

JOINT DECLARATION OF JUDGES ABRAHAM AND CLEVELAND

[Original English text]

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

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

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

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

We write separately to further elaborate on this point.

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

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

5. Together these clauses commit Member States to assist the United Nations and to fulfil in good faith their obligations under the Charter. Indeed, such co-operation is essential to support the purposes and principles of the United Nations. This commitment to co-operate, however, necessarily operates in conjunction with the legal obligations that a Member State has undertaken. The Charter, of course, grants legally binding character to a narrowly circumscribed set of actions of United Nations organs, in particular those based on decisions of the Security Council under Chapter VII. As the Court explains, such obligations “may be prescribed by specific provisions of

the Charter, or contained in decisions adopted by the relevant organs of the Organization in so far as they possess binding force for Members in accordance with the Charter” (Advisory Opinion, para. 170).

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

7. Nothing in the 1949 *Reparation* Advisory Opinion to which the Court refers¹, and which concerned only the question of legal personality and competence of the Organization, not the obligatory nature of its actions upon its Members, contradicts this reasoning or suggests that Members have a legal obligation to co-operate with non-binding recommendations of the United Nations.

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

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

The last sentence of this paragraph is essentially reiterated in paragraph 179².

9. We fully agree that UNRWA’s role in the Occupied Palestinian Territory has been crucial, particularly since October 2023; that the United Nations, acting through UNRWA, cannot effectively carry out its mandate without having direct access to the Palestinian population there, including if necessary by traversing the territory of Israel; and that Israel may not obstruct such access. As the

¹ Advisory Opinion, para. 173, citing *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, *I.C.J. Reports 1949*, pp. 178-179 and 183.

² Advisory Opinion, para. 179 (“Israel may not obstruct the functions of the United Nations and must provide every assistance in any action taken by the Organization in accordance with the Charter in and in relation to the Occupied Palestinian Territory, subject to paragraph 184 below.”).

Court indicates, however, Israel's duty to co-operate with the United Nations is "subject to" the principle of consent set forth in paragraph 184, which states:

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

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

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

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

(Signed) Ronny ABRAHAM.

(Signed) Sarah H. CLEVELAND.