

DECLARATION OF JUDGE CLEVELAND

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

2. The answer given in the Advisory Opinion, however, which is governed by the request received, should in no way be understood to suggest that Hamas and other armed groups are relieved of international legal obligations in this context. As the Court has underscored elsewhere, "all parties to the conflict in the Gaza Strip are bound by international humanitarian law"¹. I therefore write separately to emphasize that many of the international legal obligations identified in the Advisory Opinion, as well as others that are beyond its scope, also apply to Hamas and other armed groups in the Gaza Strip.

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

4. Numerous international legal obligations apply to Hamas and other armed groups, irrespective of any claimed status as State or non-State actors or the classification of the conflict. As a matter of international humanitarian law, these obligations include the "cardinal" and "intransgressible" principle of distinction in the conduct of hostilities² — which prohibits directing military attacks against civilians or civilian objects — as well as the corollary principles of proportionality and precaution³. The Court elaborates on these bedrock principles in paragraph 84. Notably, they include, among many other obligations, the duty to avoid locating military objectives within or near densely populated areas⁴.

¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024, I.C.J. Reports 2024 (I), p. 30, para. 85.

² *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996 (I), p. 257, paras. 78-79.

³ ICRC, *Customary International Humanitarian Law Study*, Vol. II: Practice, Chap. 1, Sec. A, relating to Rule 1 ("The Principle of Distinction between Civilians and Combatants"); *ibid.*, Chap. 2, Sec. A, relating to Rule 7 ("The Principle of Distinction between Civilian Objects and Military Objectives"); *ibid.*, Chap. 4, relating to Rule 14 ("Proportionality in Attack"); *ibid.*, Chap. 5, Sec. A, relating to Rule 15 ("Precautions in Attack").

⁴ *Ibid.*, Chap. 6, Sec. B, relating to Rule 23 ("Location of Military Objectives outside Densely Populated Areas").

5. Relevant obligations under international humanitarian law further include the obligation of all parties to an armed conflict to allow and facilitate the rapid and unimpeded passage of humanitarian relief for civilians in need, subject to a limited right of control. Such relief must be impartial and conducted without adverse distinction⁵. All parties to an armed conflict also have the duty to respect and protect both humanitarian relief personnel and objects, and medical personnel, units and transports⁶. All parties are subject to the prohibition on starvation as a method of warfare⁷ as well as the prohibition on the taking of hostages⁸. Moreover, International Committee of the Red Cross (ICRC) offers to visit persons deprived of their liberty must, at a minimum, be examined in good faith and cannot be arbitrarily denied⁹.

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

7. Beyond the broad protections that must be afforded under international humanitarian law, any attacks against, or appropriation of, United Nations operations, premises, properties, or assets by Hamas and other armed groups would constitute a breach of United Nations immunities, including the inviolability of its premises. The United Nations Headquarters Board of Inquiry, established by the Secretary-General to review incidents against the United Nations during the 2009 hostilities¹⁰, found that the apparent firing of a rocket by Hamas or another faction that damaged World Food Programme infrastructure constituted “a breach of the inviolability of United Nations premises and a failure to accord the property and assets of the organization immunity from any form of interference”¹¹. Thus, separate from the specific obligations that United Nations Member States have under the Charter and the General Convention to safeguard such immunities, *any* attacks against the United Nations’ premises, properties, assets or personnel, or any attempt by external actors to use such premises, properties and assets, constitute breaches of United Nations immunities and give rise to responsibility for internationally wrongful acts.

⁵ Advisory Opinion, para. 91, citing ICRC, *Customary International Humanitarian Law Study*, Vol. II: Practice, Chap. 17, Sec. C, relating to Rule 55 (“Access for Humanitarian Relief to Civilians in Need”).

⁶ *Ibid.*, paras. 134-137; ICRC, *Customary International Humanitarian Law Study*, Vol. II: Practice, Chap. 8, Sec. A, relating to Rule 31 (“Safety of Humanitarian Relief Personnel”); *ibid.*, Chap. 8, Sec. B, relating to Rule 32 (“Safety of Humanitarian Relief Objects”); *ibid.*, Chap. 7, Sec. A, relating to Rule 25 (“Medical Personnel”); *ibid.*, Chap. 7, Sec. D, relating to Rule 28 (“Medical Units”); *ibid.*, Chap. 7, Sec. E, relating to Rule 29 (“Medical Transports”).

⁷ Advisory Opinion, paras. 143-144, citing ICRC, *Customary International Humanitarian Law Study*, Vol. II: Practice, Chap. 17, Sec. A, relating to Rule 53 (“Starvation as a Method of Warfare”).

⁸ ICRC, *Customary International Humanitarian Law Study*, Vol. II: Practice, Chap. 32, Sec. I, relating to Rule 96 (“Hostage-Taking”).

⁹ *Ibid.*, Chap. 37, Sec. G, relating to Rule 124 (“ICRC Access to Persons Deprived of their Liberty”).

¹⁰ See Advisory Opinion, paragraph 45.

¹¹ See Summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry into certain incidents in the Gaza Strip between 27 December 2008 and 19 January 2009, UN doc. A/63/855-S/2009/250 (15 May 2009), p. 18, paras. 82-83.

8. With respect to human rights obligations, it is now widely accepted that human rights obligations apply to a *de facto* authority of a territory¹². Accordingly, to the extent that Hamas or other armed groups may have exercised some *de facto* authority in the Gaza Strip, relevant human rights obligations correspondingly apply. Finally, the wide swathe of international criminal law prohibitions applies to all actors, including non-State armed groups. These obligations necessarily encompass Hamas and other armed groups operating in the Gaza Strip.

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

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

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

“It should be noted that neither the ICRC — nor anyone else — has been able to visit and access the Israeli and other hostages being held in Gaza by Hamas and other militants. Hostages released have shared horrific stories of ill-treatment and abuse that may amount to torture. This also is completely unacceptable, but cannot serve as justification for Israel to deny the ICRC access to Palestinian detainees since October 2023”¹³.

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

(Signed) Sarah H. CLEVELAND.

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

¹³ CR 2025/10, p. 66, para. 26 (Langrish).