

**The inviolability of the United Nations in armed conflicts:  
International Humanitarian Law and the ICJ's  
UNRWA Advisory Opinion**

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1. *Introduction*

The legal assessment of damage caused to United Nations premises and personnel during the conflict in Gaza has acquired increasing importance within the international community due to the unprecedented scale of attacks directed against the Organization. Although incidents involving premises and personnel belonging to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and other United Nations agencies have been reported since at least 1967,<sup>1</sup> the scale of military activity in Gaza following the attacks of 7 October 2023 has been accompanied by a marked increase in such incidents,<sup>2</sup> raising renewed concern regarding the protection afforded to United Nations operations in situations of armed conflict.

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<sup>1</sup> See, for instance, damage caused to UNRWA installations, including refugee shelters and schools, during major Israeli military operations in Gaza: Operation 'Cast Lead' (2008-2009) (UN Doc A/65/13 (2009) para 37 and UN Doc A/63/855-S/2009/250 (2009) para 1); Operation 'Pillar of Defense' (2012) (UN Doc A/68/13 (2013) para 35); Operation 'Protective Edge' (2014) (UN Doc A/70/13 (2015) para 57); and Operation 'Guardian of the Walls' (2021) (UN Doc A/77/13 (2022) para 64). Earlier incidents include damage to UNRWA facilities in the West Bank during the 1967 War (UN Doc A/67/13 (1967) paras 22-28), during the Second Intifada (2000-2005) (UN Doc A/59/13 (2004) para 181; UN Doc A/61/13 (2006) para 54), and during Operation 'Defensive Shield' (2002) (UN Doc A/58/13 (2003) para 171). Similar incidents occurred in Lebanon during Israeli military operations in 1978 (UN Doc A/33/13 (1978) para 105), 1982 (UN Doc A/38/420 (1983) paras 20-22), and 2006 (UN Doc A/62/13 (2007) paras 52-53).

<sup>2</sup> According to UNRWA, during the first two years of the hostilities more than 330 UNRWA personnel were killed in Gaza, and 'most of the Agency's premises have been damaged or destroyed'. UN Doc A/80/13 (2025) 4.



In particular, the question has arisen whether attacks against United Nations premises may constitute not only a breach of the Organization's inviolability, but also a violation of international humanitarian law (IHL) when they occur in situations of armed conflict. The legal characterisation of such attacks and the identification of the obligations involved have significant implications for State responsibility, as it determines the possible justifications and legal consequences of the conduct. It may also affect the potential criminal liability of individuals belonging to State or non-State armed forces.

A significant strand of scholarship, as well as operational military legal doctrine, analyses attacks against United Nations premises and personnel during armed conflicts primarily through the framework of IHL. This characterisation has led some authors to argue that the scope of the inviolability of international organizations during armed conflict is conditioned by the rules of IHL.<sup>3</sup> Some go further, suggesting that IHL operates as *lex specialis* in relation to the regime of privileges and immunities that ordinarily governs the inviolability of international organizations in peacetime.<sup>4</sup>

The issue was briefly addressed by the 2025 Advisory Opinion of the International Court of Justice (ICJ) on the *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* (hereinafter 'UNRWA Advisory Opinion').<sup>5</sup> Although some

<sup>3</sup> See, for instance, M Milanovic, 'A Follow-Up on the ICJ's UNRWA Advisory Opinion' EJIL: Talk! (27 October 2025) <[www.ejiltalk.org/a-follow-up-on-the-icjs-unrwa-advisory-opinion/](http://www.ejiltalk.org/a-follow-up-on-the-icjs-unrwa-advisory-opinion/)> and Y Shany, A Cohen, 'Evaluating the ICJ's UNRWA Advisory Opinion' Lawfare (4 December 2025) <[www.lawfaremedia.org/article/evaluating-the-icj-s-unrwa-advisory-opinion](http://www.lawfaremedia.org/article/evaluating-the-icj-s-unrwa-advisory-opinion)>.

<sup>4</sup> See, for instance, O Pomson, 'Israel-Hamas 2023 Symposium – Damage to UN Premises in Armed Conflict: IHL and Beyond' *Articles of War* (12 December 2023) <[www.lieber.westpoint.edu/damage-un-premises-armed-conflict-ihl-beyond/](http://www.lieber.westpoint.edu/damage-un-premises-armed-conflict-ihl-beyond/)>; L Blank, 'The Limits of Inviolability: UN Facilities During Armed Conflict' *Jurist* (22 January 2015) <[www.jurist.org/commentary/2015/01/laurie-blank-inviolability-conflict/](http://www.jurist.org/commentary/2015/01/laurie-blank-inviolability-conflict/)>; L Blank, 'The Limits of Inviolability: The Parameters for Protection of United Nations Facilities during Armed Conflict' (2017) 93 *Intl L Studies* 45.

<sup>5</sup> *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) 22 October 2025 <[www.icj-cij.org/sites/default/files/case-related/196/196-20251022-adv-01-00-en.pdf](http://www.icj-cij.org/sites/default/files/case-related/196/196-20251022-adv-01-00-en.pdf)> [hereinafter UNRWA Advisory Opinion].



commentators have regarded the Court's reasoning on this point as unsatisfactory or inconclusive, the Advisory Opinion nonetheless provides indications as to how international law approaches attacks carried out during armed conflict against United Nations premises, and in particular against UNRWA.

The present article examines whether international law requires that a breach of United Nations inviolability during armed conflict be characterised as a violation of IHL. To this end, it first analyses the legal nature of the rules governing the inviolability of United Nations premises and their applicability during armed conflict (Section 2). It then examines how these rules interact with the rules of IHL governing the protection of civilian persons and objects (Section 3). Section 4 analyses the Court's treatment of the issue in the 2025 Advisory Opinion. The final section offers some conclusions.

## 2. *Rules on UN inviolability and armed conflicts*

Breaches of United Nations inviolability during armed conflict can only be characterised *ipso facto* as IHL violations where there is a coincidence either in the conduct regulated by the respective rules or in the objects protected by them. Although United Nations premises and personnel may also benefit from protection under IHL, the legal regime governing the inviolability of international organizations is conceptually autonomous (Section 2.1). Furthermore, the regime of privileges and immunities of international organizations is not derogated from by IHL and continues to apply both in peacetime and during armed conflict (Section 2.2).

### 2.1. *The rules on inviolability of international organizations*

'Inviolability' may broadly be defined as the status of protection accorded by international law to certain objects or agents against any form of attack, infringement, or interference,<sup>6</sup> including both intentional and

<sup>6</sup> E Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations* (4th edn, OUP 2016) 110.



unintentional acts involving the use of force.<sup>7</sup> It constitutes one of the elements encompassed within the broader regime of privileges and immunities recognised in relation to both States and international organizations.

With regard to States, the concept primarily refers to the protection afforded to diplomatic<sup>8</sup> or consular<sup>9</sup> premises, archives, and agents. A comparable regime exists for international organizations, particularly the United Nations, whose privileges and immunities include the protection of their premises, property, assets, archives, papers, and documents,<sup>10</sup> as well as those of its specialised agencies,<sup>11</sup> from any form of external interference.

Although the regimes of privileges and immunities applicable to States and international organizations are similar in content,<sup>12</sup> their un-

<sup>7</sup> Although the concept is often discussed in relation to immunity from interference by law-enforcement authorities (see, for instance, JP Grant, JG Barker, *Parry & Grant Encyclopaedic Dictionary of International Law* (3rd edn, OUP 2009) 313; PC Szasz, 'International Organizations, Privileges and Immunities' in R Bernhardt (ed), *Encyclopedia of Public International Law vol 5* (Elsevier 1983) 156), it may also extend to acts committed by armed forces. On this broader understanding, see L Bartholomeusz, 'The Legal Framework for Protection of United Nations Humanitarian Premises during Armed Conflict' (2014) 18 Max Planck YB United Nations L 74.

<sup>8</sup> Vienna Convention on Diplomatic Relations (adopted 18 April 1961, entered into force 24 April 1964) 500 UNTS 95 arts 22 (premises), 24 (archives or documents), 27(2) (official correspondence), 27(5) (diplomatic courier), 29 (diplomatic agent), 30(1) (private residence of a diplomatic agent) and 30(2) (papers, correspondence and property of the diplomatic agent).

<sup>9</sup> Vienna Convention on Consular Relations (adopted 24 March 1964, entered into force 19 March 1967) 596 UNTS 261 arts 31 (consular premises), 33 (archives or documents), 35(2) (official correspondence), 35(5) (consular courier), 41 (consular officer) and 61 (archives or documents of honorary consular officer).

<sup>10</sup> Convention on the Privileges and Immunities of the United Nations (adopted 13 February 1946, entered into force 17 September 1946) 1 UNTS 15 art II, section 3 (premises, property and assets), art II, section 4 (archives and documents), art IV, section 11 (papers and documents of representatives of Members to its organs and conferences) and art IV, section 22 (papers and documents of experts on missions for the United Nations).

<sup>11</sup> Convention on the Privileges and Immunities of the Specialized Agencies (adopted 21 November 1947, entered into force 2 December 1948) 33 UNTS 261 art III, section 5 (premises of specialized agencies), art III, section 6 (archives and documents) and art V, section 13 (papers and documents of representatives of members at meetings convened by a specialised agency).

<sup>12</sup> CF Amerasinghe, *Principles of the Institutional Law of International Organizations* (2nd edn, CUP 2005) 316; AS Muller, *International Organizations and Their Host States*



derlying rationales and legal sources differ. In the case of States, privileges and immunities are traditionally grounded in the principle of sovereign equality and have largely customary origins.<sup>13</sup> By contrast, the privileges and immunities of international organizations are primarily intended to safeguard their institutional independence and are predominantly based on treaty law.<sup>14</sup> In the case of the United Nations, the principal sources of this regime are Article 105 of the Charter of the United Nations and the 1946 Convention on the Privileges and Immunities of the United Nations (1946 General Convention).<sup>15</sup>

The inviolability of premises, archives, and agents entails not only a negative obligation on States to refrain from interference with the organization's functions, but also a positive duty to take appropriate measures to protect them from external disturbance.<sup>16</sup>

## 2.2. *Applicability of UN inviolability during armed conflicts*

Like many rules of international law, the regime governing the inviolability of international organizations was primarily conceived to operate under peacetime conditions. However, this does not mean that such rules cease to apply in situations of armed conflict or that they cannot operate alongside the legal regimes applicable to such situations.

(Brill 1995) 185. See also L Díaz-González, Fourth Report of the Special Rapporteur on the Status, Privileges and Immunities of International Organizations, their Officials and Experts (1989) UN Doc A/CN.4/424, 164 (para 89).

<sup>13</sup> H Accioly, *Traité de droit international public I* (P Goulé tr, Sirey 1940) 233; G Morelli, *Nozioni di diritto internazionale* (7th edn, CEDAM 1967) 217.

<sup>14</sup> L Bartholomeusz, 'Inviolability of Premises (Article II Section 3 General Convention)' in A Reinisch (ed), *The Convention on the Privileges and Immunities of the United Nations and its Specialized Agencies* (OUP 2016) 125; AR Ziegler, 'Article 105' in B Simma et al (eds), *The Charter of the United Nations: A Commentary* (4th edn, OUP 2024) 2808.

<sup>15</sup> See also Bartholomeusz, 'Inviolability of Premises' (n 14) 126. On the possible customary character of United Nations privileges and immunities, see, inter alia, M Brandon, 'The Legal Status of the Premises of the United Nations' (1951) 28 *British YB Intl L* 104; G Arangio-Ruiz, *Rapporti contrattuali fra Stati e organizzazione internazionale* (Il Sirente 2019) 135; and Ziegler (n 14) 2810. On the impact of UNRWA's institutional status on its immunity, and the possibility of reviewing the qualification of United Nations bodies as an incidental matter for the purposes of recognising immunity, see R Fonseca Melo's article in this *Zoom-in*.

<sup>16</sup> CW Jenks, *International Immunities* (Stevens & Sons 1961) 47-48; Bartholomeusz, 'Inviolability of Premises' (n 14) 129.



From a formal perspective, although armed conflicts may have a disruptive effect on the application of international law, it is generally accepted that treaties do not automatically cease to operate during armed conflict, including those recognising the inviolability of international organizations. In its 2011 Draft Articles on the Effects of Armed Conflicts on Treaties, the International Law Commission affirmed that the existence of an armed conflict does not *ipso facto* terminate or suspend the operation of treaties.<sup>17</sup> The Commission ultimately decided not to include treaties concluded between international organizations and States within the scope of the Articles, citing the complexity of the issue.<sup>18</sup> Nevertheless, given their nature and subject matter, it is reasonable to conclude that the obligations of States arising under the Charter of the United Nations and the 1946 General Convention on the Privileges and Immunities of the United Nations continue to apply during armed conflict.

From a material perspective, the continued applicability of the inviolability regime of international organizations during armed conflict can be explained by its underlying purpose of protecting the institutional independence necessary for the organization to perform its functions. This rationale is not inherently affected by the existence of armed conflict. That consideration is particularly significant in the case of the United Nations, whose central purposes include the maintenance of international peace and security and the peaceful settlement of disputes between States.<sup>19</sup> The United Nations has consistently maintained that its privileges and immunities remain fully applicable in situations of armed conflict.<sup>20</sup>

The continuing application of this regime during armed conflict may also be supported by analogy with the protection afforded to diplomatic and consular missions. It is well established that the inviolability of diplomatic and consular premises continues to apply during armed conflict,

<sup>17</sup> ILC, 'Report of the International Law Commission on the Work of its 63th Session (23 April-3 June and 4 July-12 August 2011)' UN Doc A/66/10 (2011) 183 (art 3). [hereinafter 2011 Draft Articles on the Effects of Armed Conflicts on Treaties].

<sup>18</sup> *ibid* 180 (para 4).

<sup>19</sup> Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS 16 art 1(1).

<sup>20</sup> See, for instance, UNGA Res 64/89 (19 January 2010) preambular paras 6 and 20, and operative para 15; UNGA Res 69/88 (16 December 2014) preambular paras 6 and 28 and operative para 17; and UNGA Res 78/73 (11 December 2023) preambular paras 22 and 42.



as reflected in the Vienna Conventions on Diplomatic Relations<sup>21</sup> and Consular Relations<sup>22</sup> and reaffirmed by the ICJ in the *Tebran Hostages* and the *Armed Activities* cases.<sup>23</sup>

The continued applicability of the rules governing the inviolability of international organizations during armed conflict raises the question of their relationship with the IHL rules, which constitute the primary legal framework governing the conduct of hostilities. As discussed in the following section, this relationship must be assessed in light of the respective purposes and fields of application of the two regimes.

### *3. The articulation between the inviolability of international organizations and international humanitarian law*

It is widely recognised that the rules of *jus in bello* have a special relationship with other regimes of international law that normally operate in peacetime. IHL frequently operates as *lex specialis* in relation to other legal regimes, most clearly in its interaction with international human rights law.<sup>24</sup> Similar relationships have also been observed in other fields, such as between the law of naval warfare and the law of the sea, or between the law of air warfare and general air law.

The continued applicability of a legal regime during armed conflict does not, however, imply normative convergence with the rules governing the conduct of hostilities.<sup>25</sup> This is particularly evident in the relationship between the rules governing the inviolability of international organizations and the rules of *jus in bello*, especially IHL. Although these regimes remain

<sup>21</sup> 1961 Vienna Convention on Diplomatic Relations (n 8) arts 44-45.

<sup>22</sup> 1963 Vienna Convention on Consular Relations (n 9) arts 26-27.

<sup>23</sup> *United States Diplomatic and Consular Staff in Tebran (United States v Iran)* Judgment [1980] ICJ Rep 3, 40 (para 86); *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* [2005] ICJ Rep 168, 277 (para 335). See also the ILC's 2011 Draft Articles on the Effects of Armed Conflicts on Treaties (n 17) 188 (art 7) and 198 (Annex).

<sup>24</sup> *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 238, 240 (para 25).

<sup>25</sup> As explained by the ICJ in the case of the *Wall*, even in situations of armed conflict, some matters remain the exclusive domain of international human rights law. See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136, 178 (para 106).



conceptually autonomous (Section 3.1), their relationship is better understood not in terms of displacement through *lex specialis*, but rather as one of parallel and potentially cumulative protection (Section 3.2).

### 3.1. *Autonomy of the two regimes*

The view that the rules governing the inviolability of international organizations are derogated from or conditioned by the rules of *jus in bello* appears to rest on an assumption that the two regimes regulate essentially the same conduct. Under this approach, IHL would affect the application of the inviolability regime whenever both sets of rules address the same factual situation arising in the context of armed conflict.

Most authors who support this view assume that the protection afforded by the inviolability of international organizations is equivalent to the protection granted by IHL to protected persons and objects. This premise may appear plausible, since – subject to certain exceptions, particularly in relation to peacekeeping operations<sup>26</sup> – United Nations premises and personnel generally qualify as civilian objects and civilians within the meaning of IHL.

On this basis, some authors argue that the regime of inviolability of international organizations must necessarily be subject to the rules governing targeting under IHL.<sup>27</sup> Since the law of targeting does not recognise absolute protections for persons or objects, it is argued that inviolability must similarly be interpreted in a flexible manner that takes into account the operational realities of armed conflict.

<sup>26</sup> See, on this question, M Arcari, ‘Attacks against Peacekeepers: An Overview of Recent Trends and Underlying Legal Issues’ in I Caracciolo, U Montuoro (eds), *New Models of Peacekeeping Security and Protection of Human Rights* (Giappichelli 2018) 183-196.

<sup>27</sup> See, for example, Pomson (n 4), arguing that ‘the IHL rules governing damage to objects appear to constitute *lex specialis*, and thus supersede the application of Section 3 of the CPIUN’. See also Blank, ‘The Limits of Inviolability’ (n 4), observing that ‘[t]he idea of absolute immunity [of international organizations] runs counter to the framework of the law of war, which balances protection for certain sites with the legitimate needs of military operations’. Similarly, Shany and Cohen (n 3) consider it ‘difficult to see how the privileges and immunities regimes can be operationalized in ways that are both realistic (that is, compatible with military necessities) and meaningfully add on to the already available protections for civilian objects and, in particular, for sensitive objects like schools and hospitals that exist under IHL’.



However, this reasoning is based on a false equivalence between the two regimes. First, the underlying rationale of the two sets of rules differs. The rules governing the inviolability of international organizations are primarily intended to ensure the institutional independence and effective functioning of the organization. By contrast, IHL seeks to limit the effects of armed conflict and protect vulnerable persons and humanitarian activities during hostilities.

Second, the subject matter regulated by the two regimes is different. The rules on inviolability regulate interference with the institutional sphere of the organization, including its premises, archives, and personnel. By contrast, IHL regulates the conduct of hostilities and the protection of persons and objects during armed conflict, including civilians, the wounded and sick, medical personnel, humanitarian relief personnel, and protected facilities such as hospitals.

Third, the scope of application of the two regimes differs. The protection afforded by the inviolability of an international organization is triggered primarily by the institutional status of the premises or persons concerned and generally binds the States under whose jurisdiction the organization operates. By contrast, IHL is triggered by the existence of an international or non-international armed conflict and binds both State and non-State actors participating in hostilities.

### 3.2. *The concurrent application of the two regimes*

Although the regimes governing the inviolability of international organizations and IHL are autonomous and pursue different objectives, they may apply concurrently to the same factual situations. It is not uncommon in international law for different rules to attach distinct legal consequences to the same facts while maintaining their own sphere of application.<sup>28</sup>

<sup>28</sup> As noted by Anzilotti in his separate opinion in the *Electricity Company of Sofia and Bulgaria* case, 'dans le même ordre juridique, il ne peut y avoir à la fois deux règles visant les mêmes faits et reliant à ces faits des conséquences contradictoires. (...) Dans des cas de ce genre, ou bien la contradiction n'est qu'apparente et les deux règles sont en réalité coordonnées de manière que chacune a son propre champ d'application et n'empiète pas sur le champ d'application de l'autre, ou bien l'une prime l'autre, savoir est applicable à l'exclusion de l'autre'. PCIJ, *Electricity Company of Sofia and Bulgaria*, A/B 77, Judgment of 4 April 1939 (Preliminary Objection) Separate Opinion by M. Anzilotti, 90.



This may occur where the same object is protected by different rules for different reasons. United Nations premises provide a clear example. Such premises benefit from protection under the regime of inviolability because of their status as premises of the Organization, which must remain free from external interference unless authorised by the Organization itself.<sup>29</sup> At the same time, United Nations premises and property generally fall within the category of civilian objects protected under Article 52 of the 1977 Additional Protocol I to the Geneva Conventions. Under that provision, objects may only be considered military objectives if their destruction, capture, or neutralisation offers a definite military advantage.<sup>30</sup> When United Nations premises do not satisfy this criterion, they remain protected under IHL as civilian objects.

In certain circumstances, the activities carried out by the organization may also influence its status under IHL. In particular, the humanitarian work carried out by UNRWA and other United Nations agencies in Gaza may bring them within the protection afforded by the Fourth Geneva Convention of 1949 to ‘impartial humanitarian organizations’.<sup>31</sup> Similarly, United Nations staff members, as well as civilians present within United Nations premises, may fall within the category of protected persons under Article 4 of the Convention.<sup>32</sup>

In addition to these traditional IHL rules, the 1994 Convention on the Safety of United Nations and Associated Personnel establishes specific obligations concerning the protection of United Nations personnel in operations undertaken for the purpose of maintaining or restoring international peace and security. These obligations include the prohibition of attacks against the United Nations and associated personnel, as well as against their equipment and premises.<sup>33</sup> However, Israel is not a party to the 1994 Convention, and the Convention does not appear to apply to

<sup>29</sup> Bartholomeusz, ‘Inviolability of Premises’ (n 14) 130.

<sup>30</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 art 52(2).

<sup>31</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 arts 3, 10 and 59. See also *UNRWA Advisory Opinion* (n 5) paras 95 and 120.

<sup>32</sup> Fourth Geneva Convention of 1949 (n 31) art 4.

<sup>33</sup> Convention on the Safety of United Nations and Associated Personnel (adopted 9 December 1994, entered into force 15 January 1999) 2051 UNTS 363 art 7.



most United Nations agencies and bodies providing assistance in the Occupied Palestinian Territory. Its scope of application is limited to ‘United Nations operations’, defined as operations established and conducted by the United Nations for the purpose of maintaining or restoring international peace and security, which generally excludes its application to agencies such as UNRWA.<sup>34</sup>

Because two distinct legal regimes apply to United Nations premises and personnel during armed conflict, attacks directed against them may violate both regimes *simultaneously*, without merging them into a single legal framework. Such conduct may therefore constitute both a breach of the inviolability of the United Nations and a violation of IHL, albeit for different legal reasons.

The destruction of schools operated by UNRWA may illustrate such a situation. Such an act may constitute a violation of the inviolability of the United Nations, insofar as schools operated by UNRWA are considered to be premises of the Organization enjoying privileges and immunities.<sup>35</sup> At the same time, it may also constitute a violation of IHL where the attack is carried out in the absence of evidence demonstrating that

<sup>34</sup> *ibid* art 1(c)(i). Art 1(c)(ii) further allows the Convention to apply ‘[w]here the Security Council or the General Assembly has declared, for the purposes of this Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation’, although no such declaration appears to have been made to date. The 2005 Optional Protocol expands the Convention’s scope to include operations delivering humanitarian, political, or development assistance in peacebuilding contexts, as well as emergency humanitarian assistance. Nevertheless, the Protocol does not extend to permanent United Nations offices or agencies. Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel (adopted 8 December 2005, entered into force 19 August 2010) 2689 UNTS 59 art II(1) and (2).

<sup>35</sup> As observed by the ICJ, art II, section 3, of the 1946 General Convention applies to such premises, as ‘what is pertinent [to establish whether the schools, health clinics and the hospital operated by UNRWA in the Occupied Palestinian Territory fall within the category of United Nations premises] is whether the functions and services provided by these facilities form part of the mandate of UNRWA’. *UNRWA Advisory Opinion* (n 5) para 194. The United Nations consistently considers the destruction of schools or other premises administered by UNRWA or other agencies or bodies as violations of their inviolability. See, for instance, UN Doc A/7213 (1968) para 7; UN Doc A/65/13 (2009) para 37; UN Doc A/63/855-S/2009/250 (2009) para 1; UN Doc A/68/13 (2013) para 35; UN Doc A/70/13 (2015) para 59; UN Doc A/74/13 (2018) para 51; UN Doc A/75/13 (2020) para 56; UN Doc A/77/13 (2021) para 59; and UN Doc A/77/13 (2022) para 64. See also UNGA Res 80/77 (5 December 2025) preambular para 18, and Res ES-10/25 (11 December 2024) preambular para 12.



the premises were being used for military purposes, thereby failing to distinguish between civilian objects and military objectives.<sup>36</sup>

At the same time, it is possible for conduct affecting United Nations premises or personnel to breach only one of the two regimes. Certain acts directed against United Nations premises may violate the rules on inviolability even where they are not prohibited under IHL.<sup>37</sup>

One possible example would be an attack directed against United Nations premises allegedly used by an armed group. Under IHL, civilian medical units, schools or other civilian objects that make an effective contribution to military action may lose their protected status and become lawful military objectives.<sup>38</sup> Nevertheless, even where credible evidence exists that such premises are also being used for military purposes, interference with them may still raise issues under the rules governing the inviolability of United Nations premises.<sup>39</sup>

Similarly, incidental or unintentional damage to United Nations premises in the course of broader military operations may not necessarily constitute a violation of IHL where the requirements of distinction, proportionality, and precautions in attack are respected.<sup>40</sup> However, such

<sup>36</sup> Protocol I (n 30) arts 48, 52(2), 52(3) and 57(2)(a)(i). See also ICRC, 'Customary IHL Study' (2005) rules 7, 8, 10 and 16 <<https://ihl-databases.icrc.org/customary-ihl/eng/>>.

<sup>37</sup> As observed by Bartholomeusz, '[t]he inviolability of un premises under UN law provides special protection to un humanitarian premises and is additional to protection of such premises under IHL and international criminal law. It is not necessary to conduct an IHL analysis to determine a breach of un inviolability'. Bartholomeusz, 'The Legal Framework for Protection of UN Humanitarian Premises during Armed Conflict' (n 7) 107.

<sup>38</sup> Protocol I (n 30) arts 13(1) and 52(3). Customary IHL Study (n 36) rules 7, 8 and 10.

<sup>39</sup> Art II, section 3 of the 1946 General Convention (n 10), which establishes the inviolability of United Nations premises, does not provide for the loss of such inviolability as a consequence of their use by armed groups. However, the complete and sustained control of a facility by an armed group could call into question its qualification as United Nations premises. In this regard, the ICJ observed that 'it is for the United Nations to determine whether a particular facility remains the premises of the United Nations', and that 'such a determination by the United Nations creates a presumption that may only be set aside for the most compelling reasons and is to be given the greatest weight by States'. *UNRWA Advisory Opinion* (n 5) para 196.

<sup>40</sup> See Protocol I (n 30) arts 51(5)(b), 52(2) and 57(2); Customary IHL Study (n 36) rules 7, 14, 15 and 18.



damage may still constitute a breach of the inviolability of the Organization.<sup>41</sup>

Although the two regimes may apply concurrently in certain situations, the characterisation of the breach and the legal consequences flowing from it are not identical. In particular, the circumstances that may preclude the wrongfulness of a breach of the inviolability regime, such as consent or other circumstances recognised under the law of State responsibility, do not necessarily operate in the same way within the framework of IHL.

The coexistence of these two legal assessments demonstrates that, even where the same premises or persons benefit from protection under both regimes, they do not form a single unified legal framework. As observed by Miguel de Serpa Soares, former United Nations Under-Secretary-General for Legal Affairs,

‘United Nations premises are typically civilian objects and, as such, enjoy protected status in times of armed conflict. This protected status as civilian objects may, however, be lost under certain circumstances. However, even when losing protection within the framework of international humanitarian law, United Nations premises would still remain protected under the relevant provisions on inviolability enshrined in the Charter and in the Convention on Privileges and Immunities. We could only reach a different conclusion if it were established that the latter provisions, in so far as they provide for the inviolability of the Organization’s premises, are displaced or suspended by the mere fact that an armed conflict has triggered the application of international humanitarian law. However, no practice supporting, or even suggesting, any such displacement or suspension has been identified’.<sup>42</sup>

<sup>41</sup> Art II, section 3 of the 1946 General Convention (n 10) prohibits ‘any other form of interference’, which may be interpreted as covering damage to United Nations premises even where such damage is not deliberately directed against them. United Nations practice supports this interpretation. On several occasions, incidental or collateral damage to UN premises has been treated as a violation of their inviolability. See, for example, UN Doc A/63/855-S/2009/250 (2009) 9-10 (paras 29-39) and 16-17 (paras 68-76); UN Doc A/68/13 (2013) para 35; UN Doc A/70/13 (2015) para 57; UN Doc A/72/13/Rev.1 (2017) para 52; and UN Doc A/79/13 (2024) para 86. See also Bartholomeusz, ‘Inviolability of Premises’ (n 14) 131-135.

<sup>42</sup> MS Soares, ‘UN Legal Counsel statement at 41st Annual Seminar for Diplomats on International Humanitarian Law jointly organized by the ICRC and NYU School of Law’ (20 March 2024) 9.



#### 4. *The ICJ's UNRWA advisory opinion*

The application of United Nations privileges and immunities during armed conflict, and the extent of their continued applicability in such circumstances, constituted one of the central issues underlying the request for an advisory opinion submitted to the ICJ by the United Nations General Assembly on 19 December 2024.<sup>43</sup> The UNGA Resolution requesting the advisory opinion also acknowledged this relation, expressing that the ‘presence [of the United Nations], facilitation [of its operation] and respect for privileges and immunities are closely related’.<sup>44</sup>

In its Advisory Opinion, the Court affirmed that the rules governing the inviolability of the United Nations, and of UNRWA in particular, continue to apply in situations of armed conflict. In paragraph 186, the Court observed that Article 105 of the United Nations Charter and the 1946 General Convention ‘do not cease to operate in the context of armed conflict’. In support of this conclusion, the Court emphasised that the continued application of these rules during armed conflict is ‘consistent with the purposes and functions entrusted to the United Nations, which often carries out important missions in areas of tension and conflict’.<sup>45</sup> This raises the question of whether the same conclusion would apply to other international organizations (for instance, UN specialised agencies such as FAO or WHO) whose primary functions are not typically associated with, or intrinsically linked to, the maintenance or re-establishment of peace in areas of tension or conflict, and whether such organizations would, as a consequence, still be entitled to immunity in wartime.

In any event, the reference to the ‘purposes and functions entrusted to the United Nations’ suggests that the Court relied on a functional criterion in determining the applicability of the Organization’s privileges and immunities during armed conflict, rather than on the civilian character of the property concerned or on the humanitarian nature of the activities performed by the organization.

The Court also referred to its earlier *Reparation for Injuries Suffered in the Service of the United Nations* Advisory Opinion (1949), in which it

<sup>43</sup> UNGA Res 79/232 (19 December 2024) preambular para 3.

<sup>44</sup> *ibid* preambular para 21.

<sup>45</sup> *UNRWA Advisory Opinion* (n 5) para 186.



held that the Organization's capacity to exercise functional protection of its agents 'arises by necessary intendment out of the Charter'.<sup>46</sup> Although the exercise of functional protection differs from the recognition of privileges and immunities granted to the Organization, the Court appears to reinforce the idea that, as with functional protection, the recognition of privileges and immunities connected with the 'nature of the missions of United Nations agents' derives from an interpretation of the functions entrusted to the Organization by the Charter.

The emphasis placed by the Court on this functional rationale also appears to support the continued applicability of privileges and immunities in relation to UNRWA. This aspect of the reasoning is particularly relevant in light of one of the arguments advanced by Israel in the proceedings, according to which the privileges and immunities of UNRWA were based primarily on a 'provisional agreement' concluded with the agency in 1967, which 'either party could abrogate at will'.<sup>47</sup> According to this argument, the existence of UNRWA's privileges and immunities would depend on their continued recognition by Israel. The Court's reliance on the functional basis of the regime suggests that the applicability of these protections does not depend solely on such bilateral arrangements.

The functional rationale underlying the inviolability regime is reaffirmed in paragraph 196 of the Advisory Opinion, where the Court stated that:

'The obligation to respect the inviolability of United Nations premises and the obligation not to interfere with United Nations property and assets must also be upheld in the context of armed conflict, as such inviolability and non-interference are essential to safeguarding the independent and effective performance of the functions of the Organization under all circumstances. (...) The obligation to respect the inviolability of those facilities qualifying as United Nations premises must be observed by all parties to the hostilities, along with the obligation not to interfere with the property and assets of the Organization (...)'.<sup>48</sup>

<sup>46</sup> *Reparation for Injuries suffered in the Service of the United Nations* (Advisory Opinion) [1949] ICJ Rep 174, 184.

<sup>47</sup> *UNRWA Advisory Opinion* (n 5) Written Statement of the State of Israel (28 February 2025) 3-4 (paras 10-11).

<sup>48</sup> *UNRWA Advisory Opinion* (n 5) para 196.



Although the Advisory Opinion recognised the continued applicability of the regime governing the inviolability of the United Nations alongside the operation of IHL, it provides limited clarification as to the precise relationship between the two regimes. In the same paragraph, however, the Court also recognised that the context of armed conflict may create practical difficulties in the application of the regime of privileges and immunities. It observed that:

‘[T]he context of an armed conflict raises challenges, especially in the situation of potential loss of control by the United Nations over certain of its premises. However, it is for the United Nations to determine whether a particular facility remains the premises of the United Nations. In the view of the Court, such a determination by the United Nations creates a presumption that may only be set aside for the most compelling reasons and is to be given the greatest weight by States (...). Damage to or destruction of the premises and other property and assets of the United Nations as a result of military activities may amount to a violation of obligations under Article II, Section 3, of the General Convention’.<sup>49</sup>

As noted by one commentator, the final sentence of this passage could potentially be interpreted as implicitly recognising that the inviolability of United Nations premises may be limited by the operation of IHL.<sup>50</sup> Under this interpretation, the Court’s statement that damage to or destruction of United Nations premises resulting from military activities ‘may amount’ to a violation of Article II, Section 3, of the General Convention could be understood as implying that such damage does not necessarily constitute a violation in every circumstance. On this reading, the Court would be recognising an implicit exception to the rule of inviolability based on considerations of military necessity.

A more convincing interpretation, however, is that the Court merely acknowledged that damage to or destruction of United Nations premises and property does not automatically constitute a violation of the rule of inviolability in every circumstance.<sup>51</sup> This conclusion does not necessarily

<sup>49</sup> *ibid.*

<sup>50</sup> See, for instance, Milanovic (n 3).

<sup>51</sup> This understanding goes against the traditional interpretation of art II, section 3, of the 1946 General Convention (n 10) as establishing an ‘absolute inviolability’, an interpretation shared by parts of the doctrine and by the United Nations itself. See, for instance, E Bjorge, ‘The General Assembly Must Protect UNRWA by Requesting a



follow from the requirements of military necessity under IHL, but may instead result from the application of certain exceptional justifications recognised in relation to the inviolability regime itself,<sup>52</sup> such as consent or waiver, which are also known in the context of diplomatic law.<sup>53</sup>

Rather than subordinating the regime governing the inviolability of United Nations premises to IHL, the reasoning of the Court appears to support the continued autonomy of the two regimes. This conclusion may be inferred not only from what the Court stated explicitly, but also from what it chose not to address.

In particular, the Court refrained from qualifying attacks against United Nations premises in terms of IHL. Such conduct was discussed primarily in relation to the obligations arising under the 1946 General Convention.<sup>54</sup> Similarly, the principle of proportionality, which plays a central role in the law governing targeting under IHL, is not mentioned

Binding Advisory Opinion' EJIL: Talk! (29 October 2024) <[www.ejiltalk.org/the-general-assembly-must-protect-unrwa-from-being-dismantled/](http://www.ejiltalk.org/the-general-assembly-must-protect-unrwa-from-being-dismantled/)> and Milanovic (n 3). The United Nations maintains that the '[t]he inviolability of premises, property and assets is absolute and mandatory in character, meaning that it is not qualified and it cannot be waived by the Secretary-General. There are no stated qualifications to, or limitations on, inviolability in the General Convention, and other relevant agreements; there is no reference to inviolability being merely "functional" in nature, as is the case for certain other provisions in the General Convention'. *UNRWA Advisory Opinion* (n 5) Written Statement of the Secretary General of the United Nations (27 February 2025) 78 (para 207). See also 'Legal Opinion concerning reservations attached by government of Chile to its instrument of ratification of statutes of ICJEG' (1988) UN Jurid Ybk 347 (para 9).

<sup>52</sup> See, for instance, Brandon (n 15) 104. As observed by Soares (n 42) 11: 'An attack hitting and damaging United Nations premises would thus be a breach of the Charter and the General Convention even if it complied with applicable rules of international humanitarian law, unless there are any circumstances that would otherwise preclude the wrongfulness of such an act under the law of international responsibility'.

<sup>53</sup> Sandström, ILC's Special Rapporteur on Diplomatic Intercourse and Immunities of States, considered that the inviolability of the premises of the mission could be justified by the consent of the head of the mission, 'en cas d'extreme urgence, afin d'eliminer des risques graves et imminents pour la vie humaine, les biens ou la santé de la population ou pour sauvegarder la sécurité de l'État'. AEF Sandström, Report of the Special Rapporteur (1955) UN Doc A/CN.4/91, 11 (Draft Art 12). Ultimately, only the consent of the head of mission was reflected in art 22 of the 1961 Vienna Convention on Diplomatic Relations (n 8). On the application of circumstances precluding wrongfulness in relation to breaches of United Nations inviolability, see Bartholomeusz, 'The Legal Framework for Protection of UN Humanitarian Premises during Armed Conflict' (n 7) 97-106.

<sup>54</sup> *UNRWA Advisory Opinion* (n 5) para 196.



in this part of the Advisory Opinion.<sup>55</sup> If the inviolability of United Nations premises were treated as equivalent to the protection afforded to humanitarian objects under IHL, the principle of proportionality would likely have been relevant to the Court's analysis.

One significant implication of the Court's approach is that the principles of military necessity and other limitations recognised under IHL cannot automatically be transposed to justify interferences with the inviolability of United Nations premises. While IHL allows certain civilian objects to lose their protection when used for military purposes, this does not necessarily resolve the legal questions arising under the separate regime governing the inviolability of the United Nations.

IHL, for example, permits a State to treat as a military objective a civilian object that makes an effective contribution to military action. In practical terms, this could affect the legal assessment of attacks directed against facilities such as UNRWA schools or compounds where credible evidence indicates that they are being used for military purposes. However, the fact that such conduct may be assessed within the framework of IHL does not automatically determine its lawfulness under the separate regime governing the inviolability of the United Nations.

## 5. *Conclusions*

The extensive damage caused to United Nations premises during the hostilities in Gaza has brought renewed attention to the question of how the inviolability of international organizations operates in situations of armed conflict and how this regime interacts with IHL, which had long remained relatively marginal in legal scholarship. The large number of civilians seeking refuge in UNRWA facilities during the conflict, combined with repeated allegations that such premises had been used for military purposes, placed the protection offered by the law of privileges and immunities alongside that afforded by IHL.<sup>56</sup> This article has argued that,

<sup>55</sup> The principle is only referred to in para 84 of the Advisory Opinion, dealing with the obligations of Israel as an occupying Power in relation to the presence and activities of the United Nations, other international organizations and third States.

<sup>56</sup> According to the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, at least 1 million people have been displaced in UNRWA installations since 7 October 2023, and at least



although United Nations premises and personnel may benefit from protection under both regimes, the rules governing the inviolability of international organizations remain conceptually and legally distinct from IHL and continue to apply during armed conflict.

The 2025 Advisory Opinion of the ICJ represents the first occasion on which the Court addressed this issue directly. Although the Advisory Opinion leaves several aspects of the relationship between the two regimes unresolved, its reasoning strongly supports the continued applicability of the inviolability regime during armed conflict. By grounding the privileges and immunities of the United Nations in the functional necessities of the Organization under Article 105 of the Charter and the 1946 General Convention, the Court confirms that these rules do not cease to operate once the law of armed conflict becomes applicable. As the Court observed, the continued applicability of the inviolability regime during armed conflict flows from its underlying purpose of safeguarding the institutional independence necessary for the Organization to perform its functions. At the same time, the Court appears to acknowledge that inviolability is not an absolute rule, leaving open the possibility that exceptional circumstances may affect its application.

The analysis developed in this article suggests that the relationship between the inviolability of international organizations and IHL is best understood not as one of displacement through *lex specialis*, but rather as one of concurrent application. The two regimes pursue different objectives, regulate different types of conduct, and are triggered by different legal conditions. As a result, attacks against United Nations premises may give rise simultaneously to violations of both regimes and may engage separate and cumulative sources of international responsibility, without merging them into a single framework of protection. The coexistence of these regimes therefore expands, rather than reduces, the potential bases for accountability for attacks affecting United Nations personnel and property.

Some commentators have expressed concern that maintaining the autonomy of the inviolability regime may create a risk of abuse where United Nations premises are allegedly used by armed groups for military

742 persons sheltering in its facilities had been killed and at least 2,406 injured. UN Doc A/HRC/59/26 (2025) 3 (para 8).

purposes.<sup>57</sup> While such situations undoubtedly raise complex operational and legal questions, the possibility of misuse<sup>58</sup> does not in itself justify subordinating the regime of privileges and immunities to the law of armed conflict. International law already provides mechanisms, both within the law governing international organizations and under the general law of State responsibility, to address exceptional circumstances involving the misuse of protected premises. For instance, the United Nations may recognise the misuse of particular facilities and waive inviolability in specific circumstances, without derogating from the regime as a whole. The debate surrounding recent attacks against United Nations facilities illustrates not only the practical challenges of applying these regimes in contemporary conflicts, but also the continuing relevance of maintaining distinct legal protections for the institutional independence of international organizations.<sup>59</sup>

<sup>57</sup> See, for instance, Milanovic (n 3) and Shany and Cohen (n 3).

<sup>58</sup> See the Final Report of the Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality (20 April 2024, 26, 52-53 available at <[www.un.org/unispal/document/report-independent-review-group-on-unrwa-22april2024/](http://www.un.org/unispal/document/report-independent-review-group-on-unrwa-22april2024/)>). The Report notes that instances of misuse of UNRWA installations by armed actors have occurred, including reported incursions into facilities and the discovery of weapons or tunnels near installations. However, the number of documented incidents remains limited, and UNRWA has established monitoring and inspection mechanisms to prevent and address such breaches. On measures adopted by the United Nations to prevent violations of its inviolability by non-State actors, see Bartholomeusz, 'The Legal Framework for Protection of UN Humanitarian Premises during Armed Conflict' (n 7) 88. On the alleged abuse of immunities by UNRWA and the availability of dispute resolution mechanisms, see E Castro's article in this Zoom-in.

<sup>59</sup> As observed by Jenks (n 16) 31: 'while the importance of not affording any kind of cover for subversive activities is a consideration to be kept constantly in mind by those responsible for the administration of international immunities, the degree of danger which exists in the matter is not so great as to be a major ground for hesitation in granting appropriate immunities to responsibly administered organizations'.



**Abstract:** Attacks against United Nations premises and personnel during the hostilities in Gaza since 2023 have renewed attention to the legal protection afforded to the Organization in situations of armed conflict. These incidents raise the question whether damage to United Nations facilities constitutes merely a breach of the Organization's inviolability or whether it must also be characterised as a violation of international humanitarian law. This article examines the relationship between the regime governing the inviolability of the United Nations and the rules of international humanitarian law, with particular attention to the 2025 advisory opinion of the International Court of Justice on the obligations of Israel in relation to the presence and activities of the United Nations and other international organizations in the Occupied Palestinian Territory. The article argues that, although United Nations premises and personnel may benefit from protection under both regimes, the rules governing the inviolability of international organizations remain conceptually and legally autonomous from international humanitarian law and continue to apply during armed conflict. Rather than being displaced through the application of *lex specialis* principle, the two regimes operate concurrently and may provide cumulative protection. The article further contends that the reasoning of the Court in the advisory opinion supports this interpretation by grounding the privileges and immunities of the United Nations in the functional necessities of the Organization under the Charter and the 1946 Convention on the Privileges and Immunities of the United Nations. Consequently, attacks against United Nations premises may engage separate and cumulative sources of international responsibility under both regimes without merging them into a single legal framework.

**Keywords:** United Nations – inviolability – international humanitarian law – privileges and immunities – international organizations – International Court of Justice – UNRWA Advisory Opinion

