

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.

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.

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, 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*

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 2019 (I), p. 133, 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*.

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:

- 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 rehashed 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

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

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.

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.
- 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:

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.

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.

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.
- 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

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).

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).

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.

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,

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.

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.

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 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

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 Mashal.

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.

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 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

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>; <https://www.nytimes.com/2025/07/24/world/middle-east/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.

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>.

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.

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

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>.

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 prejudice issues in pending contentious cases as this would gravely undermine the integrity of the Court's judicial function.

⁴⁵ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019 (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.

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 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 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

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.*

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*.

(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; Dan Church Aid/Norwegian Church Aid; the Danish Refugee Council; Diakonie Katastrophenhilfe; Global Communities; Humanity and 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 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

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.

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.

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

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.

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

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-Michelmores 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-Michelmores 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-Michelmores 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 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

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 Michelmores, 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.

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-Micheltmore 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-Micheltmore 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-Micheltmore 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-Micheltmore 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-Micheltmore 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 Peacekeeping Mission (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.

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

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.

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

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 legislation — to

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.

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.

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*.

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 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.

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

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

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 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-Micheltore 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:

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.

- 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 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 Hamas'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

⁷⁸ UN doc. A/58/557 (7 Nov. 2003); see also Letter from Israel to the Commissioner-General of UNRWA (2 February 2010); Letter from Israel to the Commissioner General of UNRWA (28 March 2012); 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).

⁷⁹ 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/CPR.4.

⁸⁰ UN doc. S/2017/493 (12 June 2017).

⁸¹ Written Statement of Israel, Annex 8: UN doc. A/72/334 (14 Aug. 2017). See also *ibid.* para. 17.

⁸² UN doc. A/72/334 (14 Aug. 2017).

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 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.

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>.

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”, 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.

⁸⁵ European Parliament, General Budget of the EU – European Commission 2020/2140, 29 April 2021, para. 444.

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

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.

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 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 1976 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-Micheltmore 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

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.

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

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.”

88. After the passage of these laws, Israel notified the United Nations that it had withdrawn from the Comay-Micheltmore 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-Micheltmore 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.

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.

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 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.
