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THE HAGUE INITIATIVE
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The Hague Initiative for International Cooperation (*thinc*.)

Briefing

Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory.

Analysis of International Court of Justice (ICJ) October 22 Advisory Opinion

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Executive Summary

Background

On October 22, the International Court of Justice (ICJ) issued its Advisory Opinion: *Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory.*

The Advisory Opinion is the Court's response to a request by the UN General Assembly (resolution 79/232), issued on 19 December 2024, after Israel suspended cooperation with the UN Relief and Works Agency for Palestinians in the Near East (UNRWA). Israel had ceased cooperation with UNRWA due to evidence of its employees' participation with Hamas in the October 7, 2023 massacre, as well as its longstanding role in enabling terrorism against Israel.

The General Assembly asked the Court to opine on Israel's obligations under international law. The ICJ majority concluded that Israel's suspension of cooperation with UNRWA was unlawful and that Israel must permit unimpeded access for humanitarian organizations into Gaza. However, in a strong dissenting opinion, Vice-President Judge Julia Sebutinde criticized the ruling as an abuse of the ICJ's advisory function, arguing that it overlooked the complex realities of urban warfare as well as Israel's security concerns, and noted the limited and unreliable evidence before the Court.

This analysis contends that the majority Opinion is legally flawed, one-sided, and constitutes an abuse of process. It highlights the following procedural and legal flaws with the Opinion:

Abuse of process and bias

This is the third time that the General Assembly has requested an Advisory Opinion concerning Israel and risks prejudicing two active contentious - *South Africa v. Israel* and *Nicaragua v. Germany* - which also address humanitarian issues in Gaza. Moreover, the Court's heavy reliance on UN-supplied evidence, while disregarding alternative sources, created a circular and biased evidentiary process. The Court focused only on Israel's obligations and embarked on a tangential excursion, affirming the Palestinian right to self-determination through statehood, while neglecting to scrutinise the roles and responsibilities of other actors, such as Hamas and Egypt.

Misapplication of international humanitarian law and law of occupation

The Court misapplied international humanitarian law and disregarded Israel's compliance with Articles 23 and 59 of the Fourth Geneva Convention. These are obligations that permit restrictions, including where there is a risk of aid diversion to enemy forces, as routinely occurred with Hamas in Gaza. The Court also employed an expansive definition of occupation that claimed Israel exercises effective control over Gaza, despite its 2005 disengagement and the absence of actual administrative and military authority.

Israel's right to cease cooperation with UNRWA

The Court relied on an incomplete analysis of the legal framework for UNRWA's operations to contend that Israel's UNRWA ban contravenes the UN Charter and the *Convention on the Privileges and Immunities of the United Nations*. In doing so, it disregarded a key piece of treaty law - the *Comay-Michelmore Agreement* – which qualifies the aforementioned UN instruments and permits Israel to cease cooperation with UNRWA on security grounds. Additionally, the principle of 'functional necessity' limits UN immunities to activities consistent with UN purposes, which support for terrorism is not.

UNRWA's support for terrorism

The Court rejected evidence that UNRWA's infiltration by Hamas and other terrorist organizations is so systematic that it compromises the agency's neutrality. It portrayed the involvement of UNRWA employees in the October 7 attacks as an isolated event, although UNRWA's links to terrorism are endemic and longstanding. The Court also disregarded UNRWA's role in exacerbating the conflict since its inception, including by radicalising Palestinians through its educational programs.

Conclusion

The ICJ Advisory Opinion of 22 October 2025 constituted a misuse of judicial authority that subordinated the rule of international law in the UN to political necessity. It offered a flawed and incomplete assessment of Israel's obligations under humanitarian law, the law of occupation, and UNRWA's governing framework.

As shown in evidence that the majority of the ICJ bench disregarded, UNRWA is clearly a partisan actor in the conflict, has long enabled and supported terrorism, and has ceased to act as a neutral humanitarian organization, forfeiting its right to immunities and privileges. The dissenting opinion of Judge Julia Sebutinde outlined these flaws of the majority judgment.

The majority of the Court circumvented the existing Middle East sub-regional peace negotiation framework and, rather than endorsing a return to the negotiating table, it undermined fundamental principles of international law, such as sovereign state consent and unbiased adjudication. The ICJ might begin to restore itself by curtailing its current enthusiasm for Advisory Opinion lawfare.

Overview of Majority Judgment

The judgment of the ICJ is a legal opinion in response to a request by the United Nations General Assembly concerning Israel's cooperation with UNRWA. Israel had ceased cooperation with UNRWA due to the latter's support for terrorism against Israel and its complicity with Hamas in the 7 October massacre.

Sitting on the Court's bench were 11 of its 15 judges: Iwasawa (Japan, President); Sebutinde (*Vice-President*, Uganda), Tomka (Slovakia), Abraham (France), Xue (China), Nolte (Germany), Charlesworth (Australia), Brant (Brazil), Gómez Robledo (Mexico), Cleveland (USA), and Tladi (South Africa). All judges except for Sebutinde supported the opinion of the Court in its entirety.

The preliminary parts of the ICJ opinion were decided unanimously. The bench decided that it had jurisdiction to give the Advisory Opinion requested, that it would exercise its discretion to do so, and that Israel, as an occupying power in the "Occupied Palestinian Territory" (OPT), was required to fulfil its obligations under international humanitarian law. It held unanimously that these humanitarian obligations include to:

- ensure that the population of the OPT has the essential supplies of daily life, including food, water, clothing, bedding, shelter, fuel, medical supplies and services;
- to respect and protect all relief and medical personnel and facilities;
- to respect the prohibition on forcible transfer and deportation in the OPT;
- to respect the right of protected persons from the OPT who are detained by Israel to be visited by the International Committee of the Red Cross; and
- to respect the prohibition on the use of starvation of civilians as a method of warfare.

Judge Sebutinde dissented in relation to one humanitarian obligation asserted by the majority to be incumbent upon Israel: to agree to and facilitate by all means at its disposal relief schemes on behalf of the population of the OPT so long as that population is inadequately supplied, as has been the case in the Gaza Strip, including relief provided by the UN and its entities, in particular the UNRWA, other international organizations and third States, and not to impede such relief.

Judge Sebutinde also disagreed with the rest of the legal opinion as adopted by the majority. It is apparent that Judge Sebutinde's dissents addressed flaws in the majority Opinion, namely that the State of Israel also had obligations:

- under international human rights law, as an occupying power, to respect, protect and fulfil the human rights of the population of the OPT, including through the presence and activities of the UN, other international organizations and third States, in and in relation to the OPT;
- to co-operate with the UN by providing every assistance in any action the UN takes in accordance with the UN Charter, including UNRWA, in and in relation to the OPT;

- under Article 105 of the UN Charter, to ensure full respect for the privileges and immunities accorded to the UN, including its agencies and bodies, and its officials, in and in relation to the OPT;
- under Article II of the *Convention on the Privileges and Immunities of the UN*, to ensure full respect for the inviolability of the premises of the UN, including those of the UNRWA, and for the immunity of the property and assets of the Organization from any form of interference; and
- under Articles V, VI and VII of the *Convention on the Privileges and Immunities of the UN* to ensure full respect for the privileges and immunities accorded to the officials and experts on mission of the United Nations, in and in relation to the OPT.

This analysis considers the flaws and drivers of the ICJ majority opinion. It builds on The Hague Initiative for International Cooperation's written submission on 30 April 2025 to the ICJ concerning the proposed UNRWA legal opinion.[1] The analysis concludes, sadly, that the majority judgment was legally flawed, politically predetermined and, rather than serving the international rule of law, was instead subordinated to the overwhelming prevailing politics of the majority of UN members, the General Assembly and secretariats.

Critical Analysis of the Legal Opinion

This analysis of the Advisory Opinion considers first the procedural and jurisdictional issues that are preliminary to the delivery of a judicial opinion. It then goes on to critically analyse the judicial reasoning and evidentiary basis for the Opinion actually delivered on the legal merits.

In relation to preliminary issues, it addresses problems of abuse of process, undermining of sovereign consent, prejudice to pending contentious cases, and the circularity and inadequacy of the evidence used by the Court. Concerning the legal merits, the briefing analyses the ICJ's approach to legal obligations to provide humanitarian aid into Gaza and to cooperate with UNRWA.

Abuse of ICJ Process

This is the third time that the General Assembly has requested an ICJ Advisory Opinion concerning Israel. During each of the past two calendar years, an Advisory Opinion request was adopted by the General Assembly during the last two weeks of the last month of the year, timed to constrain criticism of the request. Each misleadingly framed Israel as the sole regional belligerent.

[1] The Hague Initiative for International Cooperation (*thinc.*), *Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory* (Request for Advisory Opinion) (Written Statement, International Court of Justice, 30 April 2025) https://thinc-israel.org/wp-content/uploads/2025/04/thinc-submn-Israel-oblgn-to-UN-20250427-ph_20250430.pdf.

The majority of the ICJ bench noted that the Court has never accepted arguments of abuse of process in the contentious cases. It dismissed the notion that abuse of process could occur in advisory proceedings, and it specifically rejected that possibility in this case.[2] Judge Sebutinde noted that the ICJ has consistently affirmed that the ICJ should refuse to give an Advisory Opinion when refusal is necessary to safeguard the integrity of its judicial role.[3] She argued that the current opinion revisits issues already adjudicated in prior advisory opinions and that it is a clear misuse of the court's advisory jurisdiction. These problems could have been avoided by the bench majority by careful exercise of their judicial discretion to circumscribe the legal advice it gave, but were not.

In a fundamental error, the ICJ majority held that the Court decides cases of a "political nature" and that political and legal questions cannot be un-entangled.[4] Instead, it implicitly conceded that international legal opinions for the General Assembly can be political exercises in legal disguise. The emerging pattern of annual mobilisation of the Court's advisory jurisdiction against Israel is testimony to this. Thus, the ICJ reduced itself to a political tool of lawfare.

Prejudice to Pending Contentious Cases

By issuing problematic aspects of this Opinion, injustice was done by the ICJ to two other cases pending before it, prejudicing the rights of their respondents yet to be considered by the Court. Both cases, which are against Israel and Germany, were instituted prior to the General Assembly request to the ICJ for an Advisory Opinion and both concern the humanitarian situation in the Gaza Strip. Both of these cases overlap substantially with facts and law in the Advisory Opinion concerning the scope, content and applicability of humanitarian obligations.

The Court considered this dilemma and conceded that there were "factual and legal matters that may be relevant both in the present advisory proceedings and in contentious proceedings".[5] However, the majority of the Court dismissed the possibility of any prejudice being caused to the pending proceedings. It noted that "the same conduct may be required of a State under different legal rules, and the same conduct may simultaneously breach multiple obligations".[6] Yet, it considered that the obligations were sufficiently distinct for the facts supporting each to be distinguished, and that the parties

[2] *Obligations of Israel in Relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in Relation to the Occupied Palestinian Territory* (Advisory Opinion) [2025] ICJ Rep [39].

[3] *Obligations of Israel in Relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in Relation to the Occupied Palestinian Territory* (Separate Opinion of Judge Sebutinde) [2025] ICJ Rep [9].

[4] *Obligations of Israel (*Advisory Opinion*)* (n 2) [40].

[5] Ibid [30].

[6] Ibid [29].

will have a separate opportunity to present evidence and arguments in those proceedings.[7]

This distinction is flimsy and disingenuous. The fact that there are differences between the advisory proceedings and some of the facts and laws applicable in the contentious cases is irrelevant to the acknowledged reality that they overlap in substantive matters of fact and law. This precedent ruling in the Advisory Opinion necessarily prejudices the position of the parties in the subsequent contentious cases. Judge Sebutinde observed in her dissenting judgment that the Court should not have prejudiced pending factual or legal conclusions regarding humanitarian aid in Gaza, which will be argued by the parties in the contentious cases.[8]

Exceeding the Court's Remit

The UN General Assembly's request for the Advisory Opinion (resolution 79/232) did not ask the ICJ to opine on Palestinian self-determination. Nevertheless, the ICJ discussed and affirmed a Palestinian right to self-determination through statehood. Although the Court justified the use of its discretion to give the Opinion by stating that it was focused on "the presence and activities of the United Nations... in and in relation to the Occupied Palestinian Territory" rather than on issues that would prejudice contentious cases, the ICJ extended the scope of the boundaries that it had set itself and transgressed its own reasoning.

As Judge Sebutinde identified, the discussion surrounding self-determination constituted a "clear misuse of the Court's advisory jurisdiction".[9] It was not a necessary consideration for the Advisory Opinion. Therefore, the Court's assertion of Palestinian rights to self-determination and statehood, matters beyond the issue of Israeli obligations to cooperate with the "presence of the United Nations", was a fundamentally political act by the ICJ.

Lack of Sovereign Consent to Judicially Imposed Dispute Settlement

A fundamental rule of international law is that binding dispute resolution requires state consent to it. Israel has never consented to adjudication of its disputes with Middle Eastern states. The ICJ Statute itself requires that adjudication of disputes is subject to state consent.[10] Even the ICJ has considered that it "would not be justified in entertaining" a request for an Advisory Opinion if it would "have the effect of circumventing the principle that a state is not obliged to allow its disputes to be submitted to judicial settlement without its consent".[11]

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[7] Ibid [30].

[8] *Obligations of Israel* (Sebutinde Separate Opinion) (n 3) [12-14].

[9] Ibid [10].

[10] *Statute of the International Court of Justice*, opened for signature 26 June 1945, 33 UNTS 993 (entered into force 24 October 1945) art 36.

[11] *Western Sahara* (Advisory Opinion) [1975] ICJ Rep 12, [25].

The Advisory Opinion is, in its essence, a legal product engineered by the majority of the General Assembly to curtail Israel's sovereignty. It counters negotiation processes involving Israel as a sovereign party that have been underway through the Oslo Accords, which remain legally binding and provide that the conflict must be resolved via a negotiated settlement that considers the interests of both parties. A successful negotiation necessarily requires the consent of the parties to it. The abuse of process that manufactured the Advisory Opinion is designed to circumvent Israel's sovereign right not to consent to a disadvantageous outcome.

Circularity and Inadequacy of UN Evidence

Instead of independent evidence – which the ICJ would receive in a case contended between parties - in this advisory case the ICJ received reports provided as background briefings by the UN Secretariat. In contentious cases before the bench, the ICJ will receive far more information from both the claimants and respondents concerning their respective interests, arguments and alleged facts. Moreover, the UN materials were inadequate and included much data provided by the same UN agency - UNRWA - that was impugned by Israel for its lack of neutrality and was the primary subject of the proceedings. In a circular process, the UN Court decided in favour of the reliable integrity of a UN agency by considering exclusively the evidence provided by it and UN agencies.

Evidence before the UN Court

The majority of the ICJ bench rejected arguments that the Advisory Opinion would require the Court to undertake factual investigations on disputed matters, noting that similar arguments have been rejected in previous advisory proceedings.[12] The Court dismissed the evidentiary concerns, noting, simply in one paragraph, that "the case file contains ample documentation concerning the relevant facts".[13] The Secretariat of the United Nations had prepared a voluminous dossier. It considered that it had sufficient available information.

The majority of the ICJ bench, however, ignored the inadequacy and poor quality of the UN evidence before it. As noted in Judge Sebutinde's dissent, the ICJ lacked a sufficiently reliable evidentiary basis to accurately assess the current degree of effective control exercised by Israel over the Gaza Strip.[14]

For example, the ICJ cited the report of the UN Office of Internal Oversight Services (OIOS) that there was insufficient evidence provided by Israel to support the dismissal of all of the UNRWA officials against whom Israel alleged war crimes. However, this can hardly be regarded as endorsing UNRWA. Furthermore, the OIOS conducted no substantive investigations of its own and is notorious for ineffectiveness, incompetence and powerlessness.

[12] *Obligations of Israel* (Advisory Opinion) (n 2) [36].

[13] Ibid [37].

[14] *Obligations of Israel* (Sebutinde Separate Opinion) (n 3) [3].

In addition, the ICJ cited the findings of an "Independent Review Group" appointed in February 2024 to assess whether UNRWA was "doing everything within its power to ensure neutrality and to respond to allegations of serious breaches when they are made." Yet, the stated purpose of the review was to "reassure those donors who may have doubts." The chair of the group, former French Foreign Minister Catherine Colonna, herself stated that that the purpose of the investigation was to ensure that donations to UNRWA continue, as under her ministry. France is a major supporter of UNRWA. Other members of the Independent Review Group had themselves demonstrated extreme bias in their publications on UNRWA and against Israel.[15]

The voluminous UN reports received by the ICJ were biased in favour of the very UN institutions that produced them, reflecting the interests and one-sided agendas of the institutions.[16] For example, the UN dossier included annual reports from the Commissioner-General of UNRWA, head of a UN body heavily infiltrated by Hamas and that was the primary subject of the ICJ advisory proceedings, taken as probative evidence of its own assertions despite allegations and reasonable perceptions of its bias. The UN Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel reports were also taken as evidence, despite being notoriously one-sided, reflecting the bias of the Commission itself, which was established under a mandate that presumed Israeli guilt.[17] Its recently resigned chair, Navi Pillay, as well as two other commissioners, have a history of antisemitic remarks and support for the movement to boycott Israel.

The dossier also included reports by Francesca Albanese, the UN Human Rights Council's Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, who has also been notorious for antisemitic remarks and expressing support for terrorist organisations, resulting in recent US sanctions against her.[18] Albanese's reports have peddled continuous falsehoods - for instance, the 2024 report included in the dossier claimed that Israel is committing genocide in Gaza.

An additional example of the Court's reliance on evidence from biased agencies is its citing of reports by the UN Office for the Coordination of Humanitarian Affairs (OCHA), which draws its data from Hamas, as well as the Integrated Food Security Phase Classification (IPC), regarding the humanitarian situation in Gaza and claims of

[15] UN Watch, *Exposed: UNRWA's Rigged "Independent" Review* (Report, 24 April 2024) https://unwatch.org/wp-content/uploads/2024/04/UNRWAs-Rigged-Independent-Review.pdf.

[16] International Court of Justice, *Materials Compiled Pursuant to Article 65, Paragraph 2, of the Statute of the ICJ (Request for an Advisory Opinion Pursuant to General Assembly Resolution 79/232)* (Web Page, 30 January 2025)) https://www.icj-cij.org/sites/default/files/case-related/196/196-20250130-req-01-01-en.pdf.

[17] The Hague Initiative for International Cooperation, 'The UNHRC Commission of Inquiry – the Worst Attack of the UN Ever Against the State of Israel' (Web Page, n.d.) https://thinc-israel.org/articles/the-unhrc-commission-of-inquiry-the-worst-attack-of-the-un-ever-against-the-state-of-israel/.

[18] Jewish News Syndicate, 'Trump Admin Sanctions Albanese for Spewing "Unabashed Antisemitism," Supporting Terrorism' (News Article, 9 July 2025) https://www.jns.org/trump-admin-sanctions-albanese-for-spewing-unabashed-antisemitism-supporting-terrorism.

starvation also drawn from Hamas. OCHA has notably underreported the number of aid trucks going into Gaza.[19] The Israel Institute for National Security Studies has documented how OCHA and IPC rely on selective, biased and incomplete data - heavily drawn from UNRWA and Hamas sources - while disregarding figures provided by Israeli authorities such as COGAT.[20]

Non-Consideration of Independent Evidence

The majority judgment completely disregarded the evidence provided by Israel, the central party which was the focus of the Advisory Opinion. As noted in Judge Sebutinde's dissent, the majority judgment also disregarded the complex realities of urban warfare, including the use by Hamas of Palestinian civilians and Israeli hostages as human shields, and its militarization of civilian infrastructure.[21]

Moreover, the ICJ majority ignored hundreds of pages in dozens of reports – including by the most relevant NGO, UN Watch - documenting systemic support for terrorism within UNRWA. Only Judge Sebutinde cited this material in her dissenting opinion.[22]

In effect, the ICJ considered the evidence of only the UN. It is not coincidental that those UN institutions are the political, financial and institutional master of the ICJ.

Humanitarian Obligations in Gaza

Israel's humanitarian obligations

The ICJ provided a legally flawed and incomplete assessment of Israel's humanitarian obligations in Gaza. Article 23 of the Fourth Geneva Convention outlines the general obligation to deliver aid. The duty is not absolute but may be limited where aid is being diverted or exploited by hostile forces. [23] The ICJ, although acknowledging Article 23, did

[19] Times of Israel, 'UN and Israel Trade Blame on Gaza Aid Issues as Criticism Grows Over Hunger Crisis' (News Article, 23 July 2025) https://www.timesofisrael.com/un-and-israel-trade-blame-over-gaza-aid-issues-as-criticism-grows-over-hunger-crisis/.

[20] Institute for National Security Studies (INSS), *The Misleading Reports of the UN Over Famine in Gaza* (Special Publication, 24 July 2024) https://www.inss.org.il/publication/un-hunger-reports/

[21] *Obligations of Israel* (Sebutinde Separate Opinion) (n 3) [6].

[22] Ibid [77].

[23] Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, opened for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) art 23:

> The obligation of a High Contracting Party to allow the free passage of the consignment indicated in the preceding paragraph is subject to the condition that this Party is satisfied that there is no serious reason for fearing:
>
> (a) That the consignment may be diverted from their destination
> (b) That the control may not be effective, or
> (c) That a definitive advantage may accrue to the military efforts or economy of the enemy through the substitution of the above-mentioned consignment for goods which would otherwise be provided or produced by the enemy or through the

not engage in a substantial discussion concerning Israel's responsibilities under the provision.

Over the last two years, Israel has acted consistently with Article 23 when distributing humanitarian aid into Gaza, delivering over two million tonnes of aid.[24] Israel established inspection checkpoints to prevent weapons from being smuggled to and militarily supplying Hamas.[25] Even with these security measures in place, the IDF ensured sufficient humanitarian aid was delivered into Gaza. Israel facilitated the entry of enough aid to meet Gaza's civilian needs, handing over the aid to organisations dedicated to delivering and distributing it. The obstruction of aid from reaching civilians was, therefore, an issue of conduct by the UN and Hamas.[26]

The UN's own data demonstrates its inability to ensure aid delivery to civilians, as the majority of its trucks were intercepted by Hamas and other military groups, never reaching Gaza's civilian population. This diversion of aid not only sustained Hamas but allowed Hamas to weaponize the hunger of Palestinians to demonise Israel.[27]

Israel halted humanitarian aid operations temporarily from March until May 2025. Up to that point, Israel had facilitated over 1.7 million tonnes of food into Gaza[28] At the collapse of the at-that-time ceasefire deal, and Hamas' abuse of the system, the IDF froze aid delivery, but ensured that there was enough food stored in Gaza to feed the population for months.[29] This demonstrated no intention to starve the Palestinians, but to pressure Hamas to release all of the hostages, distribute the aid that they had in their possession to civilians, and to stop its war efforts.

The IDF's actions were met with fierce condemnation from the UN agencies that warned of mass starvation and widespread hunger related deaths.[30]

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release of such material, services or facilities as would otherwise be required for the production of such goods.

[24] State of Israel, *Gaza Aid Data Portal* (Web Page, 2025) https://gaza-aid-data.gov.il/mainhome#AidData.

[25] Emanuel Fabian, 'IDF Says Bag of Ammo Discovered in Coordinated Internal Aid Convoy in Gaza' *Times of Israel* (online, 2 November 2025) https://www.timesofisrael.com/liveblog_entry/idf-says-bag-of-ammo-discovered-in-coordinated-internal-aid-convoy-in-gaza/.

[26] As U.S. Secretary of State Marco Rubio has stated, "Hamas is the impediment. They must lay down their arms and stop their looting so that Gaza can have a brighter future", (X, 2 November 2025) https://x.com/SecRubio/status/1984682865905242498.

[27] Emanuel Fabian, 'UN: Around 88% of Aid Trucks Collected in Gaza Did Not Reach Destinations Due to Looting or Theft' *Times of Israel* (online, 2 November 2025) https://www.timesofisrael.com/liveblog_entry/un-around-88-of-aid-trucks-collected-in-gaza-did-not-reach-destinations-due-to-looting-or-theft/.

[28] *Gaza Aid Data Portal* (n 24).

[29] Lazar Berman, 'Despite IDF and PMO Denials, Israeli Official Confirms Plan to Resume Gaza Aid' *Times of Israel* (online, 3 November 2025) https://www.timesofisrael.com/despite-idf-and-pmo-denials-israeli-official-confirms-plan-to-resume-gaza-aid/.

[30] Efraim Inbar, *Humanitarian Aid to Gaza: Israel's Dilemma* (Begin-Sadat Center for Strategic Studies Policy Paper No 213, 2 September 2025) https://besacenter.org/wp-content/uploads/2025/09/213-2.9.2025-Edited.pdf.

When the IDF observed actual risks of food shortage, aid delivery resumed, albeit under a new delivery system outside of UN agencies that were subject to Hamas control. The UN's failures in delivering aid to civilians resulted in Israel's engagement of an NGO, the Gaza Humanitarian Foundation' (GHF), to deliver aid through designated aid distribution centres and ensure that civilians received aid without its diversion by Hamas.[31] Israel's intervention to put conditions on aid delivery and to organise the technical manner of its delivery exercised a right specified in Article 23:

> ... the Power which permits [the aid's] free passage shall have the right to prescribe the technical arrangements under which such passage is allowed.[32]

The GHF delivered over 180 million meals over the course of five months, adding to UN-delivered aid.[33] Despite the condemnation of Israel's examination of the aid trucks moving into Gaza, as well as the falsification of famine claims and claims of mass hunger-related deaths, there is sufficient evidence that Israel successfully met its international obligations in aid delivery to the civilians in Gaza. Hamas' systematic abuse of the humanitarian aid was ignored by the ICJ.

Occupying Powers' Obligations

Diminishing the significance of Article 23, the ICJ centred its discussion on Article 59 of the Fourth Geneva Convention - the obligations of an occupying power to supply aid. The majority's analysis was problematic. The issue of "occupation" was insufficiently addressed. There are two codified definitions of occupation. The first is from 'The Law of War on Land', 1880. Article 41 says:

> Territory is regarded as occupied when, as the consequence of invasion by hostile forces, the State to which it belongs has ceased, in fact, to exercise its ordinary authority therein, and the invading State is alone in a position to maintain order there. The limits within which this state of affairs exists determine the extent and duration of the occupation.[34]

Article 42 of the Hague Regulations (1907) builds on this, stating:

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[31] Global Humanitarian Foundation, *Updates* (Web Page, 2025) https://ghf.org/updates/.

[32] Geneva Convention Relative to the Protection of Civilian Persons in Time of War, opened for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950).

[33] Gaza Humanitarian Foundation, 'GHF Operational Update – Friday, October 10, 2025' (Web Page, 10 October 2025) https://ghf.org/ghf-operational-update-friday-october-10-2025/.

[34] *Oxford Manual on the Laws of War on Land* (adopted 9 September 1880) art 41, International Committee of the Red Cross https://ihl-databases.icrc.org/en/ihl-treaties/oxford-manual-1880/article-41.

> Territory is considered occupied when it is actually placed under the authority of the hostile army. ..... The occupation applies only to the territory where such authority is established and in a position to assert itself.[35]

Both these definitions require active military administrative control by the occupying power over the territory considered to be "occupied". Furthermore, the Fourth Geneva Convention, which Israel is a party to, elaborates:

> ... the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the function of government in such territory ...[36]

These international legal authorities establish that active command of a functioning government over the territory is required to constitute occupation. Yet, Israel does not have full military administrative or governmental control in Gaza. Seeking to expand the application of international law of occupation, Judge Gómez Robeledo's separate judgment, rejected the notion utilised in the majority judgment that "occupation" is expressed through effective/functional control, meaning the state's ability to exercise actual authority over a territory, and having the capacity to enforce its will in the area.[37] Instead, he introduced a novel notion of de facto control, whereby a territory is considered occupied if hostile armed forces 'can rapidly be deployed there'.

Should the definition of occupation be expanded in this way, its applicability would encompass a large number of countries and regions. For example, Russia's military presence in Kazakhstan and its large influence on the Kazakh political system could qualify as an "occupation". Egypt also has a border with Gaza that is highly militarised, giving Egypt effective control over Southern Gaza by this logic. Furthermore, Israel's air superiority over Iran during the 12-day war might also meet such a loose definition of "occupation".

In the case of Israel and the Gaza Strip, it must be recalled that in 2003 then Israeli Prime Minister Ariel Sharon prepared a disengagement and withdrawal plan of all Israeli settlements within Gaza, which he presented to the UN in 2004. Such plans were implemented in 2005, when the IDF evacuated over 9,000 Israeli citizens and Israeli graves.[38] This disengagement was followed by the democratic election of Hamas in 2007 and heavy militarisation of the Gaza Strip by means of an elaborate underground tunnel

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[35] *Convention (II) with Respect to the Laws and Customs of War on Land* (adopted 29 July 1899, entered into force 4 September 1900) annex art 42, International Committee of the Red Cross https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-ii-1899/regulations-art-42.

[36] Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 Aug 1949, 75 UNTS 287, art 6.

[37] Gómez Robledo, Judge. *Partially Dissenting Opinion of Judge Gómez Robledo* in *Advisory Opinion – Obligations of Israel in Relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in Relation to the Occupied Palestinian Territory* (International Court of Justice, 22 October 2025), where he dissented from paragraphs 85-87 of the majority opinion.

[38] State of Israel, *Israel's Disengagement from Gaza and North Samaria* (Web Page, 2025) https://www.gov.il/en/pages/israel-s-disengagement-from-gaza-and-north-samaria.

system – more than 500 km[39] in length – and terrorist infrastructure, such as missile launchers and military bases, integrated near and in protected buildings such as hospitals, mosques and schools.

Currently, Israel is re-establishing its occupation about half of Gaza, but Hamas controls other parts. Article 59 of the Fourth Geneva Convention provides that:

> A Power granting free passage to consignments on their way to territory occupied by an adverse Party to the conflict shall, however, have the right to search the consignments, to regulate their passage according to prescribed times and routes, and to be reasonably satisfied through the Protecting Power that these consignments are to be used for the relief of the needy population and are not to be used for the benefit of the Occupying Power.[40]

In the Court's analysis of Article 59, it failed to consider the legitimate security concerns of Israel which required the supervision, inspection and control of humanitarian aid delivered into Gaza. It ignored past and continued smuggling of weaponry by Hamas to attack Israel and the IDF.

The duty under Article 59 requires the delivery of aid if there is an inadequate supply within the area. Humanitarian aid pauses between March and May 2025 were imposed by Israel with the knowledge that there was sufficient aid inside Gaza to feed the entire population for several months. There was no positive obligation at the time, as there was an adequate supply.

As noted above, the ICJ's conclusions relied on circular reasoning where it only considered UN evidence, despite the fact that the UN was the party with interests most directly affected, other than Israel whose evidence was disregarded.

Egyptian Humanitarian Obligations Disregarded

Despite Gaza sharing a border with Egypt, the Court disregarded Egypt's humanitarian duties under international law. Egypt has multifaceted duties towards Palestinian refugees of Gaza that have not been met.

Egypt was a party to the 1965 *Casablanca Protocol on the Treatment of Palestinians in Arab States*, which imposed specific, positive duties concerning Palestinian refugees.[41] The Protocol required states to guarantee Palestinians the right to employment, freedom of movement – including the right to enter, leave and return – and access to travel documents.

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[39] Emanuel Fabian, 'Gaza Tunnels Stretch at Least 350 Miles, Far Longer Than Past Estimate – Report' *Times of Israel*(online, 31 October 2025) https://www.timesofisrael.com/gaza-tunnels-stretch-at-least-350-miles-far-longer-than-past-estimate-report/.

[40] 1 Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287 art 59 (entered into force 21 October 1950), https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf.

[41] *Arab Convention on the Suppression of Terrorism* (signed 22 April 1998, entered into force 7 May 1999) 2172 UNTS 321 https://www.refworld.org/legal/agreements/las/1965/en/36716.

Egypt is currently a party to the Organisation of African Unity (OAU) *Convention Governing Specific Aspects of Refugee Problems in Africa*. Article II of the convention sets the following duty on member states:

> Member States of the OAU shall use their best endeavors consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable to unwilling to return to their country of origin or nationality.[42]

This Convention applies to members of the African Union, including Egypt, and outlines obligations to accept and protect refugees. Its principles reinforce broader customary and moral expectations, that UN members must protect refugees within their territory, avoid discrimination, and refrain from expulsion.[43]

In practice, however, Egypt has consistently failed to fulfil these obligations.[44] It severely restricted Palestinians during its control of Gaza between 1948 until 1967 and continues to prevent their entrance into Egypt through the construction of a large, militarised border. Egypt has continued refuse to accept Palestinians as refugees during the current Hamas war with Israel.

Oddly, there has not been any attempt by the UN General Assembly to address Egyptian failure to meet its humanitarian obligations. The ICJ's judgment, by omitting any consideration of Egypt's duties, exposes its own lack of actual humanitarian concern as well as its bias against Israel. The majority of the bench in the Advisory Opinion seemed less concerned with duties to protect Palestinian civilians than with condemning Israel.

Obligations to Cooperate with UN Agencies

The Court argued that Israel's legislation banning UNRWA operations contravenes Article 105 of the *Charter of the United Nations* (UN Charter) and the *Convention on the Privileges and Immunities of the United Nations (*the Convention*),* which grant UN agencies the privileges and immunities necessary to ensure their independent and effective functioning. However, the Court overlooked that the scope of these immunities and privileges is qualified by individual agreements between agencies and host states. Moreover, Section 34 of the 1946 Convention provides that the scope and nature of privileges and immunities must be interpreted "in the light of the functions with which that agency is entrusted by its constitutional instrument".[45]

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[42] *Organisation of African Unity Convention on the Prevention and Combating of Terrorism* (adopted 14 July 1999, entered into force 6 December 2002) African Union https://au.int/sites/default/files/treaties/36400-treaty-36400-treaty-oau_convention_1963.pdf.

[43] *Convention Relating to the Status of Refugees* (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, arts 3, 32 https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees.

[44] Jewish Virtual Library, *Myths and Facts: The Refugees* (Web Page, 2025) https://www.jewishvirtuallibrary.org/myths-and-facts-the-refugees.

[45] *Convention on the Privileges and Immunities of the United Nations*, opened for signature 13 February 1946, 1 UNTS 15 (entered into force 17 September 1946).

UNRWA was established under General Assembly Resolution 302 (IV) in 1949, which did not specifically define UNRWA's immunity and privileges. Rather, it simply "called" upon states to grant UNRWA the same privileges and immunities as its predecessor, the United Nations Relief for Palestine Refugees. This non-mandatory language demonstrates that the scope of UNRWA's privileges and immunities was subject to its agreements with host states.[46] Reinforcing this is the fact that all regional states, including Israel, concluded separate agreements regulating UNRWA's status.[47]

Status of UNRWA and the Comay-Michelmore Agreement

In this respect, the Court disregarded a critical legal instrument, the *Comay-Michelmore Agreement,* on UNRWA's privileges and immunities. This was a provisional agreement between Israel and UNRWA that permitted UNRWA to operate in territories administered by Israel from June 14, 1967. The wording in the Agreement indicates that it was open to replacement or cancellation, and that UNRWA's privileges could be withdrawn or restricted on security grounds. In the exchange of letters comprising the Agreement, Michael Comay, the Israeli representative, stated:

> For its part, the Israel 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.
>
> ...
>
> The present letter and your acceptance in writing will be considered by the Government of Israel and by UNRWA as a provisional agreement which will remain in force until replaced or cancelled.

Lawrence Michelmore, UNRWA's Commissioner-General, affirmed Comay's remarks regarding the provisional nature of UNRWA's operations in his reply:

> I agree that your letter and this reply constitute a provisional agreement between UNRWA and the Government of Israel, to remain in force until replaced or cancelled. UNRWA's agreement is subject to any relevant instructions or resolutions emanating from the United Nations. [48]

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[46] UN General Assembly Resolution 302 (IV) (1949), [17].

[47] *Exchange of Letters Constituting a Provisional Agreement Concerning Assistance to Palestine Refugees* (14 June 1967) https://www.jewishvirtuallibrary.org/exchange-of-letters-constituting-a-provisional-agreement-concerning-assistance-to-palestine-refugees.

Avraham Shalev, 'The Test of Immunity: Will UNRWA Retain Its Immunity After Israeli Legislation?' *Kohelet Policy Forum* (Web Page, 2025) https://www.kohelet.org.il/en/article/the-test-of-immunity-will-unrwa-retain-its-immunity-after-israeli-legislation.

[48] *Exchange of Letters Constituting a Provisional Agreement Concerning Assistance to Palestine Refugees* (14 June 1967) https://www.jewishvirtuallibrary.org/exchange-of-letters-constituting-a-provisional-agreement-concerning-assistance-to-palestine-refugees

Avraham Shalev, 'The Test of Immunity: Will UNRWA Retain Its Immunity After Israeli Legislation?', *Kohelet Policy Forum*, https://www.kohelet.org.il/en/article/the-test-of-immunity-will-unrwa-retain-its-immunity-after-israeli-legislation.

These terms indicate that UNRWA's operational privileges were contingent upon Israel's security situation and could lawfully be restricted or withdrawn, as they were in 2024. That the Court would disregard this Agreement underscores the selective and one-sided nature of the proceedings. As Judge Sebutinde observed, "The Court's failure to engage substantively with this issue represents a significant omission in its legal analysis". [49]

Functional Necessity Limitations on Cooperation

Even if the *Comay-Michelmore Agreement* did not apply, Article 105(1) of the UN Charter and the 1946 Convention must be interpreted according to the principle of "functional necessity". This principle of international law limits privileges and immunities to what is essential for UN agencies to carry out their functions independently and effectively.[50] This suggests that when a UN agency acts outside those purposes, especially in a way that contradicts the UN's founding objectives, immunities no longer apply.

UNRWA's systemic support and enablement of terrorism against Israel, which will be documented further below, demonstrate that it has exceeded the humanitarian functions which it claims Israeli protection for. Support for terrorism - which the international community has a positive obligation to prevent - is clearly antithetical to UN purposes and not captured by the principle of functional necessity. Therefore, UNRWA can no longer claim the privileges and immunities typically afforded to UN agencies under the UN Charter. As Adv. Avraham Shalev observes, "Careful analysis of the historical record clearly demonstrates that without a special agreement, the UN convention does not apply to UNRWA. In any case, systematic support of terrorism constitutes a breach of UNRWA's mandate and is not covered by "functional immunity". [51]

In her dissenting opinion, Judge Sebutinde also noted that the Convention allows for limitations in cases of "armed conflict", "credible terrorist threats", or "verified evidence of a UN agency's involvement in harboring of individuals engaged in terrorism", meaning Israel's suspension of privileges, "if based on credible and verifiable evidence backing its security concerns, may constitute a lawful restriction".[52] To this effect, UNWRA's verified involvement in terrorism presents a credible threat that justifies suspension of its privileges.

Alternative Humanitarian Aid Providers

The majority of the Court erroneously portrayed UNRWA as the backbone of humanitarian aid in Gaza. Citing Article 59 of the Fourth Geneva Convention, the Court observed that while an occupying power is, in principle, free to select the humanitarian organizations through which it fulfils its obligations, that discretion is limited by the

[49] *Obligations of Israel* (Sebutinde Separate Opinion) (n 3) [52].

[50] Ibid [51].

[51] Avraham Shalev, 'The Test of Immunity: Will UNRWA Retain Its Immunity After Israeli Legislation?' *Kohelet Policy Forum* (Web Page, 2025) https://www.kohelet.org.il/en/article/the-test-of-immunity-will-unrwa-retain-its-immunity-after-israeli-legislation.

[52] *Obligations of Israel* (Sebutinde Separate Opinion) (n 3) [52].

requirement to ensure adequate relief for the civilian population. The Court did not consider that GHF sufficiently met those needs. However, this assessment overlooked the success of GHF even despite repeated attacks on its distribution centers and staff by Hamas. As of 14 October 2025, GHF had delivered more than 185 million meals - an indication of its commitment to ensuring that assistance reached civilians.[53]

Other than GHF, numerous viable alternatives could fill the gap left by UNRWA and have been doing so. According to Israel, UNRWA is just one of a plethora of organizations that have been providing aid in the Gaza conflict and does not even figure in the top six aid providers.[54] Israel claimed that UNRWA's role in Gaza has been exaggerated and that only 13.5 per cent of aid there comes from UNWRA.[55] This challenges the notion that UNRWA serves as the backbone of humanitarian efforts, or that its cessation would inevitably result in increased suffering for Palestinians.

Given the systemic issues of complicity in terrorism support within UNRWA, the ICJ should have endorsed alternative mechanisms. The presence of capable alternative aid providers reinforces that UNRWA is not "necessary" for the fulfillment of humanitarian functions in Gaza. Organizations such as the UN High Commissioner for Refugees (UNHCR) and World Food Programme have the capacity to deliver essential aid, as they have done for other global humanitarian situations. Where other competent organizations can ensure the delivery of aid, the rationale for maintaining UNRWA's immunities is further diminished.

Israel's Duty to Suppress UNRWA-Enabled Terrorism

Support for terrorism is contrary to the peaceful purposes of the UN, and states have positive obligations under international law to prevent and prosecute such actions. It is also a well-established international norm, reflected in multiple conventions and UN resolutions, that states and their international organizations are prohibited from providing assistance to terrorist organizations, and states are obligated to prevent and prosecute such acts - a norm incorporated in the domestic laws of many countries.[56]

Accordingly, Judge Sebutinde emphasized that Israel not only has the authority to restrict UN agency operations for security reasons but is also bound by a positive duty to prevent terrorism on its soil.[57]

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[53] Gaza Humanitarian Foundation (@GHFUpdates), 'Statement on the Safe Release of Hostages' (X, 14 October 2025) https://x.com/GHFUpdates/status/1977740608304476377.

[54] State of Israel, *Gaza Aid Data: International Coordination* (Web Page, 2025) https://gaza-aid-data.gov.il/main/international-coordination/ .

[55] Tovah Lazaroff, 'Israel's Ban on UN Agency for Palestinians Comes into Effect at Critical Point for Gaza' *NBC News* (online, 31 January 2025) https://www.nbcnews.com/news/world/israel-banning-unrwa-palestinian-territories-gaza-hamas-west-bank-rcna189554.

[56] For example, the International Convention for the Suppression of the Financing of Terrorism (1999) and UN Security Council Resolution 1373 (2001) following the 9/11 attacks.

[57] *Obligations of Israel* (Sebutinde Separate Opinion) (n 3) [71].

It is concerning that the ICJ failed to give sufficient weight to Israel's well-founded security concerns and, even more troubling, that it did not uphold the international norm requiring states to prevent terrorism within their borders. While acknowledging that UNRWA employees were proved to have participated in the October 7 attacks, the Court treated this as isolated, without considering the broader, systemic nature of the issue.

The Court concluded there was insufficient evidence to suggest that UNRWA's infiltration by terrorist actors was systemic enough to compromise its neutrality. In relation to nine UNRWA members who were dismissed due to their proved participation in the October 7 attacks, the Court stated, "This circumstance, however, is insufficient to support a conclusion that UNRWA, as a whole - with more than 17,000 employees in the Occupied Palestinian Territory and over 30,000 employees altogether - is not a neutral organization".[58]

The Court implied that Israel would need to substantiate with proof that a significant portion of UNRWA's employees were implicated in terrorist attacks for its neutrality to be compromised and to justify suspension of privileges and immunities. Yet, the fact that only a small number of individuals were implicated in the attacks does not preclude the broader institutional factors that enabled their conduct. As discussed below, concerns about UNRWA employees' glorification of and ties to terrorism are longstanding, extending beyond just October 7 and involving influential figures within the organization. Requiring Israel to demonstrate misconduct by a majority of thousands of individual employees was impractical and set an unreasonably high bar for holding organizations to account. It also reduced the question of UNRWA's neutrality to a nonsensically quantitative assessment.

UNRWA Systemic Support for Terrorism

Despite the Court's contention that URNWA employees' participation in terrorism does not represent a sufficiently systemic issue to warrant suspension of its privileges, UNRWA's ties to terrorism have been well-documented and remain unaddressed, despite years of external pressure.

Throughout the Gaza war, Hamas repeatedly used UNRWA infrastructure for terrorist purposes. In its written submission, Israel documented Hamas' establishment of command-and-control centres, weapon depots, and other military infrastructure within or adjacent to at least 32 UNRWA facilities, including schools, warehouses, compounds, and residential buildings. Terrorists from Hamas and Palestinian Islamic Jihad (PIJ) were

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.

[58] A*dvisory Opinion* (n 2) [118].

also found operating within UNRWA's Gaza City headquarters, and multiple attacks against Israeli forces originated from UNRWA premises.[59]

Israel's written submission also shed light on the alarming extent to which Hamas and Palestinian Islamic Jihad have infiltrated UNRWA, pointing to the systemic nature of the issue:

> UNRWA's infiltration is not by only a few "rotten apples", as UNRWA officials and others have implied. A comparison of lists of Hamas members obtained by Israel in the course of the current hostilities in Gaza with the list of 12,521 UNRWA employees in Gaza during the years 2023-2024 (provided to Israel by UNRWA in accordance with procedures established under the General Convention of 1946) revealed that at least 1,462 of UNRWA employees (nearly 12%) are members of Hamas, its military wing, the Palestinian Islamic Jihad organization, or other terrorist factions. Of these persons, 79% are employed as "educators" and 5 percent as "medical service providers". Others include "social workers", "construction or engineering specialists", and "administrative" staff." [60]

Similarly, UN Watch has documented how UNRWA's senior management employs individuals tied to terrorist organizations and the significant influence that these organizations exert on agency decisions and policies.[61] The Court's disregard of Israel and NGO evidence - in contrast to its unquestioning reliance on UNRWA reports - further underscores a one-sided, circular process and the Court's refusal to consider perspectives or alternatives to its own UN sources.

Israel has also noted the role of UNRWA's educational activities in "radicalizing generations of Palestinians by glorifying violence and terrorism, encouraging jihad, promoting antisemitism, and denying Israel's right to exist". The UN's own review of the situation in 2024 found that these issues represented "a grave violation of neutrality".[62] This concern has long been echoed internationally, including by the European Parliament, yet UNRWA has failed to take meaningful action, despite repeated requests to do so.[63] This underscores the endemic nature of the issue - one that cannot be resolved by merely removing a few individuals.

[59] *Statement of the State of Israel Pursuant to the Court's Order of 23 December 2024 Relating to the Advisory Proceedings Initiated by General Assembly Resolution 79/232*, UN Doc (23 December 2024) [31].

[60] Ibid [22].

[61] UN Watch, *'The Unholy Alliance: UNRWA, Hamas, and Islamic Jihad'* (7 January 2025) https://unwatch.org/the-unholy-alliance-unrwa-hamas-and-islamic-jihad/

[62] *Statement of the State of Israel* (n 57) [26].

[63] Ibid [80].

Recognizing this, US Secretary of State Marco Rubio recently referred to UNRWA as a "subsidiary" of the Hamas and confirmed that it will not be permitted to deliver aid to Gaza as part of the US-brokered peace plan to end the war.[64]

Clearly, UNRWA is acting antithetically to the objectives of the UN, having become a partial actor in the conflict that enables terrorism, and thus can no longer be afforded the immunities and privileges typically afforded to a humanitarian aid organisation. Furthermore, the international community is obligated to cease support for UNRWA, given the international legal obligation to prevent and prosecute entities that support terrorism.

UNRWA's Role in Inflaming Anti-Israel Conflict

UNRWA was created in 1949 to provide relief and facilitate the resettlement of Palestinian refugees displaced by the Arab–Israeli war. However, in the late 1950s, the agency abandoned resettlement as an objective, largely due to political pressure from Arab states seeking to escalate the refugee issue as leverage against Israel.[65] As documented by Einat Wolf and Adi Schwartz, UNRWA was seen a political tool by all anti-Israel parties involved in its development: "The West, for buying the silence of Arab world; the Arabs, for perpetuating the conflict with Israel; and the refugees, as a certificate guaranteeing their eventual return".[66]

Unlike other refugee agencies, UNWRA's aim is not to resolve a refugee issue. This is reflected in that Palestinians are the only refugee group governed under a distinct agency and criteria, while all other refugee groups have typically been managed through the UNHCR. This is noteworthy because UNRWA uses a unique and broader definition of what constitutes a refugee, which means that Palestinian descendants of the original refugees are considered refugees, even if they have settled in another state or are resident in territories considered by them to be Palestine. Essentially, a Palestinian refugee remains a refugee until living within a state of Palestine and possibly even after.[67] This means successive generations of Palestinians - even if they reside abroad and are unaffected by the conflict - are still considered refugees. In contrast, UNHCR considers

[64] Nava Freiberg and Jacob Magid, *'Rubio at Gaza Coordination HQ: Israel Has Met Its Ceasefire Commitments, Hamas Must Disarm'* (24 October 2025) *Times of Israel* https://www.timesofisrael.com/rubio-at-gaza-ceasefire-hq-israel-has-met-its-commitments-hamas-must-disarm/

[65] Robert Satloff, *'Replacing UNRWA: An Opportunity Trump Should Not Miss'* (15 January 2025) *The Washington Institute for Near East Policy* https://www.washingtoninstitute.org/policy-analysis/replacing-unrwa-opportunity-trump-should-not-miss

[66] Adi Schwartz and Einat Wilf, *The War of Return: How Western Indulgence of the Palestinian Dream Has Obstructed the Path to Peace* (All Points Books, 2020) 102.

[67] Shabtai Shavit, *'A Tale of Two Refugee Organizations: UNRWA vs UNHCR'* in *UNRWA: Past, Present and Future Scenarios* (International Association of Jewish Lawyers and Jurists, No 55, 2015) 34 https://ijl.org/wp-content/uploads/2018/09/Justice-55-Final.pdf

a person no longer a refugee once they are naturalized or absorbed into their host country.[68]

The result is that under UNRWA, the number of Palestinian refugees only continues to grow intergenerationally by natural increase, compounding the threat against Israel should the “right of return” ever be fully realized. In contrast, if UNHCR's criteria were applied to the Palestinian situation, the "right of return" diminish, removing a major obstacle to peace. By framing Palestinian refugees uniquely, UNRWA erected a significant barrier to peace.

UNRWA also contributes to the continuation of the conflict by fostering a culture of antisemitism and denial of Israel’s right to exist. UNRWA-operated schools and social services glorify terrorism, demonize Israel, and incite antisemitism. [69] This has played a significant role in ensuring Palestinian culture remains indoctrinated into Jew hatred, support for terrorism and denial Israel’s right to exist - key obstacles to any lasting peace resolution and alleviation of Palestinian suffering.

The Court failed to assess UNRWA’s longstanding role in prolonging the conflict through its perpetuation of the so-called Palestinian “right of return,” a key political obstacle to peace. Taken together, UNRWA’s links to terrorism, promotion of a culture of hatred, and perpetuation of the right of return against Israel demonstrate that it is acting to perpetuate conflict, contrary to the peace-building purposes of the UN. Under the principle of functional necessity, this conduct invalidates the legal basis for its privileges and immunities. Israel’s suspension of UNRWA operations is therefore lawful. Furthermore, disbandment of UNRWA altogether is necessary to achieve a lasting peace between Israel and her neighbours.

[68] Ibid.

[69] UN Watch, *‘UN Teachers’ Call to Murder Jews Reveals New Report’* (14 March 2023) https://unwatch.org/un-teachers-call-to-murder-jews-reveals-new-report/

Conclusion

Analysis of the ICJ Advisory Opinion of 22 October 2025 reveals that the majority judgment enabled politicization of judicial procedures. The ICJ had legal opportunity not to respond in full to, and even beyond, the General Assembly's request. The majority instead demonstrated the Court's fealty to UN political institutions - which comprise the majority of UN member states and the UN secretariat apparatus – upon which the judiciary are dependent. The majority on the bench subordinated the rule of international law in the UN to political necessity.

The Opinion implicitly endorsed an abuse of process, prejudiced two ongoing cases and relied on UN-supplied evidence to affirm UN integrity, creating a circular reasoning process. Stemming from this bias, the Court offered a flawed and incomplete assessment of Israel's obligations under humanitarian law, the law of occupation, and UNRWA's governing framework.

Moreover, the Court downplayed and disregarded UNRWA's longstanding systemic support for terrorism against Israel, including through its infiltration by Hamas and other terrorist actors, and by incitement of the Palestinian population. As shown in this analysis, UNRWA had ceased to act as a neutral humanitarian organization, forfeiting its right to immunities and privileges.

Instead of advancing peace, the Advisory Opinion shielded actors responsible for regional suffering – including UNRWA and Hamas – and incentivized lawfare. Rather than endorsing a return to the negotiating table in good faith, the majority judgment circumvented the existing Middle East sub-regional peace negotiation framework.

Furthermore, the majority judgment undermined some fundamental principles of international law, as noted by Judge Julia Sebutinde in her dissenting opinion.[70] It undermined principles of state sovereignty, state consent to international laws, and unbiased adjudication. However, it must be acknowledged that Judge Sebutinde's dissent adhered to the international rule of law.

Delivery of the ICJ Advisory Opinion of 22 October 2025 was a sad day for international law. Much work is needed to restore to the ICJ its legal integrity and apolitical judicial function. The bench might begin by curtailing its entertainment of duplicative and politically motivated requests for advisory opinions and its current enthusiasm for lawfare.

[70] *Obligations of Israel* (Sebutinde Separate Opinion) (n 3) [15].