

DECLARATION OF JUDGE CHARLESWORTH

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

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

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

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

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

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

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

importance of the duty to render to the Organization ‘every assistance’ which is accepted by the Members in Article 2, paragraph 5, of the Charter.”¹

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

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

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

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

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

(Signed) Hilary CHARLESWORTH.

¹ *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, I.C.J. Reports 1949, p. 183.

² Identical letters dated 9 December 2024 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, UN doc. A/79/684-S/2024/892 (10 Dec. 2024), p. 5.