its military wing, the Palestinian Islamic Jihad or other factions, groups Israel considers to be terrorist organizations. Of these persons, 79 per cent are employed as “educators” and 5 per cent as “medical service providers”. Israel also identified more than 10 per cent of top staff of UNRWA schools and training centres who were members of Hamas or Islamic Jihad. Israel’s written submission includes examples of specific UNRWA staff members whom Israel alleges worked for Palestinian terrorist groups and participated in the 7 October 2023 Hamas attack on the State of Israel. Israel asserts that it has complained about specific UNRWA employees involved in the military activities of Hamas and Islamic Jihad, without an appropriate response from UNRWA.
- Israel further asserts that during the armed hostilities following the 7 October 2023 attack, there was widespread and systematic misuse of UNRWA assets and facilities, which went largely unchecked. This, Israel claims, underscores the deeply entrenched ties between Hamas and Palestinian Islamic Jihad. According to Israeli sources, Hamas command-and-control centres, weapons caches and hideouts were discovered within, or adjacent to, at least 32 UNRWA facilities — including schools, warehouses, compounds and residential buildings. Most notably, a central server farm located 18 meters underground, allegedly serving as Hamas’ intelligence command centre, was found beneath UNRWA’s Gaza Headquarters and directly connected to its electricity supply. Further, Hamas and Palestinian Islamic Jihad operatives and

⁷⁹ Letter dated 7 November 2005 from the Permanent Representative of Israel to the United Nations addressed to the Chairman of the Special Political and Decolonization Committee (Fourth Committee), UN doc. [A/C.4/60/6](#) (8 Nov. 2005); Report of UNHQ Board of Inquiry into incidents in the Gaza Strip between 8 July 2014 and 26 August 2014; see also [A/HRC/29/CRP.4](#).

⁸⁰ Identical letters dated 9 June 2017 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General and the President of the Security Council, UN doc. [S/2017/493](#) (12 June 2017).

⁸¹ Written Statement of Israel, Annex 8, *Palestine refugees’ properties and their revenues*, Report of the Secretary-General, UN doc. [A/72/334](#) (14 Aug. 2017). See also *ibid.* para. 17.

⁸² *Palestine refugees’ properties and their revenues*, Report of the Secretary-General, UN doc. [A/72/334](#) (14 Aug. 2017).

infrastructure were reportedly present inside the UNRWA Headquarters in Gaza City. Multiple attacks against Israel are said to have been launched from within UNRWA premises.

G. Israel’s security concerns warrant thorough investigation and resolution by competent authorities

77. Israel’s national security concerns regarding UNRWA warrant thorough, impartial investigation and resolution by competent authorities. Where credible allegations exist implicating UNRWA facilities, personnel or operations in activities that may pose a threat to Israel’s sovereignty or security, these concerns must be addressed through appropriate legal and institutional mechanisms. Ensuring accountability and transparency in such matters is essential not only for safeguarding national security but also for maintaining the integrity of humanitarian operations under international law. While the Court cannot independently verify the accuracy of Israel’s assertions due to the limitations inherent in advisory proceedings, there exists at least some independent corroboration of certain elements of Israel’s stated concerns. This lends credibility to the claim that the issues raised merit further scrutiny and cannot be dismissed outright.

78. Reports have indicated that a significant number of UNRWA staff members are affiliated with, or sympathetic to, Hamas or Palestinian Islamic Jihad. UNRWA itself has acknowledged limitations in its ability — or willingness — to investigate the private political affiliations of its personnel. As one former Commissioner-General of UNRWA candidly stated: “Oh, I’m sure that there are Hamas members on the UNRWA payroll, and I don’t see that as a crime. Hamas as a political organization does not mean that every member is a militant, and we do not conduct political vetting to exclude individuals based on their affiliations”⁸³. Another former Commissioner-General remarked: “Our employees are part of the social fabric of Gaza and its ecosystem. And as part of that social fabric in Gaza, you also have Hamas”⁸⁴. These statements underscore the complexity of the operational environment in Gaza and lend credibility to Israel’s concerns regarding the lack of political neutrality and integrity of UNRWA’s staffing and operations.

79. In 2021, the European Parliament voiced its disappointment over the content of certain textbooks and educational materials used in UNRWA schools. It strongly condemned what it described as “problematic and hateful content that promotes violence, spreads antisemitism, and incites hatred”, found in Palestinian school textbooks prepared by European Union-funded civil servants, as well as in supplementary materials developed and taught by UNRWA staff. The European Union expressed regret that UNRWA had failed to remove these materials from circulation⁸⁵.

80. Israel points to the fact that some of the rescued Israeli hostages have testified to being held during their captivity by UNRWA staff members or at UNRWA facilities in the Gaza Strip⁸⁶ and that Hamas has made use of the facilities or surroundings of UNRWA facilities, including an allegation that a central server farm serving Hamas intelligence was located beneath UNRWA’s Gaza headquarters.

81. In addition, the United Nations commenced two separate investigations. The first has been referred to as the “Colonna investigation”, headed by Catherine Colonna, the former French Minister of Foreign Affairs. This investigation was tasked with assessing “whether UNRWA’s mechanisms and procedures ensure neutrality”,

⁸³ “Canada looking at UN Agency over Palestinian connection”, *CBS News*, 3 October 2004.

⁸⁴ *The New York Times*, “U.N. Agency in Gaza Fought Hamas Infiltration; Not Hard Enough, Israel Says”, 10 February 2024, <https://www.nytimes.com/2024/02/10/world/middleeast/unrwa-hamas-gaza.html>.

⁸⁵ European Parliament, decision of 28 April 2021 on discharge in respect of the implementation of the general budget of the European Union for the financial year 2019, Section III – Commission and executive agencies (2020/2140 (DEC)), para. 444.

⁸⁶ *The Guardian*, “Freed Gaza Hostage Told Starmer that Hamas Held her in UNRWA Premises, her Mother Says”, 31 January 2025.

but not to make any findings regarding the alleged breaches of neutrality specified by Israel⁸⁷. The Colonna investigation found that despite the “robust UNRWA Neutrality Framework established in 2017”, neutrality-related issues persist. They include instances of staff publicly expressing political views; host-country textbooks with problematic content being used in some UNRWA schools; and politicized staff unions making threats against UNRWA management and causing operational disruptions. In particular, it confirmed that UNRWA’s staff screening mechanisms are inadequate to prevent the employment of terrorists and that periodic inspections of UNRWA’s installations do not investigate misuse for terrorist purposes.

82. The Colonna Report made several recommendations regarding reforms to be made to UNRWA, including in respect of staff neutrality⁸⁸. Unlike the majority, I hold serious reservations about the efficacy of the Colonna investigation. Besides the impartiality of the Colonna investigation having been called into question⁸⁹, it is not clear to what extent its recommended reforms have been implemented with respect to UNRWA or its staff. Furthermore, the narrow scope and limited terms of reference of the investigation inherently constrained the breadth of its recommendations. Unsurprisingly, the majority view expressed in paragraph 89 of the Advisory Opinion that “reliance upon [Israel’s security] concerns must be exercised in accordance with the principle of good faith”⁹⁰ presupposes that those security concerns were adequately and satisfactorily investigated and addressed by the Colonna investigation. I respectfully disagree with the majority’s evaluation of both the Colonna investigation as well as the significance and effect of Israel’s security concerns on its international obligations towards the United Nations and UNRWA.

83. The second investigation, carried out by OIOS, examined 19 UNRWA staff members whom Israel had identified as participating in the attack of 7 October 2023. OIOS found that nine of the UNRWA staff members “may have been involved in the attack and should be dismissed”. It considered that “insufficient or no evidence had been provided with respect to the other ten staff members regarding their alleged involvement in the attack” and “did not consider that their conduct or alleged membership of Hamas or other terrorist organizations warranted any further investigation”⁹¹.

84. In my view, neither the findings of the Colonna investigation nor those of OIOS have satisfactorily or conclusively addressed Israel’s legitimate security concerns regarding the infiltration of UNRWA by Hamas and Palestinian Islamic Jihad and, in this regard, I fundamentally disagree with the conclusion of the majority in the Advisory Opinion.

H. Israel’s Knesset laws are consistent with Israel’s obligations under international law

85. In view of the foregoing, in particular UNRWA’s alleged infiltration by terrorist organizations hostile to Israel and breaches of neutrality and impartiality, coupled with the failure of the competent authorities to satisfactorily address Israel’s numerous security concerns, it is little wonder that the relationship between UNRWA and Israel came to a head with Israel’s passage of two domestic laws. In October 2024, the Knesset enacted two domestic laws aimed at terminating the operations of UNRWA within Israeli territory. These laws prohibit UNRWA from operating in areas under Israel’s sovereignty, including East Jerusalem⁹², and sever all official contact between Israeli authorities and the Agency. As stated in paragraph 10, footnote 20 above, while

⁸⁷ *Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality*, Final report for the United Nations Secretary-General, 20 April 2024.

⁸⁸ *Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality*, Final report for the United Nations Secretary-General, 20 April 2024, pp. 36-43, available at https://www.un.org/unispal/wp-content/uploads/2024/04/unrwa_independent_review_on_neutrality.pdf.

⁸⁹ UN Watch, “Exposed: UNRWA’s Rigged ‘Independent’ Review”, 15 April 2024.

⁹⁰ See paragraph 89 of the present Advisory Opinion.

⁹¹ United Nations. Note to correspondents — on the UN Office of Internal Oversight Services (OIOS) investigation of the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), 5 August 2024.

⁹² Under Israeli law, East Jerusalem (but not the West Bank and Gaza) is part of Israeli territory. UNRWA is therefore prohibited from operating in East Jerusalem pursuant to this second law. See also footnote 20 above.

United Nations Security Council resolution 2334 (2016), the only binding text relating to the status of East Jerusalem, demands that Israel halts its settlement activities in the OPT, including East Jerusalem, that resolution emphasizes that the status of East Jerusalem ultimately remains part of the broader issue of the occupied Palestinian territories that must be resolved through negotiations. The Security Council did not settle the issue of the status of Jerusalem in that resolution and that status remains moot.

86. Furthermore, by terminating the 1967 Exchange of Letters with UNRWA, the Knesset legislation effectively revoked the privileges and immunities previously granted to UNRWA personnel under the 1946 Convention. As noted in paragraph 48 above, the majority disregards the Comay-Michelmores Agreement and its legal significance in defining Israel's relationship with UNRWA. This oversight leads to the erroneous conclusion that the privileges and immunities previously accorded to UNRWA in the host State derived not from their incorporation under that bilateral agreement, but rather directly from the 1946 Convention⁹³. The first law, entitled the "Law to Cease UNRWA operations", *inter alia*, states as follows:

"Expiration of the exchange of letters between Israel and UNRWA"

1. (a) The invitation to UNRWA, based on an exchange of letters between Israel and UNRWA from 6 Sivan 5727 (14 June A.D. 1967), will expire on 5 Tishrei 5785 (7 October A.D. 2024).
- (b) The Minister for Foreign Affairs shall notify the United Nations of the expiration under subsection (a) within seven days of the passage of this law by the Knesset.

No contact with UNRWA

2. A government authority, including other bodies and individuals performing public duties according to law, shall not have any contact with UNRWA or anyone acting on its behalf.

Retention of laws

3. Nothing in the provisions of this law shall preclude any criminal proceeding against UNRWA employees, including such proceedings related to the events of 7 October 2023 or the Swords of Iron War, or any other criminal proceeding under Counter-Terrorism Law 5776-2016, or the exercise of powers against them within the framework of such proceedings."

87. The second law, entitled "The Law to Cease UNRWA Operations in the Territory of the State of Israel", *inter alia*, states as follows:

"Purpose"

1. The purpose of this law is to prevent any UNRWA operations within the territory of the State of Israel.

Prohibition of operations within the territory of the State of Israel

2. UNRWA (United Nations Relief and Works Agency) shall not operate any representative office, provide any services or carry out any activities, directly or indirectly, within the sovereign territory of the State of Israel."

⁹³ See paragraph 223 (7) and (8) of the Advisory Opinion.

88. After the passage of these laws, Israel notified the United Nations that it had withdrawn from the Comay-Michelmores Agreement⁹⁴. Israel also informed the United Nations on 24 January 2025 that it was requiring UNRWA to cease its operations in Jerusalem, including by vacating its East Jerusalem headquarters, by 30 January 2025⁹⁵. Having regard to Israel’s persistent and legitimate security concerns, which remain substantially unaddressed, and in view of the discretionary nature of the privileges and immunities accorded to UNRWA and its personnel under the relevant international instruments, as well as the provisional and non-binding character of the 1967 Comay-Michelmores Agreement — whose limitations have been previously acknowledged — Israel’s enactment of legislation through its Knesset to terminate co-operation with UNRWA constitutes a legally defensible exercise of sovereign authority and is lawful under international law. I therefore respectfully disagree with paragraphs 175-179 of the Advisory Opinion to the extent they suggest otherwise.

IV. ISRAEL’S OBLIGATIONS AS A MEMBER OF THE UNITED NATIONS

89. United Nations Member States have voluntarily assumed obligations to enable the United Nations, its specialized agencies and bodies, to fulfil the organization’s principal purpose as enshrined in the Charter, namely “the maintenance of international peace and security and the peaceful settlement of disputes”. Israel, like any other United Nations Member State, has voluntarily assumed obligations linked to the purposes enumerated in Article 1 of the Charter of the United Nations, as well as the 1946 Convention. Under Article 2, paragraph 5, of the Charter, “all Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter”. Contrary to what many participants have argued, this obligation is not unlimited or unqualified.

90. *First*, assistance to the United Nations is required in relation to action that is undertaken “in accordance with the Charter”. Consequently, where a United Nations humanitarian agency like UNRWA (or its staff) acts manifestly contrary to the principles of the Charter by failing to maintain neutrality and impartiality in a conflict zone like the OPT — or contrary to the basic principles of the international civil service contained in the Charter, to the detriment of the United Nations Member’s interests or security — that Member is not obliged to assist that United Nations agency in perpetuating such conduct.

91. *Secondly*, and consistent with the general structure of the United Nations Charter and the respective functions assigned to the various organs of the United Nations, the obligation of assistance stipulated in Article 2, paragraph 5, is limited to enforcement action undertaken by the Security Council under Chapter VII of the Charter and does not encompass all action undertaken by each and every agency of the United Nations. Moreover, obligations under the United Nations Charter must be implemented in good faith. But good faith does not oblige a United Nations Member State to take specific measures in the absence of a Security Council decision. In the absence of a binding resolution of the Security Council that Israel *must* co-operate specifically with UNRWA when providing humanitarian aid to the OPT, Israel has the flexibility and discretion to determine appropriate measures under its domestic laws.

92. Furthermore, Article 105 of the Charter provides that “[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes”. This provision is clearly linked to Articles 1 and 2 of the Charter requiring the fulfilment of the United Nations’ purposes must be in accordance with the Charter. Article 105 sets a clear limitation in terms of the extent of the privileges and immunities making it clear that they are applicable in the proper execution of the functions of the Organization. This obligation is also codified in the Staff Regulations and Rules of the United Nations.

93. As recalled above, the Israeli Government undertook in the exchange of letters between Israel and UNRWA concluded in June 1967 to “facilitate the task of UNRWA to the best of its ability, subject only to

⁹⁴ Written Statement of the United Nations, para. 139.

⁹⁵ *Ibid.*; Letter from Director General of the Israeli Ministry of Foreign Affairs to the President of the General Assembly, 3 November 2024.

regulations or arrangements which may be necessitated by considerations of military security” and, furthermore, that the “Convention on the Privileges and Immunities of the United Nations of 13 February 1946” would “govern the relations between the [Israeli] Government and UNRWA in all that concerns UNRWA’s functions”.

94. In my view, a combination of factors has significantly eroded UNRWA’s standing as a neutral and independent humanitarian organization in the eyes of Israel, the host State. These factors include the failure of senior UNRWA officials — including former commissioners-general — to uphold political neutrality and impartiality, particularly through public statements made at a time when such neutrality is critically required. Additionally, the involvement of numerous UNRWA staff members in acts of terrorism both within the Occupied Palestinian Territory and on Israeli soil has further undermined trust.

95. The lack of thorough investigation and resolution of complaints against UNRWA and its personnel, coupled with the incomplete implementation of key reforms recommended by both the Colonna investigation and OIOS, has not inspired confidence in the host State to resume co-operation with or provide support to UNRWA. On the contrary, the host State has a legal and moral obligation to avoid knowingly facilitating acts of terrorism within territory under its control.

96. Furthermore, as indicated by participants in these advisory proceedings, there are other United Nations entities and international humanitarian organizations that operate in full compliance with international law and do not pose a security threat to the State of Israel. These organizations could play a more prominent role in the delivery and distribution of humanitarian aid within the Occupied Palestinian Territory. In my view, while the Court’s advisory role is constrained by its strictly judicial mandate, the United Nations and the broader international community are better positioned to conduct a thorough assessment of the underlying causes of food and humanitarian aid shortages — particularly in Gaza — and to take all necessary measures to address the crisis.

97. Recent reports suggest that, although substantial quantities of food and humanitarian supplies have been permitted entry into the Gaza Strip, they have not reached the civilian population. Allegedly, Hamas has been diverting these supplies, reselling them to civilians at exorbitant prices. Additionally, there are indications that large volumes of aid remain undistributed and are deteriorating rapidly due to the harsh desert climate.

98. If these reports are accurate, the situation is deeply troubling and should prompt all humanitarian actors operating in the region, as well as the international community at large, to take urgent and co-ordinated action to ensure that Palestinian civilians can access this aid freely and without obstruction.

V. ISRAEL’S OBLIGATIONS AS AN OCCUPYING POWER

99. Without prejudice to Israel’s legitimate interests and claims to the so-called OPT, I have pointed out, above, that the obligations of Israel as an occupying Power in the OPT were already articulated in the 2004 and 2024 Advisory Opinions, including under the Hague Regulations and Article 59 of the Fourth Geneva Convention. For the purposes of this separate opinion, I will offer only a few additional observations. First, as the occupying Power, Israel bears the responsibility to maintain public order and security within the OPT. Accordingly, when third parties operating in that territory — under Israel’s consent — compromise public order or security, Israel is obligated to halt such activities. This duty arises not only from its legal obligations as an “occupying Power”, but also from the imperative to safeguard the well-being of all populations residing in the territory.

100. Secondly, international law does not impose unconditional obligations on an occupying Power in relation to the provision of humanitarian assistance, especially in the context of an ongoing war or armed conflict such as the one currently appertaining to Israel and the OPT. The relevant legal framework has been carefully developed through State consent to treaty law and the evolution of customary international law. As the Court has consistently affirmed in its jurisprudence, IHL constitutes the *lex specialis* governing the conduct and obligations

of parties to an armed conflict. Within this framework, the law of occupation delineates the specific rights and responsibilities of the occupying Power.

101. While such a Power is indeed obligated to maintain public order and safety and to protect the civilian population, it also retains the right to pursue legitimate military objectives and to administer the occupied territory. This necessitates a careful balancing of military and humanitarian considerations. Accordingly, where specific legal provisions require an occupying Power to facilitate relief for the civilian population, such obligations do not negate its inherent right to ensure its own security.

102. Article 59 of the Fourth Geneva Convention provides that, when the population of an occupied territory is inadequately supplied, the occupying Power is obligated to agree to relief schemes on behalf of that population and to facilitate such schemes by all the means at its disposal. The provision further specifies that these schemes “may be undertaken either by States or by *impartial humanitarian organizations*, such as the International Committee of the Red Cross”, and should include “consignments of foodstuffs, medical supplies and clothing” (emphasis added).

103. Importantly, under Article 59, the occupying Power retains discretion over which relief schemes to permit, provided that such discretion is exercised in a manner consistent with its obligation to maintain public order and security. This reflects the broader principle within the law of occupation that humanitarian obligations must be balanced with the occupying Power’s legitimate security concerns. While an occupying Power is bound by international law to refrain from obstructing the occupied population’s right to self-determination, it is not under a positive obligation to actively promote it. The decision to terminate the provisional co-operation agreement with UNRWA — based on credible evidence of its involvement in terrorist activities — does not, in itself, constitute a breach of that right. Provided that alternative mechanisms remain in place to ensure the continued delivery of essential humanitarian services and supplies to the Palestinian population, such action cannot reasonably be construed as a violation of their right to self-determination, contrary to the majority’s assertion.

104. A second safeguard built into Articles 59 and 61 of the Fourth Geneva Convention is the requirement of impartiality. Humanitarian aid must be distributed in an impartial and neutral or non-discriminatory manner, including by taking no sides in the armed conflict. In the case of UNRWA, a humanitarian organization whose neutrality has been called into question, Israel retains a margin of appreciation to allow it to operate in the OPT or, alternatively, to allow other humanitarian organizations to operate in the OPT instead. Similarly, there is no legal requirement that Israel as an occupying Power *must* permit a specific third State or international organization to conduct humanitarian activities in the OPT, if doing so would compromise Israel’s security interests.

CONCLUSION

105. I firmly believe that a lasting peace and a sustainable resolution of the Israeli-Palestinian conflict can only be achieved through the facilitation of meaningful dialogue between the parties by the international community. Current global efforts should prioritize the preservation of the ceasefire between Israel and Hamas and efforts to ensure a secure future for Israelis and Palestinians. Constructive engagement within established international mechanisms offers the most effective and enduring path toward these objectives. In contrast, proceedings before the Court — given their highly politicized and divisive nature — risk exacerbating tensions and undermining efforts toward reconciliation.

(Signed) Julia SEBUTINDE.

[Original: English and French]

JOINT DECLARATION OF JUDGES ABRAHAM AND CLEVELAND*[Original English text]*

Agreement that Israel has broad obligations to co-operate with the activities of the United Nations, including UNRWA, in and in relation to the Occupied Palestinian Territory — Obligation to co-operate applies in conjunction with the specific legal obligations of Member States and must be read together with the distribution of powers under the Charter — Israel's duty to co-operate with the United Nations derives, inter alia, from the obligations identified elsewhere in the Advisory Opinion.

1. We agree in general with the Court's replies to the question put to it by the General Assembly. We underscore, in that regard, that the obligations identified in the Advisory Opinion with respect to the United Nations, other international organizations and third States are not unique to Israel. They reflect the obligations of any State that is an occupying Power and a Member of the United Nations.

2. In subparagraph 5 of the operative clause, the Court concludes that Israel

“has an obligation to co-operate in good faith with the United Nations by providing every assistance in any action it takes in accordance with the Charter of the United Nations, including the United Nations Relief and Works Agency for Palestine Refugees in the Near East, in and in relation to the Occupied Palestinian Territory”.

We write separately to further elaborate on this point.

3. In its discussion of the obligation of a Member State to co-operate with the United Nations in Section V (B) of the Advisory Opinion, the Court explains that this obligation results from, *inter alia*, Article 2, paragraphs 2 and 5, and Articles 55 and 56 of the Charter.

4. Article 2, paragraph 2, provides that all Members shall fulfil in good faith the “obligations” assumed by them in accordance with the Charter. As the Court observes, this duty “must be applied in conjunction with the specific obligations assumed by the Members in accordance with the Charter” (Advisory Opinion, para. 171). Article 2, paragraph 5, further provides that “[a]ll Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter”. The Court notes that this provision likewise “must be read together with the provisions of the Charter relating to the powers of various organs of the United Nations” (*ibid.*, para. 172).

5. Together these clauses commit Member States to assist the United Nations and to fulfil in good faith their obligations under the Charter. Indeed, such co-operation is essential to support the purposes and principles of the United Nations. This commitment to co-operate, however, necessarily operates in conjunction with the legal obligations that a Member State has undertaken. The Charter, of course, grants legally binding character to a narrowly circumscribed set of actions of United Nations organs, in particular those based on decisions of the Security Council under Chapter VII. As the Court explains, such obligations “may be prescribed by specific provisions of the Charter, or contained in decisions adopted by the relevant organs of the Organization in so far as they possess binding force for Members in accordance with the Charter” (Advisory Opinion, para. 170).

6. To read “any action . . . in accordance with the . . . Charter” under Article 2, paragraph 5, more broadly would be to bestow on the Article an extraordinary power to transform non-binding “actions” of United Nations organs into legally binding ones and frustrate this core distinction in the distribution of powers under the Charter. However important it is for States to co-operate with the United Nations — and we agree it is extremely important — the legal obligation to co-operate under Article 2, paragraph 5, arises only when that Article is

coupled with an identified, legally binding “action” of the United Nations. In short, “any action . . . in accordance with the . . . Charter” under Article 2, paragraph 5, must be understood as referring to United Nations actions that are legally binding on a Member State.

7. Nothing in the 1949 *Reparation* Advisory Opinion to which the Court refers⁹⁶, and which concerned only the question of legal personality and competence of the Organization, not the obligatory nature of its actions upon its Members, contradicts this reasoning or suggests that Members have a legal obligation to co-operate with non-binding recommendations of the United Nations.

8. The Court explains how the obligation to co-operate plays out in the context of the Occupied Palestinian Territory in paragraph 177, which states:

“[T]he Court notes that UNRWA, as a subsidiary organ of the United Nations, has been entrusted by the General Assembly to provide direct relief and work programmes for Palestine refugees. It cannot carry out such a mandate effectively without having direct access to the population in the Occupied Palestinian Territory. This is particularly true given the crucial role that UNRWA has been playing since October 2023. In the view of the Court, Israel is not entitled to withhold its co-operation with the United Nations by unilaterally deciding on the presence and activities of United Nations entities in and in relation to the Occupied Palestinian Territory, subject to paragraph 184 below.”

The last sentence of this paragraph is essentially reiterated in paragraph 179⁹⁷.

9. We fully agree that UNRWA’s role in the Occupied Palestinian Territory has been crucial, particularly since October 2023; that the United Nations, acting through UNRWA, cannot effectively carry out its mandate without having direct access to the Palestinian population there, including if necessary by traversing the territory of Israel; and that Israel may not obstruct such access. As the Court indicates, however, Israel’s duty to co-operate with the United Nations is “subject to” the principle of consent set forth in paragraph 184, which states:

“[A]s a general rule, the way in which a subsidiary organ established by the General Assembly is utilized depends on the consent of the State or States concerned . . . and . . . States ‘possess a sovereign power of decision with respect to their acceptance of the headquarters or a regional office of an organization within their territories’ . . . It follows that, within the territory of Israel, the presence and activities of the United Nations and its entities are subject to the consent of Israel. However, in the occupied territory, over which Israel, as an occupying Power, enjoys no sovereignty, it is not entitled to decide unilaterally, with respect to the presence and activities of the United Nations in and in relation to the Occupied Palestinian Territory, in the same way as in its own territory.”

10. Accordingly, like every Member State, Israel has an obligation to co-operate with the legally binding “actions” of the Organization. This includes broad obligations to co-operate with United Nations activities in and in relation to the Occupied Palestinian Territory. On the other hand, the Court makes clear that Israel is not obligated to consent to the establishment of a United Nations office within its sovereign territory (which, as the Security Council has long recognized, does not include East Jerusalem).

11. Having explained that the obligation to co-operate under the Charter operates in conjunction with the specific legal obligations of Member States and must be read together with the provisions of the Charter relating

⁹⁶ Advisory Opinion, para. 173, citing *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, *I.C.J. Reports 1949*, pp. 178-179 and 183.

⁹⁷ Advisory Opinion, para. 179 (“Israel may not obstruct the functions of the United Nations and must provide every assistance in any action taken by the Organization in accordance with the Charter in and in relation to the Occupied Palestinian Territory, subject to paragraph 184 below.”).

to the powers of the various organs (Advisory Opinion, paras. 171 and 172), the Court regrettably makes no serious attempt to identify explicitly, in Section V (B), any underlying legal obligations that would give rise to Israel's duty to co-operate. Elsewhere in the Advisory Opinion, the Court identifies a wealth of concrete obligations of Israel with respect to the activities of the United Nations, including UNRWA, in and in relation to the Occupied Palestinian Territory. They include obligations under international humanitarian law and international human rights law, as well as under Article 105 of the Charter and the General Convention. These are legal obligations that would trigger a duty on the part of Israel to co-operate with relevant United Nations activities in and in relation to the Occupied Palestinian Territory under various provisions of the Charter, including Article 2, paragraphs 2 and 5, and Articles 55 and 56.

12. The Court's conclusion in subparagraph 5 of the operative clause that Israel has an obligation to co-operate with the United Nations "by providing every assistance in any action it takes in accordance with the Charter of the United Nations . . . in and in relation to the Occupied Palestinian Territory" must be understood in this light.

(Signed) Ronny ABRAHAM.

(Signed) Sarah H. CLEVELAND.

[Original: English and
French]

SEPARATE OPINION OF JUDGE XUE

1. While I have voted in favour of all the conclusions of the Advisory Opinion (paragraph 223), I wish to underscore two important aspects in this separate opinion, which I believe the Court should have dealt with in depth in its Advisory Opinion.

2. First, in considering the obligations of Israel as a Member of the United Nations with respect to the presence and activities of the Organization and its entities in and in relation to the Occupied Palestinian Territory, Article 2, paragraph 5, of the Charter is of particular importance. A proper interpretation of the provision accords the Court a solid legal basis to address the question put to it by the General Assembly. The approach taken in the Advisory Opinion, regrettably, eschews such a judicial exercise, leaving this provision without much substance. Given the numerous resolutions adopted by the General Assembly and the Security Council on the question of Palestine, in particular those adopted recently concerning the dire humanitarian situation in the Gaza Strip, Israel's obligation under Article 2, paragraph 5, should be examined in this specific context in relation to the presence and activities of the United Nations and its entities in charge of providing urgently needed humanitarian assistance to the Palestinian people.

3. Another aspect that I wish to highlight is Israel's obligation to respect the right of the Palestinian people to self-determination. Notwithstanding the Court's recent thorough elaboration on this issue in *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)*, the situation in the Gaza Strip since 7 October 2023 has deteriorated so gravely that prospects for the Palestinian people to exercise its right to self-determination are further undermined. It is thus imperative for the Court to reaffirm Israel's obligation to respect this fundamental principle as enshrined in the Charter of the United Nations.

I. INTERPRETATION OF ARTICLE 2, PARAGRAPH 5, OF THE CHARTER

4. Article 2, paragraph 5, of the Charter lays down one of the basic principles that govern the relationship between the Organization and its Members. As described by the Court, this provision "define[s] the position of the Members in relation to the Organization" (*Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949, p. 178*). Article 2, paragraph 5, of the Charter reads as follows: "All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action." In accordance with the rules of treaty interpretation as reflected in Article 31 of the Vienna Convention on the Law of Treaties, a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose.

5. According to the Court, the word "shall" in a convention should be interpreted as imposing an obligation on States parties to that convention (*Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020, p. 476, para. 72; Immunities and Criminal Proceedings (Equatorial Guinea v. France), I.C.J. Reports 2018 (I), p. 321, para. 92*). In other words, Article 2, paragraph 5, imposes a legal obligation on all Members to give every assistance to the actions taken by the United Nations.

6. Regarding the content of this obligation, the phrase "every assistance" is broad and unqualified, suggesting every possible support for the actions taken by the Organization. This reading, however, is limited by the phrase "any action it takes in accordance with the present Charter". What constitutes an "action" that falls within the meaning of this provision gives rise to different interpretations. The essential difference between those interpretations is whether such actions are solely limited to those taken by the Security Council or may also extend to actions taken by other organs. According to the narrow interpretation, the obligation to render every

assistance hinges on the binding character of the action in question, which means this obligation applies only to an action that has binding effects. To interpret it otherwise would run the risk of drawing from the provision an unintended power to transform non-binding “actions” of United Nations organs into legally binding ones. This narrow interpretation, in my opinion, is neither consistent with the terms of the provision, nor in line with the purposes of the Charter.

7. Article 2, paragraph 5, consists of two parts. The first part, namely “[a]ll Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter”, stipulates a positive obligation on all Members to assist the actions taken by the United Nations, which could be described as a duty to co-operate. The second part imposes a negative obligation on the Members, requiring them to “refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action”. This duty not to give assistance is addressed at the State against which an action is taken. It applies specifically to a distinct category of United Nations actions — preventive or enforcement actions — to the exclusion of other types of actions.

8. It is undisputed that the qualifier “in accordance with the present Charter” denotes that actions referred to in Article 2, paragraph 5, must be read together with the other provisions of the Charter relating to the powers of various organs of the Organization. It is also agreed that the decisions of the Security Council have binding force pursuant to Article 25, and that all Members are required to give every assistance to actions decided by the Security Council in accordance with Article 2, paragraph 5. Notwithstanding this, the ordinary meaning of the terms of Article 2, paragraph 5, does not exclude actions taken by other organs, for the simple reason that the maintenance of peace and security, over which the Security Council has the primary responsibility, constitutes only one part, albeit the most important, of the functions of the United Nations. Moreover, the word “it” in that provision refers to the Organization, and is not limited to any of its specific organs. To confine the scope of actions under Article 2, paragraph 5, to the actions of the Security Council would not only render Article 25 of the Charter superfluous but also diminish and disregard the roles of other organs in achieving the common aims of the United Nations, such as promoting international co-operation in economic and social development as well as fundamental human rights and self-determination.

9. The duty to co-operate under Article 2, paragraph 5, should be understood as a general obligation incumbent upon all Members. Assistance may be given in various ways; to “carry out” a decision of the Security Council is just one of them. According to the Charter, other major organs, such as the General Assembly and the Trusteeship Council, may also take actions in certain areas for the accomplishment of the purposes of the Organization; Members are expected to provide possible support to those actions and co-operate with the United Nations. By virtue of Article 56 of the Charter, moreover, Members pledge to work and co-operate with the Organization to promote international economic and social development as well as respect for human rights. As is observed,

“[t]he actions taken by the United Nations in accordance with the Charter are wide in scope and varied in nature. In a sense many decisions taken by the organs of the United Nations which requested Member States to co-operate in such actions may be said to bear upon Article 2 (5).” (See *Repertory of Practice of United Nations Organs, Supplement No. 1 (1954-1955)*, p. 15, para. 29.)

10. In practice, this duty to co-operate with the Organization has proven vital in ultimately resolving such questions as the question of Southern Rhodesia (Zimbabwe) (see e.g. General Assembly resolutions 31/154 of 20 December 1976, 32/116 of 16 December 1977, and 33/38 of 13 December 1978) in the decolonization movement, as well as in many other important issues concerning world peace and development. Many of the actions involved include the actions taken by the General Assembly as well as the Security Council. Even without express reference to Article 2, paragraph 5, these organs routinely request all Members to give every assistance in implementing their actions (see e.g. *Repertory of Practice of United Nations Organs, Supplement No. 10 (2000-2009)*, pp. 18-19). Confining the scope of Article 2, paragraph 5, to the decisions of the Security Council is certainly not facilitative of the attainment of the purposes of the Organization, if a Member is given the liberty

not to co-operate with actions taken by other organs; any interpretation that may leave room for a Member to ignore, hinder, impede or even obstruct actions adopted by United Nations organs for the purported reason that they are not binding would seriously undermine the authority and integrity of the Organization. That consequence is certainly not what Article 2, paragraph 5, is intended to bring about.

11. This broad interpretation of Article 2, paragraph 5, was affirmed by the Court 76 years ago in one of its earliest advisory opinions, *Reparation for Injuries Suffered in the Service of the United Nations*. Although at issue in that opinion was the international personality of the United Nations, the Court also addressed the relationship between the Organization and its Members. It pointed out that the Organization was created not merely as a centre for harmonizing the actions of nations for the achievement of the purposes enshrined in Article 1 of the Charter. With special tasks entrusted to different organs of the Organization, the Charter requires the Members “to give it every assistance in any action undertaken by it (Article 2, paragraph 5), and to accept and carry out the decisions of the Security Council” (*I.C.J. Reports 1949*, p. 178). Evidently, decisions of the Security Council were not the only “actions” that the Court had in mind when it was referring to Article 2, paragraph 5. On the need to protect the agents of the Organization, a point directly related to the present Opinion, the Court further emphasized the duty to co-operate under that provision. It stated the following:

“This need of protection for the agents of the Organization, as a condition of the performance of its functions, has already been realized, and the Preamble to the Resolution of December 3rd, 1948 . . . shows that this was the unanimous view of the General Assembly.

For this purpose, the Members of the Organization have entered into certain undertakings, some of which are in the Charter and others in complementary agreements. The content of these undertakings need not be described here; but the Court must stress the importance of the duty to render to the Organization ‘every assistance’ which is accepted by the Members in Article 2, paragraph 5, of the Charter. It must be noted that the effective working of the Organization — the accomplishment of its task, and the independence and effectiveness of the work of its agent — require that these undertakings should be strictly observed.” (*Ibid.*, p. 183.)

The “undertakings” mentioned in this statement were definitely not limited to the decisions of the Security Council. For a large part, they were actions taken by the General Assembly.

12. It should be noted that, as did many Members, Israel also shared this interpretation of Article 2, paragraph 5. When commending Ethiopia and Liberia for initiating the *South West Africa* case before the Court at the General Assembly in 1966, Israel stated that

“[t]he case was initiated in response to the consensus which emerged in the General Assembly and which was expressed in resolution 1361 (XIV) of 17 November 1959 . . . Article 2, paragraph 5, of the Charter requires all Members to give the United Nations every assistance in any action it takes in accordance with the Charter, and it was as loyal Members of this Organization, and in implementation of that consensus of the General Assembly, that Ethiopia and Liberia took the initiative referred to.” (United Nations, *Official Records of the General Assembly*, UN doc. [A/PV.1439](#), 12 October 1966, p. 10, para. 95.)

13. In conclusion, Article 2, paragraph 5, of the Charter requires Members to co-operate with the United Nations in any action it takes in accordance with the Charter. This general obligation must be read in conjunction with other provisions of the Charter for the attainment of the purposes of the Organization.

II. APPLICATION OF ARTICLE 2, PARAGRAPH 5, IN THE PRESENT CASE

14. After Hamas and other armed groups attacked Israel on 7 October 2023, Israel launched large-scale military operations in the Gaza Strip. It is reported that as of 18 September 2025, there had been over 65,000 deaths

and 165,000 injuries (United Nations Office for the Coordination of Humanitarian Affairs, “Humanitarian Situation Update #323 | Gaza Strip” (18 September 2025)). Over 2 million people forcibly displaced from their homes had been inadequately supplied with essential needs and basic medical and living services during the armed conflicts. This devastating situation in Gaza was particularly acute during the 11 weeks (from 2 March to 18 May 2025) of total blockage of humanitarian assistance from the United Nations, other international organizations and third States. The situation on the ground continues to deteriorate.

15. The presence and activities of United Nations entities, in particular the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), which has remained the backbone of all humanitarian response in the Gaza Strip, have been severely impeded. Unprecedented loss of humanitarian personnel has been recorded, with at least 531 fatalities between 7 October 2023 and 20 August 2025 — including 366 United Nations personnel, of whom 360 were UNRWA personnel — accompanied by extensive destruction of United Nations installations (Explanations submitted on behalf of the Secretary-General of the United Nations in response to the request from the International Court of Justice of 13 August 2025, 27 August 2025, hereinafter “Explanations of the United Nations”, paras. 34-35).

16. This is an institutional crisis for the United Nations: its efforts in maintaining peace and security in the region, its responsibility for the question of Palestine and its role in providing humanitarian assistance in the Occupied Palestinian Territory are all put in jeopardy. It is under these circumstances that the obligations of Israel, as a Member of the United Nations, under Article 2, paragraph 5, must be examined.

17. To answer that question, the essential issue before the Court is to what extent Israel is obligated to co-operate with the United Nations — to be more specific, whether Israel has acted in conformity with Article 2, paragraph 5, among others, by terminating the operations of United Nations entities, in particular UNRWA, suspending and blocking their humanitarian assistance to the Palestinian people in the Gaza Strip.

18. As recorded in this Advisory Opinion, the responsibility of the United Nations towards the question of Palestine has its origin in the Mandate and the Partition Plan adopted in General Assembly resolution 181 (II) in 1947 (paragraph 166). The reason why this responsibility was described as “permanent” by the United Nations is partly connected with Israel’s prolonged illegal occupation of the Palestinian territory and with the policies and practices it has adopted therein (see *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. 35). Unless and until the question of Palestine is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy, the United Nations must remain seised of the matter. Israel, as a Member of the United Nations, must co-operate with the Organization in accordance with the Charter.

19. Since 1947, the General Assembly has considered, debated and adopted resolutions on the question of Palestine almost annually (see *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. 35). The same holds true for the Security Council. The extensive lists of relevant resolutions adopted by the General Assembly and the Security Council submitted by the United Nations in both the present proceedings and the above-mentioned proceedings, attest to the Organization’s unwavering commitment to the question of Palestine throughout its history.

20. With regard to the presence and activities of the United Nations and its entities in the Occupied Palestinian Territory, it must be underlined that the mandates of these missions come from the actions of the United Nations, particularly through General Assembly resolutions (e.g. General Assembly resolution 302 (IV), which established UNRWA and which Israel voted in favour of). Over the decades, the United Nations and its entities, in particular UNRWA, have carried out their functions for the benefit of the local population. Even supposing that Israel had the right to terminate its 1967 Agreement with UNRWA (Exchange of letters between Ambassador Michael Comay of the Ministry of Foreign Affairs of Israel and Commissioner-General of UNRWA Lawrence Michelmore), it has no right, as an occupying Power, to unilaterally put an end to the presence and

activities of the United Nations in the occupied territory. Article 2, paragraph 5, of the Charter requires it to enter into consultation with the Organization in respect of any issues arising from the presence and activities of the United Nations in the occupied territory and ensure uninterrupted supplies of urgently needed humanitarian assistance to the people in the Gaza Strip in accordance with international humanitarian law.

21. Since 7 October 2023, the General Assembly and the Security Council have called upon Israel to fulfil its obligations to ensure unhindered provision of urgently required humanitarian assistance to the Gaza Strip. The Security Council has adopted five resolutions relating to the situation in the area (resolution 2712 (2023) of 15 November 2023, resolution 2720 (2023) of 22 December 2023, resolution 2728 (2024) of 25 March 2024, resolution 2730 (2024) of 24 May 2024 and resolution 2735 (2024) of 10 June 2024), while the General Assembly has adopted about 20 resolutions on the Occupied Palestinian Territory, many of which were adopted during the Tenth Emergency Special Session entitled “Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory”.

22. By virtue of these resolutions, the United Nations repeatedly underscored the importance of respect and protection of humanitarian personnel, the United Nations personnel and associated personnel; emphasized the urgent need to expand the flow of humanitarian assistance to and reinforce the protection of civilians in the entire Gaza Strip; and reiterated its demand for the lifting of all barriers to the provision of humanitarian assistance at scale in line with international humanitarian law and resolutions of the Security Council.

23. Undoubtedly, Israel’s obligations referred to in those resolutions are based on international law, including international humanitarian law and human rights law. Israel must fulfil those obligations in good faith. Moreover, its obligation under Article 2, paragraph 5, also requires it to co-operate with the United Nations and its entities, in particular UNRWA, in every possible way as required by the resolutions of the General Assembly and the Security Council to ensure unhindered provision of humanitarian assistance to the occupied territory and to respect and protect humanitarian personnel, United Nations personnel and associated personnel in the Gaza Strip in line with its obligations under international law and international humanitarian law.

24. This interpretation of Article 2, paragraph 5, of the Charter is in conformity with the rules of treaty interpretation, supported by the long-standing practice of the United Nations for the attainment of the purposes of the Organization.

III. ISRAEL’S OBLIGATION TO RESPECT THE RIGHT OF THE PALESTINIAN PEOPLE TO SELF-DETERMINATION

25. The connection between the Palestinian people’s right to self-determination and the present proceedings is neither incidental nor artificial. The current situation in the Gaza Strip underlying the present proceedings demonstrates one of the most devastating humanitarian crises in recent times, which would likely further erode the conditions for the Palestinian people to exercise its right to self-determination. In this connection, there is a reason that General Assembly resolution 79/232, which puts the question to the Court, begins with the affirmation of the right of the Palestinian people to self-determination (first preambular paragraph).

26. In the Advisory Opinion concerning *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, delivered just over a year ago, the Court identified four elements that are of particular relevance for the exercise of the right to self-determination — first, the right to territorial integrity as a “corollary of the right to self-determination”; second, the people to be protected “against acts aimed at dispersing the population and undermining its integrity as a people”; third, the right to exercise permanent sovereignty over natural resources; and fourth, the right of a people to freely determine its political status and to pursue its economic, social and cultural development (*Advisory Opinion of 19 July 2024*, paras. 236-241). Some of these elements, as found in the present proceedings, are in grave deterioration.

27. Since October 2023, Israel has intensified its control over the Gaza Strip. Its large-scale military operations in the Gaza Strip; its extensive non-co-operation with international humanitarian assistance and obstruction of the presence and activities of the United Nations entities, other international organizations and third States; and its massive forcible transfer and displacement of the local population: all point to one direction — that Israel is taking over the Gaza Strip. Moreover, Israel’s indiscriminate attacks and bombings of civilian buildings and infrastructure in the Gaza Strip have left behind an uninhabitable place for the local people to go back to. Israel’s encroachment of the occupied territory further impairs the territorial integrity of Palestine.

28. Second, a people is the core of the right to self-determination; without the existence of a people, there is no basis to exercise the right to self-determination. In addition to what the Court has found in *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, with regard to Israel’s settlement policies and practices in the West Bank and the annexation of East Jerusalem (*Advisory Opinion of 19 July 2024*, para. 239), Israel’s military operations since October 2023 have resulted in wide-spread famine, mass displacement, extreme levels of deprivation of essential needs, and a large number of civilian casualties, in particular fatalities of children. The situation of the Palestinian people in the Gaza Strip further undermines the integrity of the Palestinian people, significantly impeding the exercise of its right to self-determination.

29. Lastly, Israel’s prolonged occupation and persistent disturbance, as demonstrated by the worsening situation in the Gaza Strip since October 2023, has further disrupted the Palestinian people’s pursuit of its economic and social development. As noted in paragraph 54 of this Advisory Opinion, in the Gaza Strip, UNRWA was the primary provider of essential services, educating around 300,000 children in 288 schools and two training centres, delivering healthcare to some 900,000 patients and offering emergency assistance to around 1.1 million people. In 2023, two months prior to October 2023, UNRWA had allocated nearly half of its total budget for the 2024-2025 Programme (US\$1,065,583,000 out of US\$2,219,261,000) to education programmes and approved more than two thirds of its workforces (22,602 out of 30,026) for the same purpose (UNRWA, “Programme Budget 2024-2025” (August 2023), pp. 10 and 21). However, since October 2023 and as of 8 July 2025, nearly 91.8 per cent of school buildings in the Gaza Strip (518 out of 564) were directly hit or damaged by attacks. In the three-month period between 4 April and 8 July 2025, 26 schools were damaged, including 11 government-run schools, eight UNRWA schools and seven private schools (Explanations of the United Nations, para. 31).

30. Furthermore, it should be recalled that UNRWA’s connection to the right of the Palestinian people to self-determination runs even deeper. General Assembly resolution 2672 (XXV) of 8 December 1970, adopted in the context of reviewing UNRWA’s annual report for 1969-1970, formally pronounced that “the people of Palestine are entitled to equal rights and self-determination, in accordance with the Charter” and declared that “full respect for the inalienable rights of the people of Palestine is an indispensable element in the establishment of a just and lasting peace in the Middle East”. In resolution 3236 (XXIX) of 22 November 1974, four years later, the General Assembly provided a more comprehensive and full affirmation of the Palestinian people’s inalienable rights to self-determination without external interference, to national independence and sovereignty, and to return to their homes and property from which they have been displaced and uprooted (see *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. 62). Reaffirmation of Israel’s obligation to respect the right of the Palestinian people to self-determination is crucial for the achievement of peace and security in the region and the ultimate realization of the two-State solution.

(Signed) XUE Hanqin.

[Original: English and
French]

DECLARATION OF JUDGE CHARLESWORTH

The obligation of Member States to give the United Nations “every assistance” under Article 2, paragraph 5, of the Charter — Lack of clarity in the Court’s reasoning — The scope of the obligation is not limited to giving assistance in connection with binding resolutions of the Security Council.

1. United Nations (UN) Member States’ assistance to UN bodies, agencies and subsidiary organs for actions within their competence is vital for the functioning of the United Nations. One of the issues in these proceedings is the scope of Israel’s obligation to assist the United Nations. I support the Court’s conclusion that Israel is obliged “to co-operate in good faith with the United Nations by providing every assistance in any action it takes in accordance with the Charter of the United Nations”. I regret, however, the opacity of the Court’s reasoning leading to this conclusion.

2. Article 2, paragraph 5, of the United Nations Charter provides that “[a]ll Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action”. The meaning of this paragraph was debated among participants and also, as is evident from some of the individual opinions, among Members of the Court. The debate has been portrayed as between a “broad” interpretation of Article 2, paragraph 5, which requires States to assist any UN action, and a “narrow” account of the provision, which confines its application to binding resolutions adopted by the United Nations Security Council. The scope of Article 2, paragraph 5, is an important issue in this case because the United Nations General Assembly, rather than the Security Council, has borne the responsibility of co-ordination of humanitarian relief for the people of Gaza.

3. It is important to observe that Article 2, paragraph 5, contains two distinct clauses, each imposing a different type of obligation on UN Members. The first clause (“shall give the United Nations every assistance in any action it takes in accordance with the present Charter”) sets out a positive general obligation of assistance to UN bodies, agencies and subsidiary organs in any actions they take that are mandated by the United Nations Charter. The second clause (“shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action”) has a narrower scope. It imposes a specific negative obligation on UN Members not to assist any State that is the target of UN preventive or enforcement action. It is only the first clause of Article 2, paragraph 5, that is at issue in these proceedings.

4. The Court’s consideration of Article 2, paragraph 5, fails to clarify the terms of the provision. The Court states, cryptically, that “[t]his provision must be read together with the provisions of the Charter relating to the powers of various organs of the United Nations” (Opinion, para. 172). The reader is left wondering what such a reading might entail.

5. Despite citing the *Reparation for Injuries* Advisory Opinion twice, the Opinion does not engage with its most pertinent section. On page 183 of that Opinion, the Court stated that

“[f]or this purpose [the protection of UN officials to allow the United Nations to perform its functions], the Members of the Organization have entered into certain undertakings, some of which are in the Charter and others in complementary agreements. The content of these undertakings need not be described here; but the Court must stress the importance of the duty to render to the

Organization ‘every assistance’ which is accepted by the Members in Article 2, paragraph 5, of the Charter.”⁹⁸

Here, the Court discussed the duty to render assistance to the United Nations in the context of undertakings, “some of which are in the Charter and others are in complementary agreements”. The Court thus set the limits of the obligation under Article 2, paragraph 5, as potentially going beyond the four corners of the Charter. It would be difficult to square this statement with an interpretation that confines the scope of the provision’s applicability to the binding resolutions of the Security Council.

6. The interpretation indicated by the *Reparation for Injuries* Advisory Opinion does not mean that non-binding resolutions of the General Assembly are transformed into binding instruments by virtue of Article 2, paragraph 5: an obligation to “give every assistance” is of a different nature to an obligation to comply. The obligation to give assistance is better understood as a distinct obligation of good faith co-operation. In my view, interpreting the first clause of Article 2, paragraph 5, as applying only to binding Security Council resolutions is to read it inaccurately in the shadow of the second clause.

7. I note that the same non-restrictive interpretation has been confirmed by the practice of the United Nations. In the very context of Israel’s assistance to UNRWA, the Secretary-General has said that

“as a Member of the United Nations, Israel continues to be required, *pursuant to Article 2, paragraph 5*, of the Charter of the United Nations, to give UNRWA every assistance in any action it takes *in accordance with the relevant decisions of competent principal organs* adopted pursuant to the provisions of the Charter, including General Assembly resolution [302 \(IV\)](#) and subsequent Assembly resolutions renewing the UNRWA mandate”⁹⁹ (emphasis added).

8. In my view, the present Advisory Opinion should have clarified the scope of Article 2, paragraph 5, of the Charter to anchor Israel’s obligation to assist the United Nations’ actions in the Occupied Palestinian Territory.

(Signed) Hilary CHARLESWORTH.

⁹⁸ *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949*, p. 183.

⁹⁹ Identical letters dated 9 December 2024 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, UN doc. [A/79/684-S/2024/892](#) (10 Dec. 2024), p. 5.

SEPARATE OPINION OF JUDGE BRANT

[Translation]

Law of occupation — Obligations of the occupying Power — Test of effective control and obligations unaffected by ongoing hostilities — Right of the Palestinian people to self-determination — Territorial integrity — Forcible transfer of population — Rights of children.

1. While I voted in favour of all the points in the operative part of the Opinion, I nevertheless consider that the Court's excessive caution in some of its analysis partly undermines its reasoning, and that the Opinion does not sufficiently reflect the centrality of the right to self-determination of the Palestinian people in these proceedings, of which it is nonetheless the cornerstone.

2. In my view, the Court has a certain tendency to be overly cautious in its approach; although understandable given the highly sensitive nature of the case, at times this weakens the rigour of some of its legal reasoning and even diminishes the scope of the applicable legal framework. This tendency manifests itself in various ways, and I think it is useful to provide a few examples.

3. One such example can be found in paragraphs 58 and 59 of the Opinion, which deal with the factual background to these proceedings. While the former paragraph states that “[o]n 7 October 2023, Hamas and other armed groups present in the Gaza Strip carried out attacks in Israel, killing more than 1,200 people, injuring thousands and abducting 251, some of whom continued to be held hostage for more than two years”, the latter paragraph reads as follows:

“Following these attacks, Israel launched a large-scale military operation in the Gaza Strip, by land, air and sea, which has caused massive casualties, including the death of tens of thousands of civilians, a large number of whom were women and children, extensive destruction of civilian infrastructure and the repeated displacement of the overwhelming majority of the civilian population in the Gaza Strip.”

I find it is extremely problematic to provide a precise figure on the one hand, and, on the other, merely to use wording that certainly conveys a sense of gravity but that is as vague as the reference to “massive casualties” (“d’innombrables victimes” in the French version, meaning literally too many to count). The use of this phrase, which comes only with the clarification that this includes “the death of tens of thousands of civilians, a large number of whom were women and children”, is most regrettable in my view. The victims, whoever they may be, are unfortunately all too *countable*. Indeed, the number of casualties caused by the attacks led by Israel in the Gaza Strip is quantifiable, and precise estimates exist in this regard¹⁰⁰.

4. Another example of this excessive caution can be seen in paragraph 87 of the Opinion, in which it is stated that

“[t]he Court observes that the fact that hostilities are ongoing does not *necessarily* preclude the simultaneous application of the law of occupation. When hostilities take place in an occupied

¹⁰⁰ For example, according to the United Nations, as of 29 September 2025, more than 65,000 deaths had been recorded, including over 18,400 children (<https://unric.org/en/the-un-and-the-crisis-in-the-middle-east-gaza/>, accessed 10 Oct. 2025). On 8 October 2025, UN Women reported that more than 33,000 women and girls had been killed since the start of the war in Gaza (https://x.com/UN_Women/status/1975936732848607461, accessed 10 Oct. 2025). The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) also regularly publishes figures on the humanitarian situation in the Gaza Strip.

territory, the law of occupation applies alongside other rules of international humanitarian law relating to the conduct of hostilities, and the occupying Power must comply with both sets of rules. *However, the intensity of the hostilities could affect the implementation of certain obligations under the law of occupation, and therefore the particular conduct required of the occupying Power.*" (Emphasis added.)

5. By introducing the possibility of flexibility in the effective implementation of the obligations of the occupying Power, this paragraph wrongly reduces the scope of the legal obligations incumbent on the latter throughout the entire period of occupation. The application of the law of occupation does not depend on a subjective perception of the situation but rather on a set of objective criteria deriving from the same starting point: the effective control exercised over the occupied territory. From the beginning to the end of the occupation, this body of law applies continuously, and therein lies its rationale, namely "the necessity to organize the allocation of responsibilities between the belligerents with the view to avoiding, as far as possible, vacuum of authority and protection in occupied territory"¹⁰¹. Therefore, as is widely recognized in international humanitarian law, the fact that hostilities are ongoing does not lead to the suspension of the law of occupation or to the weakening of its requirements.

6. Consequently, and contrary to what is stated in the above-mentioned paragraph, the obligations of the occupying Power do not vary depending on the intensity of the hostilities. These obligations exist for the occupying Power as such, in accordance with the law in force — which provides, where necessary, for certain adjustments in light of the factual situation¹⁰² — and only cease to have effect when the situation of occupation ends. To state that "the intensity of the hostilities could affect the implementation of certain obligations under the law of occupation, and therefore the particular conduct required of the occupying Power", in my opinion, opens a regrettable loophole which would authorize the occupying Power to consider at its discretion that, depending on the intensity of the said hostilities, the scope of its obligations may be reduced.

7. In my view, the Court has not been sufficiently firm on this point: where hostilities are ongoing in an occupied territory, the occupying Power must comply with two distinct legal régimes. With regard to combatants or civilians who take a direct part in the hostilities (at such time as they do so), the applicable rules are those governing the conduct of hostilities. On the other hand, with regard to the civilian population as a whole, as long as it remains under the effective control of the occupying Power, the latter must continue to comply with the law of occupation¹⁰³.

8. Turning now to the right of the Palestinian people to self-determination, as rightly noted by a participant in the proceedings, the resolution by which the United Nations General Assembly transmitted to the Court its request for an advisory opinion "takes, as its point of departure and point of arrival, the inalienable right of all peoples to self-determination"¹⁰⁴. Although I do not think that the Court should develop a general theory on every point examined in the decisions it adopts, I regret that the right of the Palestinian people to self-determination is only briefly addressed at the end of the present Opinion and that it does not feature in the operative provisions.

¹⁰¹ T. Ferraro, "Determining the beginning and end of an occupation under international humanitarian law", *International Review of the Red Cross*, Vol. 94, 2012/1, p. 158, fn. 76.

¹⁰² See, e.g., Article 43 of the 1907 Hague Regulations, according to which "[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, *unless absolutely prevented*, the laws in force in the country" (emphasis added). See also *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, *I.C.J. Reports 2005*, p. 231, para. 178.

¹⁰³ Y. Dinstein, *The International Law of Belligerent Occupation*, Cambridge University Press, 2nd ed., 2019, p. 111.

¹⁰⁴ CR 2025/5, pp. 57-58, para. 11 (Colombia, Jaramillo Jassir).

9. There is no doubt that the right to self-determination of peoples exists in international law¹⁰⁵. The fact that the Palestinian people enjoys such a right is also beyond doubt, as was recognized by the United Nations General Assembly back in 1974¹⁰⁶ and has been reaffirmed several times since then. Again, very recently, by way of its resolution 79/81 of 3 December 2024, the General Assembly called for “[t]he realization of the inalienable rights of the Palestinian people”, including the right to self-determination¹⁰⁷. This right of the Palestinian people has also been explicitly recognized by the Court on two occasions: in its Advisory Opinion of 9 July 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*¹⁰⁸ and in that of 19 July 2024 on the *Legal Consequences of Israel’s Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem*¹⁰⁹. Moreover, the Court recognized in the latter Opinion that “in cases of foreign occupation such as the present case, the right to self-determination constitutes a peremptory norm of international law”¹¹⁰.

10. The Palestinian people’s fundamental right to self-determination is intrinsically linked to the majority of Israel’s obligations as both the occupying Power of the Occupied Palestinian Territory and a Member of the United Nations, obligations which are set out by the Court in the present Opinion. I would like to list some of those obligations to highlight where the Opinion fails to take account of the critical role of the right to self-determination in this case.

11. First, as the Court recalls in paragraph 176 of the Opinion, “Israel, as an occupying Power, is not entitled to sovereignty over or to exercise sovereign powers in any part of the Occupied Palestinian Territory, including East Jerusalem”. Consequently, Israel “is not entitled to sovereignty over” that territory by virtue of its occupation. The Court rightly recognizes that “[b]y enacting and enforcing the two laws adopted by the Knesset . . . that unilaterally terminated Israel’s co-operation with UNRWA, including its operation in East Jerusalem . . . , Israel continues to exercise sovereign power in East Jerusalem”. However, Israel’s obligation not to obstruct the functions of the United Nations in and in relation to the Occupied Palestinian Territory also contributes more broadly to refraining from further impeding the realization of the right to self-determination of the Palestinian people. Indeed, as is clear from the Court’s consistent jurisprudence, the right to territorial integrity is a “corollary of the right to self-determination”¹¹¹.

12. This situation of occupation — which is necessarily “temporary”¹¹² — gives rise to a set of legal obligations incumbent on Israel as the occupying Power; these obligations are set out in paragraphs 82 to 162 of this Advisory Opinion. Once again, it appears that compliance with the majority of these obligations contributes directly to the effective realization of the right of the Palestinian people to self-determination. This is particularly true of Israel’s obligation to provide the local population with “the supplies essential for their *survival*” (emphasis added)

¹⁰⁵ This right is enshrined in several international legal instruments, foremost among which is the Charter of the United Nations, which includes it among its purposes (Charter of the United Nations, Art. 1, para. 2), and the 1966 Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, which enshrine it in common Article 1. According to paragraph 1 of that Article, “[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” This right is also enshrined in certain regional human rights conventions, such as Article 20 of the African Charter on Human and Peoples’ Rights, which states that “[a]ll peoples shall have right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.”

¹⁰⁶ United Nations General Assembly resolution 3236 (XXIX), 2296th plenary meeting, 22 Nov. 1974, A/RES/3236, para. 1.

¹⁰⁷ United Nations General Assembly resolution 79/81, 46th plenary meeting, 3 Dec. 2024, A/RES/79/81, para. 15 (b).

¹⁰⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 183, para. 118.

¹⁰⁹ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024*, para. 102.

¹¹⁰ *Ibid.*, para. 233.

¹¹¹ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 9 (I)*, p. 134, para. 160.

¹¹² *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. 105.

(Opinion, para. 128) and, when Israel does not itself fulfil that obligation, of the obligation to support and not obstruct the activities carried out by UNRWA, as well as by other international organizations and third States. Thus, the decision adopted by Israel to suspend the activities of UNRWA in the Occupied Palestinian Territory — UNRWA being a key humanitarian actor, particularly in the vital sectors of education and health — directly compromises the viability of civilian life in that territory. In this respect and in the current circumstances, is the assistance provided by UNRWA not one of the conditions *sine qua non* for the Palestinian people to be able to exercise their right to self-determination? Although the Court recognizes this link between the obligations of the occupying Power and the right to self-determination of the Palestinian people (Opinion, paras. 219 to 221), in my view it should have developed its analysis further.

13. Citing its own jurisprudence¹¹³ (and in keeping with that of other international courts and tribunals¹¹⁴), the Court notes elsewhere that Article 49 of the Fourth Geneva Convention prohibits the *forcible* transfer of persons living in the Occupied Palestinian Territory. In paragraph 139 of the Opinion, it recalls that the use of physical force is not necessarily required for a transfer to be characterized as *forcible*: this characterization also applies where the conditions imposed on the civilian population are such that it is left with no choice but “to leave”. In other words, the effective realization of the right to self-determination necessarily depends on the capacity of a people “freely to determine its political status and to pursue its economic, social and cultural development”¹¹⁵. Thus, in forcing the Palestinian population to leave — without guaranteeing it any right of return¹¹⁶ — the realization of the right of the Palestinian people to self-determination is *de facto* seriously compromised, or even made impossible.

14. In the same vein, the Court recognizes that Israel has a duty to respect and fulfil the various rights enjoyed by children, as enshrined in several international instruments, including the Convention on the Rights of the Child. In this respect, as an occupying Power, Israel is obliged to ensure children’s “enjoyment of the highest attainable standard of health and [access] to facilities for the treatment of illness and rehabilitation of health”, and “to ensure that no child is deprived of his or her right of access to such health care services”¹¹⁷. Yet again, the performance of such an obligation forms part of the realization of the right of the Palestinian people to self-determination, and failure to comply with it amounts to jeopardizing that people’s future. Deprivation of access to education cannot be regarded as solely an individual violation: it constitutes a structural obstacle to the development of an autonomous society that is capable of independently determining its status and future — politically, economically, socially and culturally.

15. In conclusion, I believe that the Court has given only a partial response to the request for an advisory opinion that was transmitted to it by the United Nations General Assembly. In the present Opinion, the Court certainly answers the question of

“[w]hat are the obligations of Israel, as an occupying Power and as a member of the United Nations, in relation to the presence and activities of the United Nations, including its agencies and bodies, other international organizations and third States, in and in relation to the Occupied Palestinian Territory”¹¹⁸.

¹¹³ *Ibid.*, para. 145.

¹¹⁴ International Criminal Tribunal for the former Yugoslavia (2006), *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgement, 22 Mar. 2006, para. 279.

¹¹⁵ *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. 241.

¹¹⁶ In this regard, the Court has recognized that the right of return of displaced Palestinians constitutes one of the forms of the obligation of restitution incumbent upon Israel on account of the unlawful nature of its continued presence in the Occupied Palestinian Territory (*Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024*, para. 270).

¹¹⁷ Convention on the Rights of the Child, Art. 24, para. 1.

¹¹⁸ United Nations General Assembly resolution 79/232, 54th plenary meeting, 19 Dec. 2024, [A/RES/79/232](#), para. 10. See also the present Advisory Opinion, para. 21.

That is why I have voted with the majority in favour of the operative part of this Opinion. However, while I recognize that the Court must not go beyond the questions put to it, it can nevertheless not reduce their scope. In these advisory proceedings, the General Assembly's request also referred to the "right of the Palestinian people to self-determination"¹¹⁹. In this instance, it was certainly not for the Court to reiterate what it had already established in its previous Opinions — namely, the existence of this right, its content and its peremptory character — but rather to give the right of the Palestinian people to self-determination its due place, inasmuch as that right, in fact, forms the backdrop to the present proceedings.

(Signed) Leonardo BRANT.

¹¹⁹ *Ibid.*

[Original: English and
French]

PARTIALLY DISSENTING OPINION OF JUDGE GÓMEZ ROBLEDO

[Original English text]

Disagreement with the reasoning of the Court concerning the status of the Gaza Strip as occupied territory — The Court should have developed conclusive reasoning in this regard — Disagreement with the Court's timid approach concerning the obligation to co-operate with the United Nations — The Court should have conducted a more detailed examination of the question of the obligations incumbent on Israel under the provisional measures ordered by the Court.

1. I agree with the Opinion rendered by the Court in this case. However, I cannot support the Court's reasoning on certain substantive points that warranted further elaboration.

2. In terms of substance, I regret that the Court did not go further in its reasoning on two matters that I consider to be crucial: first, the status of the Gaza Strip as occupied territory and, second, the obligation to co-operate with the United Nations. Lastly, the Court should have conducted a more detailed analysis of Israel's obligations, including those incumbent on it by virtue of the provisional measures ordered by the Court in 2024.

3. First, as regards the reasoning adopted by the Court in the present Opinion, in paragraphs 85 to 87, about the status of the Gaza Strip as occupied territory, the Court's pronouncement appears to convey a desire to avoid expressly concluding that the Gaza Strip is now under full-scale occupation. 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* (para. 94), the Court adopted a so-called functional approach, determining that Israel's obligations remained commensurate with the degree of its effective control over the Gaza Strip, refraining from reaching a determination as to the exact status of that territory at the time of the events of 7 October 2023 and confining the temporal scope of its Opinion to exclude the events that took place thereafter. That is not the case in these proceedings, however, which have specifically arisen out of the present situation, which has continued to deteriorate since that date and in the months following it, including after the conclusion of the oral proceedings in May 2025. The current situation on the ground fully justifies the characterization of the Gaza Strip as occupied territory.

4. The Court observed in 2005 that “under customary international law, as reflected in Article 42 of the Hague Regulations of 1907, territory is considered to be occupied when it is actually placed under the authority of the hostile army” (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 229, para. 172). It reaffirmed this reasoning in its 2024 Advisory Opinion, observing that “[a] State therefore cannot be considered an occupying Power unless and until it has placed territory that is not its own under its effective control” (*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. 90). Hence, “for the purpose of determining whether a territory remains occupied under international law, the decisive criterion is . . . whether [the] authority [of the State in question] ‘has been established and can be exercised’”, pursuant to the aforementioned Article 42 (*ibid.*, para. 92). The concept of occupation is thus based on an objective criterion. Territory is occupied as soon as it is subject *de facto* to the authority of hostile foreign armed forces or when such authority can rapidly be deployed there, resulting in an effective control that manifests itself through the unauthorized presence of those forces on the territory, their ability to exercise authority in place of the local government and the ensuing impossibility for the latter to exercise its own authority over the area in question.

5. The continuation of hostilities in Gaza, in so far as they are still taking place, does not preclude the existence of an occupation. The Gaza Strip is occupied territory, and continues to be occupied territory, since the

outbreak of the full-scale war in the wake of the 7 October 2023 attacks. The Court could have shown less deference in its reasoning (paras. 85 to 87) and stated explicitly that Israel is currently occupying the Gaza Strip and, moreover, maintaining an occupation there that is in breach of international law (*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. 261).

6. It is my view, therefore, that there is no justification for the ambiguity in the Court's reasoning and that a more explicit assertion was warranted, since it would have reinforced the Court's findings on Israel's obligations in Gaza.

7. As for *the obligation to co-operate* with the United Nations in accordance with Article 2, paragraph 5, and Articles 55 and 56 of the Charter, I consider this obligation to be one of the cornerstones of the architecture of the United Nations system and a *raison d'être* of the Organization. I regret that, in interpreting the Charter, the Court has adopted a timid and excessively formalistic approach that has no basis in reality, by failing to specify that this duty of co-operation *also* entails, *under certain circumstances*, the obligation to lend assistance to the General Assembly in any action undertaken by it (Opinion, paras. 172 and 173). Indeed, the obligation to co-operate clearly extends beyond the strict institutional division of functions among the principal organs of the United Nations: it assumes that States agree to co-operate *in good faith* with the Organization as such, in the pursuit of its purposes under the provisions of the Charter. The Court itself has interpreted the scope and importance of the obligation set forth in Article 2, paragraph 5, in a broad manner, emphasizing the need for it to "stress the importance of the duty to render to the Organization 'every assistance' which is accepted by the Members in Article 2, paragraph 5, of the Charter", and to recall "that the effective working of the Organization — the accomplishment of its task, and the independence and effectiveness of the work of its agents — require that these undertakings should be strictly observed" (*Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949*, p. 183).

8. In my view, there is a major internal discrepancy in the Court's reasoning in this case, in that it posits the existence of an apparently extensive duty of co-operation, to then render that duty meaningless by asserting that it applies only within the narrow framework of strictly binding obligations imposed by certain bodies, first and foremost the Security Council (Opinion, paras. 172 and 173). The Court should have made clear the importance of the obligation to co-operate with the General Assembly, the most representative organ of the United Nations and the best expression of the universal conscience. This obligation plays a central role in the institutional functioning of the Organization; I would even venture to say that the fulfilment of the latter's mandate is conditional upon it. In this sense, the General Assembly embodies the will of the international community as a whole, through the actions it decides to take to fulfil the purposes enshrined in the Charter. Despite all its limitations, and I refer in particular to the brazen abuse of the right of veto by the majority of the permanent members of the Security Council, the United Nations synthesizes the *civitas maxima* ideal, the ultimate source of international law.

9. It should be noted in this regard that the role of the General Assembly, particularly in the maintenance of international peace and security, has been growing since the United Nations began its activities. Although the General Assembly and the Security Council initially interpreted and applied Article 12 of the Charter to the effect that the Assembly could not make a recommendation on a question concerning the maintenance of international peace and security while the Security Council remained seised of the matter, this interpretation has progressively evolved. Subsequent practice has in fact revealed an increasing tendency for the General Assembly and the Security Council to deal in parallel with the same matter concerning the maintenance of international peace and security (see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 149-150, para. 27). The question is not, however, limited to noting the evolution towards a more flexible division of the competencies of each organ.

10. Indeed, depending on the specific circumstances of each case, General Assembly resolutions may "provide evidence for determining the existence and content of a rule of customary international law, or

contribute to its development” (International Law Commission, Draft conclusions on identification of customary international law, *Yearbook of the International Law Commission*, 2018, Vol. II, Part Two, Conclusion 12 (2); see *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 254-255, para. 70).

11. In my view, the Court should also have emphasized the “permanent responsibility” of the United Nations towards the question of Palestine “until th[at] question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy” (see General Assembly resolution 57/107 of 3 December 2002, UN doc. A/RES/57/107, p. 1), rather than discarding it pitifully by placing the entire responsibility for this assertion on the General Assembly (Opinion, paras. 166 to 168). I would add that Israel voted in favour of General Assembly resolution 302 (IV), by which UNRWA was established, and that in 1967 it concluded with the latter an agreement reaffirming that UNRWA would continue to provide assistance to the Palestine refugees with the full co-operation of the Israeli authorities (United Nations, *Treaty Series*, Vol. 620, No. 8955). In this regard, the Court should have made clear that the Member States of the United Nations, including Israel, have an obligation to give every assistance to the Organization in any action undertaken by it in accordance with the Charter to discharge this permanent responsibility towards the question of Palestine.

12. I regret that the Court has failed to give full effect to its acknowledgment of the importance of UNRWA, which plays a unique and irreplaceable role in the provision and co-ordination of both humanitarian and development assistance in the Occupied Palestinian Territory, including East Jerusalem. The Court should have taken a firmer position in this regard, emphasizing that there is a limit to what actions Israel can take, *including on its own territory*, since certain activities relating to humanitarian assistance in the occupied territory are reliant on access routes located in Israeli territory. On the contrary, by making paragraphs 177 and 179 subject to paragraph 184, the Court ultimately sided with Israel, as it acknowledged that the activities of the United Nations on its territory are subject to its consent. I am of the opinion that the Court should have made plain that Israel’s conduct is impeding the activities of the United Nations, and notably those of UNRWA, in and in relation to the occupied territory, in particular in the Gaza Strip, in breach of the obligations incumbent upon it. Due account should thus have been taken in the Advisory Opinion of the obligation to co-operate.

13. It should be noted that an international organization such as the United Nations is not merely the sum of the wills of its Member States. As a subject of international law in its own right that enjoys legal personality and broad autonomy, the Organization operates independently of the will of its Members. If it had always to seek their authorization to act, it would be unable to perform its functions effectively. The Organization has its own distinct role. Hence, since it is the General Assembly that has entrusted UNRWA with its present mandate — and has done so for such a prolonged period — it is clear that the General Assembly, together with the Secretary-General, may adopt an evolutive interpretation of the obligations arising from its constituent act, in this instance the Charter, and be a source of obligations for its Member States, with a view to achieving that mandate. Specifically, the Organization has the authority to interpret its own constituent act and the practice of its principal organs may be taken into consideration when interpreting the provisions of that instrument and the very function of the international organization in question, taking account of the developments in its institutional evolution (International Law Commission, Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, *Yearbook of the International Law Commission*, 2018, Vol. II, Part Two, Conclusion 12). With this in mind, agents with institutional competence or born of a given legal order fulfil the function entrusted to them by that same order, with a view to ensuring the achievement of common goals, when that order does not yet have the necessary organs to do so or has them only to a limited extent. One cannot but recall the relevance of Georges Scelle’s well-known duality of functions theory (G. Scelle, “Le phénomène juridique du dédoublement fonctionnel”, in *Rechtsfragen der internationalen Organisation: Festschrift für Hans Wehberg zu seinem 70. Geburtstag* (W. Schätzel and H.-J. Schlochauer, eds.), 1956, p. 331; G. Scelle, *Précis de droit des gens : principes et systématique 1932-1934*, Part I, pp. 43, 54, 56 and 217; Part II, pp. 10 and 319; see *Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 74-75, para. 19).

14. States' duty of co-operation is not confined to binding obligations in the strict sense. When the action required goes beyond this, that is, it requires States to take measures that do not necessarily derive from a specific obligation, then it is founded on a broader framework, specifically that which derives from the general duty to co-operate with the Organization. Even though States enjoy a certain latitude in interpreting this obligation, the obligation to co-operate remains an extensive one, since it is an integral part of the very object and purpose of the United Nations.

15. Lastly, I regret the Court's complete failure to address the question of the legal consequences for Israel of disregarding its obligations. I accept that the question submitted to the Court in the request for an advisory opinion is more limited in scope than that in the 2024 Opinion. Nevertheless, it is my view that the Court should not have remained silent on this matter and that it should at least have examined whether Israel is fulfilling the obligations previously identified by the Court as incumbent upon it.

16. In this regard, it is lamentable that the Court has ignored in its reasoning and in the operative part of its Opinion the question of the provisional measures in force — indicated on three occasions in 2024 — and Israel's obligation to comply with them. The Court has confined itself to addressing them only in the context of whether, in giving the opinion requested, the Court would prejudge certain elements in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* (Opinion, paras. 26 to 31). Yet the provisional measures that Israel has been ordered to take by the Court, which constitute binding obligations for that State, are, in my opinion, part of the applicable law in this instance, for at least two principal reasons. The first reason is substantive and relates to the normative autonomy of provisional measures in relation to the merits of a case. In view of this, the Court would in no way have prejudged the merits of the case pending between South Africa and Israel had it reaffirmed the applicability of its provisional measures as a source of binding obligations for Israel. The second reason is procedural. Provisional measures are autonomous not only in terms of the obligations they create, but also in terms of their basis of jurisdiction. Indeed, I share the view expressed by my eminent colleague Judge Abraham, who rightly stated, in 2019, that the Court's power to indicate provisional measures derives from Article 41 of its Statute, which constitutes an autonomous basis of jurisdiction to this end (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 14 June 2019, I.C.J. Reports 9 (I)*, separate opinion of Judge Abraham, p. 379, para. 9). The Court, therefore, does not derive its power to indicate provisional measures from the principal basis of jurisdiction invoked by the Applicant in the *South Africa v. Israel* case, namely Article IX of the Genocide Convention, but from Article 41 of the Statute. Not only does this underscore the normative autonomy of provisional measures, but it also serves to fill a significant procedural void that would exist if the Court were to indicate provisional measures before later concluding that it lacked jurisdiction to entertain the merits of the case. When a State consents to be bound by the Statute of the Court, which is assuredly the case for Israel as a State party to the Charter of the United Nations and the Statute of the International Court of Justice, it thereby accepts that the Court may indicate provisional measures that create autonomous and binding obligations for it, provided that the conditions put in place for that purpose have been met.

17. Consequently, had the Court recalled in this Advisory Opinion the provisional measures it has indicated in the *South Africa v. Israel* case, it would in no way have prejudged the merits of that case, because these two questions are, and remain, distinct. It would nevertheless have noted that, because of Israel's actions, the population of the Gaza Strip continues to endure unspeakable suffering that is "unimaginable" and that "deeply shock[s] the conscience of humanity" (preamble of the Rome Statute of the International Criminal Court).

(Signed) Juan Manuel GÓMEZ ROBLEDÓ.

[Original: English and
French]

DECLARATION OF JUDGE CLEVELAND

1. The question submitted to the Court by the General Assembly concerns the obligations of Israel with respect to the activities of the United Nations, other international organizations and third States in and in relation to the Occupied Palestinian Territory. The Court’s jurisdiction to render an Advisory Opinion is determined by the scope of the legal question contained in the request, and the Court’s reply to the request thus necessarily focuses on Israel’s obligations. This framing may yield the unfortunate impression that Israel is the only bearer of obligations under international law in the current armed conflict, that Israel possesses unique or special obligations, or that international law is indifferent to the conduct of Hamas and other armed groups in the Gaza Strip.

2. The answer given in the Advisory Opinion, however, which is governed by the request received, should in no way be understood to suggest that Hamas and other armed groups are relieved of international legal obligations in this context. As the Court has underscored elsewhere, “all parties to the conflict in the Gaza Strip are bound by international humanitarian law”¹²⁰. I therefore write separately to emphasize that many of the international legal obligations identified in the Advisory Opinion, as well as others that are beyond its scope, also apply to Hamas and other armed groups in the Gaza Strip.

3. The Advisory Opinion identifies a number of actions attributed to Hamas and other armed groups. The Opinion explains that, on 7 October 2023, these groups carried out violent attacks in Israel — which intentionally targeted civilians — killed over 1,200 individuals and injured thousands more. Hamas and other armed groups also abducted 251 people, some of whom continued to be held hostage for more than two years (Advisory Opinion, para. 58). The Court identifies Hamas as one of the parties to the ongoing armed conflict (*ibid.*, paras. 44 and 87). It recognizes a pattern of hostilities by Hamas and other armed groups since Hamas took power in the Gaza Strip in 2007, including launching rockets and making incursions into Israel (*ibid.*, paras. 44-45). The Court also acknowledges Israel’s contentions that during the current hostilities Hamas has, *inter alia*, appropriated United Nations facilities, including schools, for military purposes (*ibid.*, paras. 60 and 117), and intentionally disrupted and diverted humanitarian aid from the civilian population of the Gaza Strip (*ibid.*, paras. 70, 72 and 73).

4. Numerous international legal obligations apply to Hamas and other armed groups, irrespective of any claimed status as State or non-State actors or the classification of the conflict. As a matter of international humanitarian law, these obligations include the “cardinal” and “intransgressible” principle of distinction in the conduct of hostilities¹²¹ — which prohibits directing military attacks against civilians or civilian objects — as well as the corollary principles of proportionality and precaution¹²². The Court elaborates on these bedrock principles in paragraph 84. Notably, they include, among many other obligations, the duty to avoid locating military objectives within or near densely populated areas¹²³.

5. Relevant obligations under international humanitarian law further include the obligation of all parties to an armed conflict to allow and facilitate the rapid and unimpeded passage of humanitarian relief for civilians in need, subject to a limited right of control. Such relief must be impartial and conducted without adverse

¹²⁰ *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 (I), p. 30, para. 85.

¹²¹ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996 (I), p. 257, paras. 78-79.

¹²² ICRC, *Customary International Humanitarian Law Study*, Vol. II: Practice, Chap. 1, Sec. A, relating to Rule 1 (“The Principle of Distinction between Civilians and Combatants”); *ibid.*, Chap. 2, Sec. A, relating to Rule 7 (“The Principle of Distinction between Civilian Objects and Military Objectives”); *ibid.*, Chap. 4, relating to Rule 14 (“Proportionality in Attack”); *ibid.*, Chap. 5, Sec. A, relating to Rule 15 (“Precautions in Attack”).

¹²³ *Ibid.*, Chap. 6, Sec. B, relating to Rule 23 (“Location of Military Objectives outside Densely Populated Areas”).

distinction¹²⁴. All parties to an armed conflict also have the duty to respect and protect both humanitarian relief personnel and objects, and medical personnel, units and transports¹²⁵. All parties are subject to the prohibition on starvation as a method of warfare¹²⁶ as well as the prohibition on the taking of hostages¹²⁷. Moreover, International Committee of the Red Cross (ICRC) offers to visit persons deprived of their liberty must, at a minimum, be examined in good faith and cannot be arbitrarily denied¹²⁸.

6. Accordingly, with respect to the specific obligations under international humanitarian law relating to the provision of assistance by the United Nations, other international organizations and third States in the Gaza Strip, Hamas and other armed groups are prohibited from, *inter alia*, targeting or failing to respect and protect humanitarian personnel and convoys and medical personnel and facilities; delaying or diverting humanitarian aid intended for the civilian population; deliberately locating military objectives in densely populated civilian areas; and directing attacks against civilians and civilian objects or appropriating civilian objects, including schools and other United Nations facilities, for military purposes. Requests by the ICRC to visit hostages also could not be arbitrarily denied.

7. Beyond the broad protections that must be afforded under international humanitarian law, any attacks against, or appropriation of, United Nations operations, premises, properties, or assets by Hamas and other armed groups would constitute a breach of United Nations immunities, including the inviolability of its premises. The United Nations Headquarters Board of Inquiry, established by the Secretary-General to review incidents against the United Nations during the 2009 hostilities¹²⁹, found that the apparent firing of a rocket by Hamas or another faction that damaged World Food Programme infrastructure constituted “a breach of the inviolability of United Nations premises and a failure to accord the property and assets of the organization immunity from any form of interference”¹³⁰. Thus, separate from the specific obligations that United Nations Member States have under the Charter and the General Convention to safeguard such immunities, *any* attacks against the United Nations’ premises, properties, assets or personnel, or any attempt by external actors to use such premises, properties and assets, constitute breaches of United Nations immunities and give rise to responsibility for internationally wrongful acts.

8. With respect to human rights obligations, it is now widely accepted that human rights obligations apply to a *de facto* authority of a territory¹³¹. Accordingly, to the extent that Hamas or other armed groups may have exercised some *de facto* authority in the Gaza Strip, relevant human rights obligations correspondingly apply. Finally, the wide swathe of international criminal law prohibitions applies to all actors, including non-State armed groups. These obligations necessarily encompass Hamas and other armed groups operating in the Gaza Strip.

¹²⁴ Advisory Opinion, para. 91, citing ICRC, *Customary International Humanitarian Law Study*, Vol. II: Practice, Chap. 17, Sec. C, relating to Rule 55 (“Access for Humanitarian Relief to Civilians in Need”).

¹²⁵ *Ibid.*, paras. 134-137; ICRC, *Customary International Humanitarian Law Study*, Vol. II: Practice, Chap. 8, Sec. A, relating to Rule 31 (“Safety of Humanitarian Relief Personnel”); *ibid.*, Chap. 8, Sec. B, relating to Rule 32 (“Safety of Humanitarian Relief Objects”); *ibid.*, Chap. 7, Sec. A, relating to Rule 25 (“Medical Personnel”); *ibid.*, Chap. 7, Sec. D, relating to Rule 28 (“Medical Units”); *ibid.*, Chap. 7, Sec. E, relating to Rule 29 (“Medical Transports”).

¹²⁶ Advisory Opinion, paras. 143-144, citing ICRC, *Customary International Humanitarian Law Study*, Vol. II: Practice, Chap. 17, Sec. A, relating to Rule 53 (“Starvation as a Method of Warfare”).

¹²⁷ ICRC, *Customary International Humanitarian Law Study*, Vol. II: Practice, Chap. 32, Sec. I, relating to Rule 96 (“Hostage-Taking”).

¹²⁸ *Ibid.*, Chap. 37, Sec. G, relating to Rule 124 (“ICRC Access to Persons Deprived of their Liberty”).

¹²⁹ See Advisory Opinion, paragraph 45.

¹³⁰ See 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), p. 18, paras. 82-83.

¹³¹ E.g. United Nations, Human Rights Council, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, 25 Sept. 2009, UN doc. [A/HRC/12/48](#), para. 305 (“non-State actors that exercise government-like functions over a territory have a duty to respect human rights”); Report of the Special Rapporteur on the situation of human rights in Afghanistan, Richard Bennett, UN doc. [A/79/330](#) (30 Aug. 2024), para. 3 (“The *de facto* authorities . . . are . . . responsible for fulfilling these [human rights] obligations”).

9. In light of the above, it would have been welcome for the Court to state explicitly that Hamas and other armed groups, too, are bound by international legal obligations toward the United Nations, other international organizations and third States.

10. To be clear, however, the fact that the Court was not asked to address the obligations of other actors in no way detracts from the validity of its legal conclusions regarding the obligations of Israel as an occupying Power and a Member of the United Nations. Courts often examine the legal obligations of only one party or participant in an armed conflict. More fundamentally, the international law obligations at issue are not reciprocal. Compliance is not conditioned on a principle of reciprocity and the failure of one actor to comply in no way excuses or justifies lack of compliance by another. If such were the case, the fabric of international law would quickly unravel.

11. As the United Kingdom poignantly put it in its oral submissions regarding the denial of ICRC access:

“It should be noted that neither the ICRC — nor anyone else — has been able to visit and access the Israeli and other hostages being held in Gaza by Hamas and other militants. Hostages released have shared horrific stories of ill-treatment and abuse that may amount to torture. This also is completely unacceptable, but cannot serve as justification for Israel to deny the ICRC access to Palestinian detainees since October 2023”¹³².

12. In sum, Israel, as an occupying Power and a Member of the United Nations, necessarily bears significant legal obligations with respect to the United Nations, other international organizations and third States in and in relation to the Occupied Palestinian Territory. This fact, however, must not obfuscate the responsibilities of other parties to the conflict in the Gaza Strip. The General Assembly, and the international community as a whole, should be in no doubt that robust international law obligations apply to all parties to the armed conflict, including Hamas and other armed groups.

(Signed) Sarah H. CLEVELAND.

¹³² CR 2025/10, p. 66, para. 26 (Langrish).

[Original: English and
French]

DECLARATION OF JUDGE TLADI

1. I am, for the most part, in agreement with the Court’s Opinion. I wish, however, to make some observations on three issues that may need further clarification. The first of these issues concerns the right of self-determination and its impact on the obligations of Israel under Article 59 of the Fourth Geneva Convention. The second of these concerns the immunities and privileges of the United Nations, including the inviolability of UN premises, and the circumstances under which they may be said to be no longer applicable. Third, I wish to highlight that the current catastrophe in Palestine results from Israel’s ongoing unlawful occupation of the Occupied Palestinian Territory and that, in the final analysis, the Court has only a limited role in resolving that situation.

SELF-DETERMINATION AND THE DISCRETION OF ISRAEL UNDER ARTICLE 59 OF THE FOURTH GENEVA CONVENTION

2. Article 59 of the Fourth Geneva Convention imposes a duty on an Occupying Power to “agree to relief schemes on behalf of the [occupied] population” and to “facilitate [such relief schemes] by all the means at its disposal” if the whole or part of the population of an occupied territory is inadequately supplied. I concur with much of the analysis of the Court regarding the nature of Israel’s obligation under Article 59, including the assessment that the duty under Article 59 is additional to the general duties under Articles 55 and 56 requiring Occupying Powers to ensure that the population is adequately provided for¹³³, and that the duty under Article 59 is unconditional. I agree also with the Court’s description of the scope of the duty¹³⁴.

3. I find it necessary to note, however, that the duties of Israel as an Occupying Power should not be seen in isolation. Over and above the particular duties and constraints on Israel under international humanitarian law, and in particular the law of occupation, the determination by the Court in its Advisory Opinion of 19 July 2024 that Israel’s presence in the Occupied Palestinian Territory is unlawful and must be brought to an end as rapidly as possible¹³⁵ also has implications for Israel’s obligations.

4. In the present Opinion, the Court recalls its conclusions in the Advisory Opinion of 19 July 2024 and states that Israel should not exert any power “in any manner inconsistent with its obligation not to impede the Palestinian people from exercising its right to self-determination, including its inalienable right to territorial integrity over the entirety of the Occupied Palestinian Territory”¹³⁶. While the Court does not expressly link its statement concerning the right of self-determination to obligations flowing from Article 59, I believe that the former undoubtedly has particular implications for the latter. It is for this reason that, when addressing the discretion of an Occupying Power to choose the humanitarian organization through which it fulfils its Article 59 obligation, the Court characterized an Occupying Power’s “free[dom] to choose” as a “general rule”, whose application to a particular context was to be considered by the Court in specific situations¹³⁷. The “free[dom] to choose” the humanitarian organizations through which it fulfils its obligation to agree to and facilitate humanitarian relief is not available to Israel due to the unlawfulness of its occupation. Indeed, the Court is careful in paragraph 120 of the Opinion, when outlining this “freed[om] to choose”, to state that this freedom is available “in principle” to “an occupying Power”, without at all suggesting that Israel, as an Occupying Power, has this freedom. Thus, while an Occupying Power will, as a general matter of the law of occupation, have *some* freedom

¹³³ Advisory Opinion, para. 92.

¹³⁴ *Ibid.*, para. 96.

¹³⁵ *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. 285 (3)-(4).

¹³⁶ Advisory Opinion, para. 219.

¹³⁷ *Ibid.*, para. 120.

to determine which humanitarian organization will fulfil its responsibility under Article 59, the unlawfulness of Israel's occupation results in it not having such a discretion as a matter of law.

5. The Court does not address this point directly. Instead, the Court addresses the question of Israel's discretion under Article 59 on the basis of a factual assessment whether the capacity of the United Nations, acting through UNRWA, can be replicated to ensure that the population of the Gaza Strip is adequately provided for¹³⁸. It concludes that, under the present circumstances, "the United Nations, acting through UNRWA, [is] an indispensable provider of humanitarian relief in the Gaza Strip" and that Israel is under an obligation to agree to and facilitate relief schemes provided by the United Nations, including UNRWA¹³⁹.

6. While the Court opted to determine that Israel cannot deny UNRWA its role in the provision of humanitarian assistance on account of UNRWA's indispensability in the Occupied Palestinian Territory, that choice should not detract from the equally relevant legal effects flowing from the conclusions of the Court in its Advisory Opinion of 19 July 2024. The law of occupation cannot be applied in complete isolation from the general rules of international law. The Court has determined that Israel's occupation of the Palestinian territory is unlawful and that there is a duty on other actors not to recognize as lawful the situation arising from Israel's unlawful occupation¹⁴⁰. While, as a *factual matter*, Israel is in control of the Occupied Palestinian Territory and determines who to allow in and who not to allow (a situation made painfully evident by the refusal to allow humanitarian personnel and aid into Gaza), any suggestion that, as a *matter of law*, Israel has the right to make such determinations would have the effect of providing normative legitimacy to an unlawful factual situation — and thus a recognition as lawful of a situation that the Court has deemed unlawful¹⁴¹.

THE PROPER PROCEDURE FOR ADDRESSING CONCERNS REGARDING PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

7. The Court correctly determines that Israel is under an obligation to ensure full respect for the privileges and immunities of the United Nations and its personnel, to ensure full respect for the inviolability of its premises and to ensure full respect for the immunity of the property and assets of the Organization from any form of interference. In respect of these privileges and immunities, the Court makes several comments that might be misconstrued as suggesting that Israel has the right to make determinations about the applicability of those immunities and privileges in given circumstances. First, at paragraph 193, having correctly determined that Israel has an obligation to respect the inviolability of the premises of the United Nations and not to interfere "with the performance of their functions", the Court adds "that the question whether a particular facility qualifies as '[t]he premises of the United Nations' must be assessed by taking into account the specific circumstances pertaining to each facility concerned". Second, at paragraph 196, the Court, having correctly acknowledged that it is for the United Nations to decide whether a particular facility remains the premises of the Organization, adds that "such a determination by the United Nations creates a presumption that may only be set aside for the most compelling reasons and is to be given the greatest weight by States". Third, at paragraph 204, the Court introduces a similar

¹³⁸ *Ibid.*, para. 121.

¹³⁹ *Ibid.*, para. 124.

¹⁴⁰ *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. 285 (7).

¹⁴¹ The Court alludes to this rule of international law at paragraph 184 of the Opinion when discussing Israel's obligation to respect the privileges and immunities of the United Nations ("in the occupied territory, over which Israel, as an occupying Power, enjoys no sovereignty, it is not entitled to decide unilaterally, with respect to the presence and activities of the United Nations in and in relation to the Occupied Palestinian Territory, in the same way as in its own territory").

qualification in respect of the assessment of the Secretary-General whether an official or expert on mission acted within the scope of their functions¹⁴².

8. While I am prepared to accept the correctness of these qualifiers, taken out of context they are liable to create a misunderstanding as to the scope of States' obligations concerning the privileges and immunities of the United Nations. It is important, therefore, to ensure that these comments are not seen as providing a right of auto-determination by States to escape from obligations owed to the Organization. In other words, in respect of the first statement, it is not for Israel, or any other State, to unilaterally assess whether a facility qualifies as premises of the United Nations. Similarly, the statement — that a determination of immunity and/or inviolability by the United Nations creates a presumption which may only be set aside for the most compelling reasons — does not provide sanction for Israel, or any other State, to unilaterally set aside that determination.

9. These comments by the Court should be read in the context of what the Court says in paragraphs 211-216 of the Opinion concerning the obligation to address disagreements regarding the applicability or scope of the United Nations' privileges and immunities within the existing legal framework for the settlement of differences. Thus, where a State believes that there are compelling reasons to set aside a determination of the Secretary-General concerning the privileges and immunities enjoyed by the United Nations or its personnel, or where a State believes that a facility does not qualify as premises of the United Nations, notwithstanding an authoritative determination by the Organization, such matters are to be addressed through the framework established under the General Convention. For instance, its Article V, Section 21, imposes a duty upon the Organization to “co-operate at all times with the appropriate authorities . . . to . . . prevent the occurrence of any abuse in connection with the privileges, immunities and facilities” that have been accorded¹⁴³. States must therefore raise any compelling reasons to set aside determinations of the Secretary-General, or seek to address differences of views, directly with the United Nations through good-faith negotiations. Moreover, Article VIII, Section 30, of the General Convention provides that “[i]f a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved”. Any difference or dispute between a Member State and the United Nations concerning the determination of the Secretary-General may thus be brought before the Court in accordance with the terms of Section 30. Therefore, as the Court has noted as well (see paragraph 212 of the Opinion), it is not for a State to, on its own, make unilateral determinations concerning abuse or inapplicability of the privileges and immunities of the United Nations or its personnel.

10. It is the case that the Court in *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights* — the authority that is relied upon in the Opinion for the proposition that a determination of the Secretary-General can be set aside for compelling reasons — addressed the consideration by a national court (a State organ) of the immunity of an agent of the United Nations. But even in that case, the final determination concerning the immunities and privileges of the agent in question, the United Nations Special Rapporteur on the Independence of Judges and Lawyers, was made by this Court seised under Article VIII, Section 30, of the General Convention¹⁴⁴.

¹⁴² Advisory Opinion, para. 204 (“It is for the Secretary-General to determine whether a particular official or expert on mission is entitled to the privileges and immunities provided, and to assess whether that person acted within the scope of the person’s functions . . . In the view of the Court, the Secretary-General’s determination of the scope of the official functions of the officials or experts in question creates a presumption that can only be set aside for the most compelling reasons and is to be given the greatest weight by States”).

¹⁴³ While Article V, Section 21, of the General Convention relates only to “the privileges, immunities and facilities mentioned in [that] Article” (emphasis added), meaning that it relates only to the privileges and immunities afforded to officials under Article V, the practice of the United Nations has been to apply this provision to the privileges and immunities contained in Article II as well: see *United Nations Juridical Yearbook* 2003, pp. 521-523; *United Nations Juridical Yearbook* 2006, pp. 455-456.

¹⁴⁴ *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports* 9 (I), p. 87, para. 61.

**THE LIMITED ROLE FOR THE COURT IN RESOLVING THE CONFLICT
IN THE MIDDLE EAST**

11. In May 2024, I said:

“There are no more words to describe the horrors in Gaza. The words ‘apocalyptic’, ‘exceptionally grave’, ‘disastrous’ and ‘catastrophic’ have all been used to describe the current situation, and all seem to pale in comparison to what is unfolding before our very eyes. Almost daily we are confronted with gut-wrenching accounts of victims and survivors and images of unimaginable suffering.”¹⁴⁵

12. That was 17 months ago. The situation has deteriorated further still. It is presumably because of this that the General Assembly has once again approached the Court. The current request, as the Court notes (Opinion, paras. 32-35), is narrower than its predecessors¹⁴⁶. It arises out of a specific sequence of events and actions that impede assistance to the Palestinian people, including through measures that curtail the presence and operations of the United Nations and UNRWA in and in relation to the Occupied Palestinian Territory. At the same time, however, it can hardly be denied that these more recent events are all part and parcel of the broader problem in the Occupied Palestinian Territory: the denial of the right of self-determination of the Palestinian people.

13. While recourse to the Court is understandable, especially given the paralysis of the Security Council in addressing the crises in the Middle East, it should not be forgotten that the role of the Court in the resolution of the problem in Palestine is a limited one. In this context, I recall that in May 2024 when the Court ordered Israel to, *inter alia*, “[i]mmediately halt its military offensive” and allow “unhindered provision at scale . . . of urgently needed basic services and humanitarian assistance”, I cautioned that the “Court is only a court!”. The events that followed laid bare the limitations of judicial pronouncements when other responsible organs fail to discharge their responsibilities. It is for the political organs of the United Nations, not the Court, to take appropriate action to resolve this problem. In its Advisory Opinion of 19 July 2024, the Court (and some judges in their individual opinions) made a series of findings and provided legal pathways to addressing the problem. This is the Court’s second Opinion in 17 months on this issue. The ball is now squarely in the court of the political organs of the United Nations to decide what action, if any, to take by utilizing the findings of the Court to bring about a just, lasting and comprehensive settlement of the question of Palestine.

14. And what if no heed is paid to this Advisory Opinion and to other recommendations and resolutions of the United Nations? Then I end this declaration by recalling Judge Lauterpacht’s words, that there comes a point “when the cumulative effect of the persistent disregard of the articulate opinion of the Organization is such as to foster the conviction that the State in question has become guilty of disloyalty to the Principles and Purposes of the Charter”¹⁴⁷.

(Signed)

Dire TLADI.

¹⁴⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the Modification of the Order of 28 March 2024, Order of 24 May 2024, I.C.J. Reports 2024 (II), declaration of Judge Tladi, p. 700, para. 18.

¹⁴⁶ See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004 (I), p. 136; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024.

¹⁴⁷ *Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa*, Advisory Opinion, I.C.J. Reports 1955, separate opinion of Judge Lauterpacht, p. 120.