

SEPARATE OPINION OF JUDGE XUE

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

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

3. Another aspect that I wish to highlight is Israel's obligation to respect the right of the Palestinian people to self-determination. Notwithstanding the Court's recent thorough elaboration on this issue in *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Advisory Opinion of 19 July 2024, paras. 230-243), the situation in the Gaza Strip since 7 October 2023 has deteriorated so gravely that prospects for the Palestinian people to exercise its right to self-determination are further undermined. It is thus imperative for the Court to reaffirm Israel's obligation to respect this fundamental principle as enshrined in the Charter of the United Nations.

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

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

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

6. Regarding the content of this obligation, the phrase "every assistance" is broad and unqualified, suggesting every possible support for the actions taken by the Organization. This reading, however, is limited by the phrase "any action it takes in accordance with the present

Charter”. What constitutes an “action” that falls within the meaning of this provision gives rise to different interpretations. The essential difference between those interpretations is whether such actions are solely limited to those taken by the Security Council or may also extend to actions taken by other organs. According to the narrow interpretation, the obligation to render every assistance hinges on the binding character of the action in question, which means this obligation applies only to an action that has binding effects. To interpret it otherwise would run the risk of drawing from the provision an unintended power to transform non-binding “actions” of United Nations organs into legally binding ones. This narrow interpretation, in my opinion, is neither consistent with the terms of the provision, nor in line with the purposes of the Charter.

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

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

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

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

10. In practice, this duty to co-operate with the Organization has proven vital in ultimately resolving such questions as the question of Southern Rhodesia (Zimbabwe) (see e.g. General Assembly resolutions 31/154 of 20 December 1976, 32/116 of 16 December 1977, and 33/38 of 13 December 1978) in the decolonization movement, as well as in many other important issues concerning world peace and development. Many of the actions involved include the actions taken by the General Assembly as well as the Security Council. Even without express reference to Article 2, paragraph 5, these organs routinely request all Members to give every assistance in implementing their actions (see e.g. *Repertory of Practice of United Nations Organs, Supplement No. 10 (2000-2009)*, pp. 18-19). Confining the scope of Article 2, paragraph 5, to the decisions of the Security Council is certainly not facilitative of the attainment of the purposes of the Organization, if a Member is given the liberty not to co-operate with actions taken by other organs; any interpretation that may leave room for a Member to ignore, hinder, impede or even obstruct actions adopted by United Nations organs for the purported reason that they are not binding would seriously undermine the authority and integrity of the Organization. That consequence is certainly not what Article 2, paragraph 5, is intended to bring about.

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

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

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

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

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

“[t]he case was initiated in response to the consensus which emerged in the General Assembly and which was expressed in resolution 1361 (XIV) of 17 November 1959 . . . Article 2, paragraph 5, of the Charter requires all Members to give the United Nations

every assistance in any action it takes in accordance with the Charter, and it was as loyal Members of this Organization, and in implementation of that consensus of the General Assembly, that Ethiopia and Liberia took the initiative referred to.” (United Nations, *Official Records of the General Assembly*, UN doc. A/PV.1439, 12 October 1966, p. 10, para. 95.)

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

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

14. After Hamas and other armed groups attacked Israel on 7 October 2023, Israel launched large-scale military operations in the Gaza Strip. It is reported that as of 18 September 2025, there had been over 65,000 deaths and 165,000 injuries (United Nations Office for the Coordination of Humanitarian Affairs, “Humanitarian Situation Update #323 | Gaza Strip” (18 September 2025)). Over 2 million people forcibly displaced from their homes had been inadequately supplied with essential needs and basic medical and living services during the armed conflicts. This devastating situation in Gaza was particularly acute during the 11 weeks (from 2 March to 18 May 2025) of total blockage of humanitarian assistance from the United Nations, other international organizations and third States. The situation on the ground continues to deteriorate.

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

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

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

18. As recorded in this Advisory Opinion, the responsibility of the United Nations towards the question of Palestine has its origin in the Mandate and the Partition Plan adopted in General Assembly resolution 181 (II) in 1947 (paragraph 166). The reason why this responsibility was described as “permanent” by the United Nations is partly connected with Israel’s prolonged illegal

occupation of the Palestinian territory and with the policies and practices it has adopted therein (see *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 35). Unless and until the question of Palestine is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy, the United Nations must remain seised of the matter. Israel, as a Member of the United Nations, must co-operate with the Organization in accordance with the Charter.

19. Since 1947, the General Assembly has considered, debated and adopted resolutions on the question of Palestine almost annually (see *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 35). The same holds true for the Security Council. The extensive lists of relevant resolutions adopted by the General Assembly and the Security Council submitted by the United Nations in both the present proceedings and the above-mentioned proceedings, attest to the Organization's unwavering commitment to the question of Palestine throughout its history.

20. With regard to the presence and activities of the United Nations and its entities in the Occupied Palestinian Territory, it must be underlined that the mandates of these missions come from the actions of the United Nations, particularly through General Assembly resolutions (e.g. General Assembly resolution 302 (IV), which established UNRWA and which Israel voted in favour of). Over the decades, the United Nations and its entities, in particular UNRWA, have carried out their functions for the benefit of the local population. Even supposing that Israel had the right to terminate its 1967 Agreement with UNRWA (Exchange of letters between Ambassador Michael Comay of the Ministry of Foreign Affairs of Israel and Commissioner-General of UNRWA Lawrence Michelmore), it has no right, as an occupying Power, to unilaterally put an end to the presence and activities of the United Nations in the occupied territory. Article 2, paragraph 5, of the Charter requires it to enter into consultation with the Organization in respect of any issues arising from the presence and activities of the United Nations in the occupied territory and ensure uninterrupted supplies of urgently needed humanitarian assistance to the people in the Gaza Strip in accordance with international humanitarian law.

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

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

23. Undoubtedly, Israel's obligations referred to in those resolutions are based on international law, including international humanitarian law and human rights law. Israel must fulfil those obligations in good faith. Moreover, its obligation under Article 2, paragraph 5, also requires it to

co-operate with the United Nations and its entities, in particular UNRWA, in every possible way as required by the resolutions of the General Assembly and the Security Council to ensure unhindered provision of humanitarian assistance to the occupied territory and to respect and protect humanitarian personnel, United Nations personnel and associated personnel in the Gaza Strip in line with its obligations under international law and international humanitarian law.

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

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

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

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

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

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

further undermines the integrity of the Palestinian people, significantly impeding the exercise of its right to self-determination.

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

30. Furthermore, it should be recalled that UNRWA's connection to the right of the Palestinian people to self-determination runs even deeper. General Assembly resolution 2672 (XXV) of 8 December 1970, adopted in the context of reviewing UNRWA's annual report for 1969-1970, formally pronounced that "the people of Palestine are entitled to equal rights and self-determination, in accordance with the Charter" and declared that "full respect for the inalienable rights of the people of Palestine is an indispensable element in the establishment of a just and lasting peace in the Middle East". In resolution 3236 (XXIX) of 22 November 1974, four years later, the General Assembly provided a more comprehensive and full affirmation of the Palestinian people's inalienable rights to self-determination without external interference, to national independence and sovereignty, and to return to their homes and property from which they have been displaced and uprooted (see *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 62). Reaffirmation of Israel's obligation to respect the right of the Palestinian people to self-determination is crucial for the achievement of peace and security in the region and the ultimate realization of the two-State solution.

(Signed) XUE Hanqin.
