

INTERNATIONAL COURT OF JUSTICE

Legal Consequences arising from the Policies and Practices of Israel in the  
Occupied Palestinian Territory, including East Jerusalem

(Request for an Advisory Opinion)

**WRITTEN STATEMENT OF THE REPUBLIC OF CHILE**

24 July 2023



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### WRITTEN STATEMENT OF THE REPUBLIC OF CHILE

1. On 30 December 2022, the United Nations General Assembly adopted, at the 56<sup>th</sup> meeting of its Seventy-seventh Session, resolution 77/247, by which it decided, pursuant to Article 65 of the Statute of the Court, to request the International Court of Justice to render an advisory opinion. In accordance with paragraph 18 of Resolution 77/247, the question submitted to the Court reads as follows:

Considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, and international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004:

- (a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character, and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?
  - (b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?"
2. By Order of 3 February 2023, the Court decided that the United Nations and its Member States, as well as the Observer State of Palestine, are considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion. For this purpose, it fixed 25 July 2023 as the time limit within which written statements on the questions may be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute.
3. The purpose of this written statement is to put forward the views of the Republic of Chile regarding the jurisdiction of the Court and the admissibility of the request for an advisory opinion made by the General Assembly of the United Nations. It is also the purpose of

Chile to provide its views about the substantive issues involved in this request for an advisory opinion.

4. This written statement is divided in five chapters, namely:
  - I. The Court has jurisdiction and should not use its discretionary power to reject giving this advisory opinion.
  - II. The evidence before the Court allows it to conclude that the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, violated and continue to violate international law.
  - III. The applicable law relevant to assess the legal consequences arising from Israel's violation of international law.
  - IV. Chile's views on question (a).
  - V. Chile's views on question (b).
5. Before addressing the issues involved in this request for an advisory opinion, Chile would like to underline that it has diplomatic relations with both Israel and Palestine. Chile supports the existence of the two States and their right to live in peace and harmony, within safe and recognized international boundaries, in which every human being has the opportunity to develop its personality and skills, to fully exercise his or her human rights and fundamental freedoms, and to live a life worth living. In this sense, Chile reaffirms that the region needs and deserves peace, and that a solution to the Israeli-Palestinian conflict lies in fruitful and direct negotiations between Palestine and Israel, and the political will to leave behind radical political views and to uphold respect for human rights.

**I. THE COURT HAS JURISDICTION AND SHOULD NOT USE ITS DISCRETIONARY POWER TO REJECT GIVING THIS ADVISORY OPINION**

6. Before entering into the substantive questions, the Court will need to consider (a) whether it has jurisdiction to give the advisory opinion requested by the General Assembly, and (b) whether it should exercise its discretion to give the opinion.
7. In accordance with Article 65 of its Statute, the Court "may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request". As explained by the Court in its Advisory Opinion on the *Application for Review of Judgment No. 273 of the United*

*Nations Administrative Tribunal*,<sup>1</sup> it is “a precondition of the Court’s competence that the advisory opinion be requested by an organ duly authorized to seek it under the Charter”. In this regard, Chile recognizes the well-settled principle of *la compétence de la compétence*,<sup>2</sup> which means that the Court will decide about its jurisdiction to give the requested advisory opinion.

8. The position of Chile is that the Court has jurisdiction to give the requested advisory opinion and that there are no compelling reasons that could lead the Court to decline to respond to the General Assembly request.

#### A. JURISDICTION TO GIVE THE REQUESTED ADVISORY OPINION

9. As stated in Article 96(1) of the United Nations Charter, the General Assembly is duly authorized to request the International Court of Justice to give an advisory opinion on any legal question.
10. The request concerns matters that fall within the competence of the General Assembly. In this regard, Article 10 of the Charter provides that “[t]he General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter [...]”. In turn, Article 11 states that: (1) “The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, [...] and make recommendations with regard to such principles to the Members or to the Security Council or to both; (2) The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by any State which is not a member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the State or States concerned or to the Security Council or to both. [...]”; (3) The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security”.
11. The General Assembly has been involved in the question of Palestine since 1947, when it recommended the Plan of Partition for Palestine.<sup>3</sup> In the aftermath of the 1948 War, the

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<sup>1</sup> Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982, pp. 333-334, para. 21.

<sup>2</sup> See, e.g., *Nottebohm case (Preliminary Objection)*, Judgment of November 18th, 1953, I.C.J. Reports 1953, p. 111, at pp. 119-120.

<sup>3</sup> UN General Assembly Resolution 181 (II) (29 November 1947) UN Doc A/RES/181(II).

General Assembly was concerned about the situation of the Palestine refugees. In 1949, by Resolution 302(IV) of 8 December 1949, the General Assembly established the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the agency in charge of carrying out direct relief and work programs for Palestine refugees. Until today, its mandate has been continuously renewed on an annual basis.

12. After the 1967 war (Six-Days War), which resulted in the occupation of Palestine territory beyond the armistice line (Green line) of 1949, the General Assembly has been constantly and deeply concerned about the humanitarian and human rights situation in the Occupied Palestinian Territory (“OPT”), calling on Israel to comply with its obligations under international law. By Resolution 2443(XXIII) of 19 December 1968, the General Assembly appointed a Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People, composed of three Member States. For more than 55 years, on an annual basis, the Special Committee has submitted its periodic Report, and together with the General Assembly, has condemned Israel, year after year, for its violation of international law and called its government to respect humanitarian law and human rights law in the OPT.
13. In its most recent Report of 3 October 2022, the Committee reported on the establishment and expansion of settlements,<sup>4</sup> the unprecedented levels of settler violence,<sup>5</sup> and multiple reports of a qualitative increase in the participation and complicity of Israeli security forces in settler violence.<sup>6</sup> The Committee also reported on the discriminatory access to basic services, including limited access to water for the Palestinian population,<sup>7</sup> and several impacts and restrictions on the provision of health, education and basic services for Palestinians, including shortages of housing, potable water, electricity, as well as lack of access to essential medicines and medical care, food, educational equipment and building materials.<sup>8</sup> Previous reports of the Committee have also examined the Israeli plans for annexation,<sup>9</sup> which the Committee has univocally labeled as “a serious a violation of international law, the Charter of the United Nations and numerous Security

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<sup>4</sup> UNGA ‘Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories’ (3 October 2022) UN Doc A/77/501, paras. 17-19.

<sup>5</sup> *Ibid.* paras. 22-24.

<sup>6</sup> *Ibid.* paras. 25-26.

<sup>7</sup> *Ibid.* para. 46.

<sup>8</sup> *Ibid.* paras. 46-47.

<sup>9</sup> UNGA ‘Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories’ (27 August 2020) UN Doc A/75/199, paras. 10-12.



Council resolutions on the matter”, as well as a practice that would lead to the intensification of human rights violations against Palestinians.<sup>10</sup>

14. The General Assembly has also adopted Resolutions concerning the right of the Palestinian people to self-determination, which have been traditionally co-sponsored by Chile. The latest of these resolutions, Resolution 77/208, stressed “the urgency of achieving without delay an end to the Israeli occupation that began in 1967 and a just, lasting and comprehensive peace settlement between the Palestinian and Israeli sides”, and reaffirmed “the right of the Palestinian people to self-determination, including the right to their independent State of Palestine”.
15. In relation to the request for an Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, some States invoked Article 12(1) of the UN Charter as the basis for arguing that the Court should reject the request. In particular, States opposing the request for an advisory opinion claimed that the General Assembly had acted *ultra vires* and not in accordance with Article 12 of the Charter. The Court did not share that view. In the opinion of the Court, Article 12 was not an obstacle to give its Advisory Opinion because:
  - (i) Article 12 prescribes that the General Assembly shall not make any recommendation with regard to a dispute or situation while the Security Council is exercising its functions in relation to that dispute or situation. In the case of the Wall Advisory Opinion, the Court underlined that the resolution of the General Assembly to require an advisory opinion from the International Court of Justice “is not in itself a recommendation with regard to a dispute or situation.”<sup>11</sup>
  - (ii) Initially, both the General Assembly and the Security Council interpreted that the General Assembly could not make recommendations on a question concerning the maintenance of international peace and security while the matter remained on the Council’s agenda. However, as the Court explains in the Wall Advisory Opinion, the interpretation of Article 12 has subsequently evolved in recognizing that it is not rare that both, the Security Council and the General Assembly, deal in parallel with the same matter concerning the maintenance of international peace and security.<sup>12</sup> In this vein, the Court has explained that: “It is often the case that, while the Security Council has tended

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<sup>10</sup> *Ibid.* para. 12.

<sup>11</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 148, para. 25.

<sup>12</sup> *Ibid.* para 27.

to focus on the aspects of such matters related to peace and security, the General Assembly has taken a broader view, considering also their humanitarian, social and economic aspects.”<sup>13</sup>

16. In addition, the Court should take into account that the present request for an advisory opinion concerns a very general topic: the legal consequences of the policies and practices of Israel in the Occupied Palestinian Territory. As a matter of fact, the Palestine question, including the occupation and the settlements policy, as well as the humanitarian and human rights situation in the OPT, has for many years been dealt in parallel by both the Security Council and the General Assembly.
17. Lastly, it is important to point out, that the fact that a legal question also has political aspects that does not bar the Court from its jurisdiction,<sup>14</sup> since in those situations it may be particularly necessary to understand the legal principles applicable to the matter under debate.<sup>15</sup>
18. Therefore, Chile’s position is that the Court has jurisdiction to give the requested advisory opinion.

#### B. NO COMPELLING REASONS TO REFUSE GIVING THE ADVISORY OPINION

19. In accordance with Article 65(1) of its Statute, the Court has a discretionary power to decline to give an advisory opinion.
20. The Court has stated that “given its responsibilities as the ‘principal judicial organ of the United Nations’ [...] [it] should in principle not decline to give an advisory opinion”, except when compelling reasons lead it to take such an exceptional decision.<sup>16</sup>
21. In Chile’s views, there are no compelling reasons that could lead the Court to refuse to give the requested advisory opinion. First, because answering the question would not violate the principle of consent, and would not impede nor undermine a political,

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<sup>13</sup> Ibid.

<sup>14</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 234, para. 13; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 11), para. 41.

<sup>15</sup> *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, I.C.J. Reports 1980, p. 87, para. 33.

<sup>16</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 11), para. 156; See also, *Legality of the Threat or Use of Nuclear Weapons* (n 14), para. 14; and *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p. 27, para. 41; and *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, p. 21, para. 23.

negotiated solution to the Israeli-Palestinian conflict; and second, because there is sufficient evidence.

22. It must be noted that an advisory opinion is not a judicial decision about a contentious matter. Therefore, the existence of disputes between Israel and Palestine, or between Israel and any other State has no bearing on the exercise of the advisory jurisdiction of the Court, the purpose of which is to assist the requesting organ in the fulfillment of its functions, namely, the Security Council, the General Assembly or other organs of the United Nations or specialized agencies, duly authorized by the General Assembly.
23. It must be borne in mind that advisory opinions are not binding and the object of this request is to obtain an opinion that will assist the General Assembly in the exercise of its functions.<sup>17</sup> It is the General Assembly that has approached the Court to obtain an advisory opinion on two specific legal questions. The advisory jurisdiction of the Court has specifically been established to provide the legal assistance of the principal judicial organ of the United Nations to the Security Council, the General Assembly, or to any other organ or specialized agency duly authorized by the General Assembly.
24. Thus, when a matter such as the situation in the OPT, can be regarded as of concern of the United Nations, an advisory opinion would contribute to the proper functioning of the Organization.<sup>18</sup> Hence, it would be wrong to say that this request for an advisory opinion is a way to circumvent the principle of consent to judicial settlement.<sup>19</sup>
25. Chile acknowledges that the existence of an underlying dispute between two or more States could, in some circumstances, lead to an instance of judicial impropriety in the exercise of the advisory jurisdiction of the Court.<sup>20</sup> One such situation would be a case in which the Court has no access to the evidence that would enable it to give its legal opinion.<sup>21</sup> This is not the case here.
26. In the context of its Opinion on the Construction of a Wall in the Occupied Palestinian Territory, the Court already explained that “the question whether the evidence available

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<sup>17</sup> *Interpretation of Peace Treaties, First Phase*, Advisory Opinion, I.C.J. Reports 1950, p. 71. See also, *Western Sahara* (n 16), para. 31.; and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 11), para. 47.

<sup>18</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 11), para. 50.

<sup>19</sup> *Ibid.* para. 47.

<sup>20</sup> *Status of Eastern Carelia*, P.C.I.J., Series B, No. 5, pp. 27-28.

<sup>21</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 11), para. 56: See also, *Western Sahara* (n 16), paras. 46-47; *Interpretation of Peace Treaties*, (n 17), p. 72; *Status of Eastern Carelia* (n 21), p. 28.

to it is sufficient to give an advisory opinion must be decided in each particular instance”.<sup>22</sup> In that proceeding, the Court concluded that the Report of the United Nations’ Secretary-General, and a voluminous dossier submitted by him to the Court which contained detailed information about the humanitarian and socio-economic impact of the wall on the Palestinian population, provided important evidence to the Court. Additionally, the Court also considered the reports of the various Special Rapporteurs and of the competent organs of the United Nations, as well as the availability of public information, as important elements that allowed it to conclude that it had before it “sufficient information and evidence to enable it to give the advisory opinion requested by the General Assembly”.<sup>23</sup>

27. Similarly, since there is ample public evidence about the policies and practices of Israel in the OPT relevant to the request, as is demonstrated by the 1805 documents (the Dossier) that the Secretary General has filed with the Court, it is Chile’s position that, in the present request the Court also has before it sufficient information and evidence to enable it to give the requested advisory opinion.

**II. THE EVIDENCE BEFORE THE COURT ALLOWS TO CONCLUDE THAT THE POLICIES AND PRACTICES OF ISRAEL IN THE OCCUPIED PALESTINIAN TERRITORY, INCLUDING EAST JERUSALEM, VIOLATED AND CONTINUE TO VIOLATE INTERNATIONAL LAW**

28. To answer the questions posed by the General Assembly in its request for an advisory opinion, the Court must determine the facts and evidence that will enable it to reach its conclusions. The Court must also identify the applicable law.<sup>24</sup> Chile will put forward its views about the evidence on which the Court can rely to support its conclusions.

29. It is the position of Chile that the Court has sufficient evidence before it to conclude that Israel has violated and continues to violate: (1) the right of the Palestinian people to self-determination; (2) the rules of international humanitarian law applicable to the Occupied Palestinian Territory, including East Jerusalem, and (3) the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem.

30. In this regard, the Secretary General submitted 1805 documents containing relevant information regarding the policies and practices of Israel in the Occupied Palestinian Territory. The documents date back to 14 June 1967, when the Security Council called

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<sup>22</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 11), para. 56.

<sup>23</sup> *Ibid.* para. 57.

<sup>24</sup> See *infra* Ch. III.

the Government of Israel to ensure the safety, welfare, and security of the inhabitants of the areas where military operations had taken place and to facilitate the return of those inhabitants who had fled the areas since the outbreak of hostilities. More than 56 years have passed since the Six Days War and the humanitarian and human rights situation of the Occupied Palestinian Territory continues to worsen.

31. The documents submitted by the Secretary General include Security Council, General Assembly and Economic and Social Council Resolutions; Reports of the Secretary General and the Economic and Social Commission for Western Asia; Reports of the UNCTAD; Reports of the UNRWA; Resolutions of the Human Rights Council; Resolutions of the Commission on Human Rights; Reports of the High Commissioner for Human Rights; Reports of Commissions of Inquiry/Fact-Finding Missions/Experts Committee; Reports of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967; Reports of other Special Rapporteurs and Special Representatives; Reports of the Committee against Torture, of the Committee on Economic, Social and Cultural Rights, of the Committee on the Elimination of Discrimination Against Women, of the Committee on the Elimination of Racial Discrimination, of the Committee of the Rights of the Child, and of the Human Rights Committee. These documents show that during the prolonged occupation of Palestinian territory, Israel has violated and continues to violate international law.
32. Accordingly, the Court has at its disposal a massive amount of information concerning the policies and practices of Israel in the OPT. However, it is not only the number of documents that matters, but the quality of the information contained in them, that allows Chile to assert the existence of sufficient evidence on the basis of which the Court can give its advisory opinion.
33. In the last years the situation in the OPT has become more and more serious. For this reason, on 27 May 2021 the Human Rights Council decided to establish a Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and in Israel.<sup>25</sup> On 22 July 2021, the President of the Human Rights Council appointed the members of the Commission of Inquiry composed of Navi Pillay (South Africa), Miloon Kothari (India) and Chris Sidoti (Australia).<sup>26</sup> Their mandate includes the responsibility

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<sup>25</sup> UN Human Rights Council Res. S-30/1 (27 May 2021) UN Doc A/HRC/RES/S-30/1.

<sup>26</sup> UNHRC 'President of Human Rights Council appoints Members of Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel' Press Release (22 July 2021) <https://www.ohchr.org/en/news/2021/07/president-human-rights-council-appoints-members-commission-inquiry-occupied>, accessed 18 July 2023.

to “establish the facts and circumstances that may amount to such violations and abuses and of crimes perpetrated” and “identify, where possible, those responsible, with a view to ensuring that perpetrators of violations are held accountable”. In its first report, the Commission of Inquiry stated that:

“The Commission notes the strength of prima facie credible evidence available that Israel has no intention of ending the occupation, has clear policies for ensuring complete control over the Occupied Palestinian Territory, and is acting to alter the demography through the maintenance of a repressive environment for Palestinians and a favourable environment for Israeli settlers.”<sup>27</sup>

34. As early as 1968, the General Assembly appointed the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories (Resolution 2443 (XXIII)). The Special Committee is composed of three UN Member States: Malaysia, Senegal and Sri Lanka, and every year reports to the Secretary General. Its last Report was issued on 3 October 2022. The Special Committee has made a significant contribution in making the human rights situation in the occupied territories known to the Members of the United Nations. Its reports are a valuable source of information, together with the other documents forming part of the Dossier that the Secretary General has submitted to the Court in the context of the request for an advisory opinion. In its End of Mission Statement of 16 June 2023, the Special Committee stated that: “This year, the Special Committee was presented with the clearest evidence it has seen in its 55-year history of Israeli policies that systematically violate the human rights of the Palestinian people in a manner many interlocutors see as akin to apartheid.”<sup>28</sup>

35. Although the Republic of Chile considers the entire Dossier submitted by the Secretary General to be of great importance for the analysis to be conducted by the Court on the questions presented by the General Assembly, the Republic of Chile wishes to focus on the reports of the Special Rapporteurs on the situation of human rights in the Palestinian territories occupied since 1967, appointed from 1993 onwards by the Commission on Human Rights and later by the Human Rights Council, as these contain the views of independent experts who work closely with governments, civil society, and other relevant actors. Furthermore, in preparing the reports the Special Rapporteurs have taken into

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<sup>27</sup> UNHRC ‘Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel’ (9 May 2022) UN Doc A/HRC/50/21, para. 70.

<sup>28</sup> OHCHR End-of-Mission Statement of the UN Special Committee to Investigate Israeli Practices (16 June 2023) [www.ohchr.org/en/statements/2023/06/end-mission-statement-un-special-committee-investigate-israeli-practices](http://www.ohchr.org/en/statements/2023/06/end-mission-statement-un-special-committee-investigate-israeli-practices) accessed, accessed 18 July 2023.

account the work of all other UN organs and specially appointed experts, whose mandates touch upon the situation of human rights in the OPT, which is why the reports offer a particularly accurate overview of the development of the situation and the current and most updated information on the subject.

36. Prior to 2006, the Special Rapporteurs were appointed by the Human Rights Commission. The first Special Rapporteur was appointed in 1993, and since then Special Rapporteurs have submitted a total of forty-one reports.
37. A chronological reading of the Reports of the Special Rapporteurs shows the evolution of the humanitarian and human rights situation in Palestine within a time span of twenty-nine years. It is striking how the humanitarian and human rights situation in Palestine has continuously deteriorated during this period.
38. On 19 February 1993, after 25 years of occupation, the Human Rights Commission appointed Mr. René Felber, as the first Special Rapporteur with the mandate to investigate Israel's violations of the principles and bases of international law and international humanitarian law; to receive communications, and to hear witnesses; and to report, with his conclusions and recommendations, to the Commission on Human Rights. Since then, eight Special Rapporteurs have been appointed to report on the human rights situation in the Palestinian territories occupied since 1967.
39. In 1994, despite the fact that a peace process between Israel and the Palestinian Authority had been initiated, Special Rapporteur Felber was able to observe that the OPT, during 25 years of occupation, suffered from a continued decline of the standard of living. He expressed that the major concerns regarding the human rights situation in the OPT related to the protection of the rights to life and physical integrity, the ill-treatment of prisoners (including torture), the arbitrary demolition of houses, the confiscation of land, the practice of sealing off the territories and the expansion of settlements.<sup>29</sup>
40. In 1996, Special Rapporteur Hannu Halinen described the restrictions of movement imposed on the Palestinian population and referred to the situation of Gaza as sometimes resembling a large prison.<sup>30</sup> However, the policy of expansion of Israeli settlements

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<sup>29</sup> UN Commission on Human Rights 'Report on the human rights situation in the Palestinian territories occupied since 1967, submitted by Mr. René Felber, Special Rapporteur, pursuant to Commission on Human Rights resolution 1993/2 A' (28 January 1994) UN Doc E/CN.4/1994/14.

<sup>30</sup> UNCHR 'Report on the situation of human rights in the Palestinian territories occupied since 1967, submitted by Mr. Hannu Halinen, Special Rapporteur, pursuant to Commission on Human Rights resolution 1993/2 A' (15 March 1996) UN Doc E/CN.4/1996/18, p. 5.

continued despite the peace process. By 1998, Special Rapporteur Halinen reported that there was no more trust in the peace process.<sup>31</sup> Notwithstanding the political negotiations, the effects of the closures, the expansion of the Israeli settlements, the practice of torture in detention centers, among other human rights violations, explained what the Special Rapporteur described as “a sense of frustration among the people in the Middle East *vis-a-vis* the peace process”.<sup>32</sup> It is in 1998 that the word apartheid appears for the first time in the Report of a Special Rapporteur.<sup>33</sup>

41. In 2000, Special Rapporteur Giorgio Giacomelli, provided the following statistics: “Since 1967, Israel has confiscated an estimated 60 per cent of the West Bank, 33 per cent of the Gaza Strip, and approximately 33 per cent of the Palestinian land area in Jerusalem for public, semi-public and private use in order to create Israeli military zones, settlements, industrial areas, elaborate ‘by pass’ roads, and quarries, as well as to hold ‘State land’ for exclusive Israeli use.” He added that “Israeli occupation practices also affect the natural environment of the occupied Palestinian territories, including degradation of the infrastructure, land confiscation, water depletion, uprooting of trees, dumping of toxic waste and other pollution.” Special Rapporteur Giacomelli made an interesting observation with regard to the combined effect of the various policies and practices of Israel in the OPT, which destroyed the very fabric of society in the occupied territories.<sup>34</sup> In 2001, he spoke of an Israeli ‘strategy’ of restricting the Palestinian economy with the intent and purpose of effecting social control.<sup>35</sup>
42. Special Rapporteur John Dugard, in its 2002 Report, stated that the “cumulative effect of the restrictions on the freedom of movement of people and goods is understandably perceived by the Palestinians affected as a siege”.<sup>36</sup>
43. The erection of the wall between Israel and the OPT started in 2002. At the time, special Rapporteur Dugard reported a reoccupation of seven of the eight major cities in the West

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<sup>31</sup> UNCHR ‘Report on the situation of human rights in the Palestinian territories occupied since 1967, submitted by Mr. Hannu Halinen, Special Rapporteur, pursuant to Commission on Human Rights resolution 1993/2 A’ (19 February 1998) UN Doc E/CN.4/1998/17, p. 7.

<sup>32</sup> *Ibid.* p. 3.

<sup>33</sup> *Ibid.* p. 12 para. 57.

<sup>34</sup> *Ibid.* p. 18 para. 65.

<sup>35</sup> UNCHR ‘Update to the mission report on Israel’s violations of human rights in the Palestinian territories occupied since 1967, submitted by Giorgio Giacomelli, Special Rapporteur, to the Commission on Human Rights at its fifth special session’ (21 March 2001), UN Doc E/CN.4/2001/30, p. 5, para. 20.

<sup>36</sup> UNCHR ‘Report of the Special Rapporteur of the Commission on Human Rights, Mr. John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967’ (6 March 2002) UN Doc E/CN.4/2002/32, p. 14 para. 35.



Bank, the imposition of curfews, shortages of food, interference with medical services, interruption of family contacts and stoppages of education.<sup>37</sup> The 2002 Report also condemned Israel policy and practice of destroying property, asserting that this was not only a disproportionate response to the Palestinian violence but a policy of retribution and punishment.<sup>38</sup> In this context, the erection of a wall which encroached deeply upon Palestinian territory appeared as “a case of *de facto* annexation in which the security situation is employed as a pretext for territorial expansion”,<sup>39</sup> the effects of which have to be assessed together with the policy of encouragement of new settlements.<sup>40</sup>

44. In its 2003 Report the Special Rapporteur Dugard stated that the evidence strongly suggested that with the construction of the wall, Israel was determined to create facts on the ground amounting to *de facto* annexation.<sup>41</sup> Furthermore, he also noted that the construction of the wall resulted in the creation of a “Closed Zone” between the Wall and the Green Line, in which a permit system was enacted for Palestinians entering into this zone where they might live, work or study.<sup>42</sup> In the words of Special Rapporteur Dugard: “There is a real prospect that life will become so intolerable for those villagers living in the Closed Zone that they will abandon their homes and migrate to the West Bank.”<sup>43</sup> In his December 2004 Report, the Special Rapporteur compared the permit system to the notorious “pass laws” of apartheid South Africa.<sup>44</sup>
45. Nineteen years have passed since the Court delivered the Wall Advisory Opinion on 9 July 2004. During these years, the humanitarian and human rights situation in the OPT has only gotten worse. Evidence of this can be found in the reports of the aforementioned Special Rapporteurs John Dugard, Richard Falk, Makarim Wibisono, Michael Lynk, and

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<sup>37</sup> UNCHR ‘Report of the Special Rapporteur of the Commission on Human Rights, Mr. John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967, submitted in accordance with Commission resolutions 1993/2 A and 2002/8’ (17 December 2002) UN Doc E/CN.4/2003/30, p. 2.

<sup>38</sup> *Ibid.* p.10.

<sup>39</sup> *Ibid.* p. 14.

<sup>40</sup> *Ibid.* p. 14.15.

<sup>41</sup> UNCHR ‘Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967, submitted in accordance with Commission resolution 1993/2 A’ (8 September 2003) UN Doc E/CN.4/2004/6, p. 2.

<sup>42</sup> UNCHR ‘Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967’ (27 February 2004) UN Doc E/CN.4/2004/6/Add.1, p. 2.

<sup>43</sup> *Ibid.* p.3.

<sup>44</sup> UNCHR ‘Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967’ (7 December 2004) UN Doc E/CN.4/2005/29, p. 4.

Francesca Albanese, the latter three of whom reported not having been able to visit the OPT due to an absolute lack of collaboration by the Israeli Government.

46. Already in 2004, Special Rapporteurs had noted that the policies and practices of Israel in the OPT had violated international humanitarian law and the human rights of the Palestinian population. However, the situation aggravated in such a manner that, by 2007, the situation could be described as one of colonization and apartheid. In his January 2007 Report, Special Rapporteur Dugard devoted an entire chapter to this situation. Now that the Court has been requested to give a second advisory opinion on the situation in the OPT, it is worth recalling that Special Rapporteur Dugard anticipated that the Court would have a second opportunity to review the legal consequences of the Israeli policies and practices:

“Colonialism and apartheid are contrary to international law. Occupation is a lawful regime, tolerated by the international community but not approved. Indeed over the past three decades it has, in the words of the Israeli scholar Eyal Benvenisti, ‘acquired a pejorative connotation’. What are the legal consequences of a regime of occupation that has continued for nearly 40 years? Clearly none of the obligations imposed on the occupying Power are reduced as a result of such a prolonged occupation. But what are the legal consequences when such a regime has acquired some of the characteristics of colonialism and apartheid? Does it continue to be a lawful regime? Or does it cease to be a lawful regime, particularly in respect of ‘measures aimed at the occupants’ own interests? And if this is the position, what are the legal consequences for the occupied people, the occupying Power and third States? Should questions of this kind not be addressed to the International Court of Justice for a further advisory opinion? It is true that the 2004 Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* has not had the desired effect of compelling the United Nations to take firmer action against the construction of the Wall. On the other hand, it must be remembered that the United Nations requested four advisory opinions from the International Court of Justice to guide it in its approach to South Africa’s occupation of South-West Africa/Namibia. In these circumstances a request for another advisory opinion warrants serious consideration.”<sup>45</sup>

47. In March 2008, the Human Rights Council appointed Professor Richard Falk as the Special Rapporteur on the Human Rights Situation in Palestine. Between 2008 and 2014, he submitted six reports, and found little cooperation from the Israeli government, while the humanitarian and human rights situation continued to deteriorate in the OPT. The 2014 Report by Special Rapporteur Falk describes the situation of the prolonged occupation of Palestine as a case of colonialism, apartheid, and ethnic cleansing.<sup>46</sup>

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<sup>45</sup> UNHRC ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard’ (29 January 2007) UN Doc A/HRC/4/17, pp. 23-24, para. 62.

<sup>46</sup> UNHRC ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk’ (13 January 2014) UN Doc A/HRC/25/67.

48. Later on, Special Rapporteur Makarim Wibisono issued three reports on the situation of humanitarian and human rights law in the OPT during his mandate, between 2014 and 2016. In his first report, Mr. Wibisono, focused primarily on the devastating consequences of the 51 days of hostilities brought upon by operation “Protective Edge” in Gaza that took place between 7 July and 26 August of 2014, and particularly its impact on children. He stressed that the casualties of this round of violence surpassed the combined number of casualties of the two previous conflicts in the area, with 2,256 Palestinian fatalities of whom 1,563 were civilians, and 538 children.<sup>47</sup>
49. Amongst the worst consequences of the hostilities, Special Rapporteur Wibisono reported on the deliberate targeting of civilian infrastructure, including schools, mosques, hospitals,<sup>48</sup> and the only power station in Gaza,<sup>49</sup> resulting in 450,000 people without access to municipal water for at least three months following the ceasefire,<sup>50</sup> the mass displacement of 500,000 people rendered homeless by the attacks,<sup>51</sup> 75 hospitals, primary health centers and clinics damaged and in need of repair or maintenance,<sup>52</sup> the total destruction of 26 schools, and partial damage to a further 228 schools.<sup>53</sup> The Special Rapporteur also pointed out the increasing risk of disease that resulted from the displacement of a substantial number of persons as a consequence of the violence, “including contaminated water and sewage and wastewater flowing into the environment because of poor and damaged sanitation infrastructure.”<sup>54</sup>
50. Special Rapporteur Wibisono also reported on an increasing pattern of excessive use of force against Palestinian civilians in the West Bank,<sup>55</sup> often children;<sup>56</sup> an increase of operations in refugee camps,<sup>57</sup> and a practice of punitive house demolitions, constituting an act of collective punishment.<sup>58</sup> In this connection, he reported that “between January 2008 and July 2014, more than 5,000 Palestinians were displaced as a result of house

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<sup>47</sup> UNGA ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Makarim Wibisono’ (22 January 2015) UN Doc A/HRC/28/78, p.5, para. 11.

<sup>48</sup> *Ibid.* paras. 12-13.

<sup>49</sup> *Ibid.* para. 10.

<sup>50</sup> *Ibid.* para. 13.

<sup>51</sup> *Ibid.* para. 15.

<sup>52</sup> *Ibid.* para. 26.

<sup>53</sup> *Ibid.* para. 34.

<sup>54</sup> UNGA ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’ (25 September 2015), UN Doc A/70/392, para. 27.

<sup>55</sup> UNHRC ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’ (11 January 2016) UN Doc A/HRC/31/73, paras. 20-21.

<sup>56</sup> A/HRC/28/78 (n 47), paras. 41-43.

<sup>57</sup> *Ibid.* para. 48.

<sup>58</sup> *Ibid.* paras. 50-53. See also, A/HRC/31/73 (n 55), paras. 24-25.

demolitions and evictions in the West Bank, including East Jerusalem”<sup>59</sup>, with the threat of the eviction of additional 5,000 to 11,000 Palestinians if the “Bedouin Regulation” plan was approved.<sup>60</sup>

51. Special Rapporteur Wibisono reported that Israel had furthered implemented policies and practices to force Bedouin communities out of their current areas that included restricting access to grazing land, basic services and infrastructure, the rejection of building permit applications, and the demolition or threat of demolition of civilian infrastructures.<sup>61</sup>
52. In line with the views of the previous Special Rapporteurs, Mr. Wibisono stressed that most of the human rights violations in the West Bank, including East Jerusalem, were a consequence of the existence and expansion of Israeli settlements, which were part of a policy of the Government of Israel to change the demographic composition in Jerusalem.<sup>62</sup>
53. In 2016, the Human Rights Council appointed Professor Michael Lynk as the new Special Rapporteur. During his mandate, between 2016 and 2021, Mr. Lynk issued eleven reports focusing on a wide variety of issues, including the challenges faced by human rights defenders, the right to health, the right of self-determination, accountability-related issues and the responsibility of the international community, different forms of collective punishment, the legal status of settlements, the illegality of annexation, and whether the Israeli rule over the Occupied Palestinian Territory could now be called apartheid. The worsening of the human rights situation in the OPT is made clear as the tone of urgency in his reports increased.
54. As his predecessors, Special Rapporteur Lynk also reported on the excessive use of police force against the Palestinian population, the problem of systemic and deeply ingrained

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<sup>59</sup> A/HRC/28/78 (n 47), para. 67.

<sup>60</sup> *Ibid.* para. 64.

<sup>61</sup> *Ibid.* para. 67.

<sup>62</sup> *Ibid.* para. 51.

lack of accountability,<sup>63</sup> and the increasing rise of arbitrary detentions and torture as an overarching policy to intimidate and restrict the freedoms of Palestinians.<sup>64</sup>

55. He also noted that, particularly during protests and demonstrations, Palestinians were at great risk of being targeted by Israeli security forces. He reported that, in 2018, over 200 Palestinians were killed by Israeli security forces in Gaza, 38 of which were children,<sup>65</sup> while in 2019, during the Great March of Return, 207 Palestinians were killed, and 33,828 were injured.<sup>66</sup>

56. In relation to the settlements, Special Rapporteur Lynk reported on the clear disregard Israel has had of the repeated admonitions the international community has made, through the Security Council, the General Assembly, and other bodies, in relation to the illegality of the settlements.<sup>67</sup> In fact, less than two months after the adoption of Security Council Resolution 2334 (2016) condemning the establishment of settlements, the Government of Israel announced its plans for about 6,000 new settlements units in the West Bank, including East Jerusalem.<sup>68</sup> Since then, demolitions of Palestinian homes have continued in the West Bank and East Jerusalem unabated, and legislation that regularizes the establishment of new settlements continue to be passed in the Knesset.<sup>69</sup> As a result, in 2019, there were 441,600 settlers in the West Bank,<sup>70</sup> which increased to 700,000 settlers in the West Bank and East Jerusalem by 2022.<sup>71</sup>

57. The counterpart of the settlement policy is the demolition of Palestinian homes. As noted by Special Rapporteur Lynk in 2020 “since the occupation began in 1967, Israel has

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<sup>63</sup> UNGA ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’ (19 October 2016) UN Doc. A/71/554, paras. 11-17. *See also*, UNHRC ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’ (14 June 2018) UN Doc A/HRC/37/75, para. 23; and UNGA ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’ (21 October 2019) UN Doc A/74/507, paras. 17, 69.

<sup>64</sup> A/71/554 (n 63), para. 18. *See also*, UNGA ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk’ (22 October 2020) UN Doc A/75/532, para. 24; and UNHRC ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’ (22 December 2020) UN Doc A/HRC/44/60, para. 17.

<sup>65</sup> UNGA ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’ (22 October 2018) UN Doc A/73/447, para. 11.

<sup>66</sup> A/74/507 (n 63), para. 11.

<sup>67</sup> *Ibid.* paras. 62-63.

<sup>68</sup> UNHRC ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’ (13 April 2017) UN Doc A/HRC/34/70, para. 9.

<sup>69</sup> *Ibid.* paras. 10-11. *See also*, A/HRC/37/75 (n 63), paras. 17-20.

<sup>70</sup> UNHRC ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’ (29 July 2021) UN Doc A/HRC/47/57, para. 62.

<sup>71</sup> UNHRC ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk’ (12 August 2022) UN Doc A/HRC/49/87, para. 9.

punitively demolished or sealed approximately 2,000 Palestinian homes in the occupied territories.”<sup>72</sup> A significant part of the demolitions took place in 2016, totaling 1,093, causing the displacement of 1,593 Palestinians and affecting the livelihoods of 7,101 others.<sup>73</sup> In 2017, there were tenders for the construction of 2,858 housing units, which is more than what had been recorded in the previous 10 years,<sup>74</sup> and during the same year, 116 demolitions were recorded in East Jerusalem, displacing 202 people. These were justified as administrative penalties for building without a permit, which are virtually impossible to obtain, or as a punitive measure against alleged attackers or their families.<sup>75</sup> In 2019, the rate of home demolitions and seizures of Palestinian-owned structures in the West Bank increased 64 per cent compared to the previous year, with 362 demolitions and the displacement of 481 Palestinians,<sup>76</sup> while 111 Palestinian-owned structures were destroyed in East Jerusalem.<sup>77</sup>

58. Sadly, and despite the COVID-19 pandemic and world health emergency, in 2020 Israel’s illegal settlement expansion intensified. In 2020, Israel approved or advanced more than 12,150 settlement homes, “making it the single highest rate on record since 2012”, while at the same time destroying 560 structures with the concurrent displacement of 747 Palestinians.<sup>78</sup> In 2021, the Israeli authorities demolished or seized over 387 Palestinian structures, resulting in the displacement of 309 children in the midst of a pandemic.<sup>79</sup>
59. The expansion of Israeli settlements has also prevented Palestinians from exploiting their natural resources. Israel has purposely inhibited Palestinians from accessing those resources by prohibiting the installation of infrastructure necessary to access them, establishing closed military zones around them, or extracting more than their fair share.<sup>80</sup> In fact, Israel has enclaved most of the agricultural lands, water sources and underground reservoirs within their illegal settlements,<sup>81</sup> impeding access to Palestinians, or establishing administrative obstacles for their ability to extract them;<sup>82</sup> in such a manner,

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<sup>72</sup> A/HRC/44/60 (n 64), para. 38.

<sup>73</sup> A/HRC/37/75 (n 63), para. 10.

<sup>74</sup> UNGA ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’ (23 October 2017) UN Doc A/72/556, para. 11.

<sup>75</sup> *Ibid.* para. 14. *See also*, A/HRC/44/60 (n 64), paras. 38-52; and A/HRC/49/87 (n 71), para. 43.

<sup>76</sup> A/74/507 (n 63), para. 16.

<sup>77</sup> *Ibid.* para. 20.

<sup>78</sup> A/75/532 (n 64), para. 14.

<sup>79</sup> A/HRC/47/57 (n 70), para. 21.

<sup>80</sup> UNHRC ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’ (30 May 2019) UN Doc A/HRC/40/73, paras. 44-45.

<sup>81</sup> *Ibid.* para. 47.

<sup>82</sup> *Ibid.* paras. 47-52

that water is disproportionately allocated to the settlements.<sup>83</sup> Thus, Israel has been exploiting for its own benefit, quarries, Dead Sea minerals, oil and gas, and water.<sup>84</sup> On the other hand, the water situation in Gaza is verging on a humanitarian catastrophe, since 96 per cent of its water sources have become unfit for human consumption, because of their inability to operate their waste treatment system.<sup>85</sup>

60. In 2022, the Human Rights Council appointed Ms. Francesca Albanese as the new Special Rapporteur on the situation of human rights in the OPT. In her report of 21 September 2022, she confirms the illegality of the Israeli occupation,<sup>86</sup> achieved through territorial fragmentation,<sup>87</sup> the impediment to exploit their own natural resources,<sup>88</sup> the hampering of the organic formation and functioning of their political leadership,<sup>89</sup> and the transferring of its civilian population.<sup>90</sup> In turn, her report of 9 June 2023 focuses on arbitrary and deliberate ill-treatment inflicted upon the Palestinians both through unlawful practices in detention and incarceration,<sup>91</sup> but also as an open-air carceral continuum, comprised of techniques of physical segregation, bureaucratic barriers, and intense digital surveillance, among others.<sup>92</sup>

61. In Gaza, even though Israel vacated its formal presence in 2005, its effective control over the Strip by imposing a land, sea and air blockade remains, which means they retain responsibility as an Occupying Power.<sup>93</sup> Furthermore, the worsening of the humanitarian crisis in Gaza is largely caused by this 16-year blockade.<sup>94</sup>

62. Human rights deprivations and violations have intensified because of the progressive increase of exit permit denials, the damage to essential infrastructure that has scarcely been repaired because of restrictions on the imports of items labelled as “dual-use” by

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<sup>83</sup> A/HRC/47/57 (n 70), para. 58.

<sup>84</sup> A/71/554 (n 63), para. 51.

<sup>85</sup> A/HRC/40/73 (n 80), paras. 53-54.

<sup>86</sup> UNGA ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese’ (21 September 2022) UN Doc A/77/356, para. 10.

<sup>87</sup> *Ibid.* paras. 43-46.

<sup>88</sup> *Ibid.* paras. 47-52.

<sup>89</sup> *Ibid.* paras. 56-62.

<sup>90</sup> *Ibid.* para. 73.

<sup>91</sup> UNHRC ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese’ (9 June 2023) UN Doc A/HRC/53/59, paras. 38-78.

<sup>92</sup> *Ibid.* paras. 79-93.

<sup>93</sup> A/72/556 (n 74), para. 56. *See also*, UNGA ‘Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel’ (14 September 2022) UN Doc A/77/328, para. 82.

<sup>94</sup> A/HRC/34/70 (n 68), para. 29. *See also*, A/72/556 (n 74), para. 9; and A/HRC/40/73 (n 80), para. 13.

Israel,<sup>95</sup> and the insufficiency of basic services like potable water and electricity that have harshly impinged on Palestinians right to health, education, work, and family life.<sup>96</sup> Indeed, by early 2019, 95 per cent of the Gazan population did not have access to clean water.<sup>97</sup>

63. All this has led to the steady de-development of Gaza. By 2020, its gross domestic product per capita had declined by 30 per cent, and its unemployment rate increased to 46 per cent.<sup>98</sup> Furthermore, Israeli policies have vastly diminished Gaza's ability to provide its own sustenance. The allowable fishing zone off the coast of Gaza has been reduced by the Israeli navy firing at and confiscating fishing boats. In 2020 alone, 105 incidents with the Israeli navy were reported.<sup>99</sup> In addition, Israel has imposed a high-risk restricted zone near the perimeter fence surrounding Gaza, which deprives it of approximately 35 per cent of its agricultural lands.<sup>100</sup> Hence, today Gaza is highly dependent on foreign aid, which has been in decline since 2017.<sup>101</sup> The situation is so dire that in 2021, Secretary General of the United Nations, António Guterres stated: "if there is a hell on earth, it is the lives of children in Gaza."<sup>102</sup>

64. Medical permit approvals have also significantly dropped over time. "In 2012, the approval rate was 92 per cent; it declined to 82 per cent in 2014; and declined further to 62 per cent in 2016."<sup>103</sup> In 2017, that number was reduced to 52.4 per cent, of which only 2.6 per cent of the applications were formally rejected, while 45 per cent were delayed, or received no response.<sup>104</sup> The situation further deteriorated in 2020 due to the suspension of security coordination between the Palestinian Authority and Israel, "in the context of announced annexation plans by Israel in the West Bank."<sup>105</sup>

65. In addition, electricity outages in Gaza are an everyday occurrence that severely affects the correct functioning of hospitals and medical facilities, and impedes the desalinization of water and sewage treatment.<sup>106</sup> In 2017, residents of Gaza experienced outages of 18–

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<sup>95</sup> A/HRC/34/70 (n 68), para. 28.

<sup>96</sup> *Ibid.* para. 20. *See also*, A/74/507 (n 63), para. 9; and A/75/532 (n 64), para. 15.

<sup>97</sup> A/HRC/40/73 (n 80), para. 10.

<sup>98</sup> A/HRC/44/60 (n 64), para. 61.

<sup>99</sup> *Ibid.* para. 63.

<sup>100</sup> *Ibid.* para. 64.

<sup>101</sup> *Ibid.* para. 61. *See also*, A/HRC/49/87 (n 71), para. 45.

<sup>102</sup> A/HRC/49/87 (n 71), para. 45.

<sup>103</sup> A/HRC/37/75 (n 63), para. 43. *See also*, A/HRC/34/70 (n 68), para. 22.

<sup>104</sup> A/HRC/37/75 (n 63), para. 43.

<sup>105</sup> A/75/532 (n 64), para. 19. *See also*, A/HRC/47/57 (n 70), para. 15.

<sup>106</sup> A/72/556 (n 74), para. 8. *See also*, A/HRC/37/75 (n 63), para. 38; and A/HRC/44/60 (n 64), para. 67.



20 hours per day.<sup>107</sup> Mercifully, by 2019, and thanks to the aid provided by the Government of Qatar, electricity was supplied for between 14 and 15 hours per day. Nevertheless, less than half of the electricity demands were met in the first half of 2019, and supply interruptions still hindered the proper functioning of hospitals and medical facilities.<sup>108</sup> In 2020, only 41.7 per cent of Gaza's energy demand was met,<sup>109</sup> with further regressions in 2021 due to a ban on fuel shipments imposed by the Israeli authorities after an escalation in violence. In mid-2021, only 31 per cent of the power demand was met, resulting in approximately 6–12 hours of electricity available each day.<sup>110</sup>

66. Additionally, the blockade, lack of essential services, and continued outbreak of hostilities has brought the health system in Gaza to the brink of collapse.<sup>111</sup> Undeniably, the blockade has provoked the lack of adequate medical supplies and essential drugs, and hampered the import of items required for the reparation of key infrastructure and equipment.<sup>112</sup> At the beginning of 2018, 40 per cent of essential medicines listed in its basic health basket were completely out of stock, while another 43 per cent had less than a month's supply remaining.<sup>113</sup> At the same time, "3 hospitals and 13 primary health-care clinics were temporarily closed, affecting health-care delivery to more than 300,000 people."<sup>114</sup> In 2020, only 93 ventilators and 110 beds were available in the intensive care units in Gaza to cover a population of 2 million in the midst of a global pandemic, while 47 per cent of essential drugs were at zero stock level.<sup>115</sup> In 2021, because of an escalation of hostilities, 9 hospitals and 19 clinics in Gaza were damaged.<sup>116</sup>

67. Moreover, owing to the escalation of hostilities and the difficulties for reconstruction, the Palestinians' right to education has heavily suffered. In 2017, two thirds of the schools in Gaza operated in double shifts, and often by candlelight, while travel restrictions have hindered the ability of teachers and students alike to access further training or educational opportunities abroad.<sup>117</sup> By 2019, the shortage of classrooms in Gaza was serious. Out of 274 UNRWA schools in Gaza, 84 operated on a single-shift basis, 177 on a double-shift

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<sup>107</sup> *Ibid.* para. 8.

<sup>108</sup> A/74/507 (n 63), para. 10.

<sup>109</sup> A/HRC/44/60 (n 64), para. 61.

<sup>110</sup> A/HRC/47/57 (n 70), para. 16.

<sup>111</sup> A/74/507 (n 63), para. 13. *See also*, A/75/532 (n 64), para. 17.

<sup>112</sup> A/HRC/37/75 (n 63), para. 38. *See also*, A/75/532 (n 64), para. 18; and A/HRC/44/60 (n 64), para. 69.

<sup>113</sup> A/HRC/37/75 (n 63), para. 37.

<sup>114</sup> *Ibid.* para. 38.

<sup>115</sup> A/75/532 (n 64), para. 18.

<sup>116</sup> A/HRC/47/57 (n 70), para. 12.

<sup>117</sup> A/HRC/37/75 (n 63), para. 24.

basis and 13 on a triple-shift basis.<sup>118</sup> The circumstances only worsened, when in 2021, 58 education facilities were damaged.<sup>119</sup> Similarly, in the West Bank, communities who face the risk of being forcibly transferred have also experienced the demolitions of their schools.<sup>120</sup>

### III. THE APPLICABLE LAW RELEVANT TO ASSESS THE LEGAL CONSEQUENCES ARISING FROM ISRAEL'S VIOLATION OF INTERNATIONAL LAW

68. The rules and principles of international law that are relevant to answer the questions posed by the General Assembly in its request for an advisory opinion, are the United Nations Charter, specifically the prohibition against the threat or use of force and its corollary prohibiting the annexation of territory through the use of force; International Humanitarian Law (“IHL”), in particular the law of occupation; International Human Rights Law (“IHRL”), with special emphasis on the right to self-determination and the prohibition of discrimination; and International Criminal Law (“ICL”).

#### A. THE UNITED NATIONS CHARTER

69. Article 2(4) of the United Nations Charter establishes the prohibition of the “threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.”

70. This prohibition entails the duty to refrain from using or threatening to use force to violate international lines of demarcation, such as armistice lines; to deprive people of their right to self-determination, freedom, and independence; and to acquire territory of another State.<sup>121</sup>

71. As a member of the United Nations,<sup>122</sup> Israel has accepted the obligations contained in the United Nations Charter and is deemed able to carry them out.<sup>123</sup> Furthermore, since the prohibition of the threat or use of force also reflects customary international law<sup>124</sup>,

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<sup>118</sup> A/74/507 (n 63), para. 26.

<sup>119</sup> A/HRC/47/57 (n 70), para. 12.

<sup>120</sup> A/HRC/37/75 (n 63), para. 15.

<sup>121</sup> Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UNGA Res. 2625 (XXV) (24 October 1970) UN Doc A/RES/2625(XXV).

<sup>122</sup> Admission of Israel to membership in the United Nations, UNGA Res. 273 (III) (11 May 1949) UN Doc A/RES/273(III).

<sup>123</sup> Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI art 4.

<sup>124</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 11), para. 86; and *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. Merits, Judgment. I.C.J. Reports 1986, pp. 98-101, paras. 187-190.

with the character of a *jus cogens* norm,<sup>125</sup> it is applicable on the whole of the Occupied Palestinian Territory.

72. These rules and prohibitions are relevant when examining Israel's attempt to annex, both *de jure* and *de facto*, parts of Palestinian territory. The rules are also crucial for evaluating the legality of the prolonged occupation itself. As noted by Special Rapporteur Lynk, "the inexorable Israeli occupation has become indistinguishable from annexation".<sup>126</sup>

## B. INTERNATIONAL HUMANITARIAN LAW

73. Considering that the territories concerning these advisory proceedings, including East Jerusalem, and Gaza<sup>127</sup> are occupied territories,<sup>128</sup> international humanitarian law, and in particular the law of occupation, is also applicable to assess the legality of Israel's measures in the Occupied Palestinian Territory.

74. The law of occupation is mostly enshrined in the 1907 Hague Regulations, the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, and Protocol I Additional to the 1949 Geneva Conventions.

75. In the case of the Occupied Palestinian Territory, both The Hague Regulations and the Fourth Geneva Convention are applicable. The former, because they are part of customary international law,<sup>129</sup> and the latter, because both parties to the conflict have acceded to the Convention. Israel has been a party to the Convention since 1951, while Palestine gave a unilateral undertaking to apply the Convention in 1982, which was considered valid by Switzerland as the depositary State,<sup>130</sup> and officially acceded to the four Geneva Conventions and Additional Protocol I on 2 April 2014. In addition, the applicability of the Fourth Geneva Convention to the OPT has also been confirmed by

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<sup>125</sup> See, *Military and Paramilitary Activities in and against Nicaragua* (n 124), para. 190; International Law Commission, 'Yearbook of the International Law Commission, 2001, vol. II, Part Two', UN Doc A/CN.4/SER.A/2001/Add.1, p. 112, footnote 641, and p. 85, para. 5; and ILC 'Report of the International Law Commission Seventy-third session' (18 April–3 June and 4 July–5 August 2022) UN Doc A/77/10, Annex to the Draft conclusions on identification and legal consequences of preemptory norms of general international law (*jus cogens*).

<sup>126</sup> A/HRC/49/87 (n 71), para. 51.

<sup>127</sup> A/77/328 (n 93), para. 82.

<sup>128</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 11), para. 78.

<sup>129</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 11), para. 89; and *Legality of the Threat or Use of Nuclear Weapons* (n 14), para. 75.

<sup>130</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 11), para. 91.

the Security Council,<sup>131</sup> the General Assembly,<sup>132</sup> the High Contracting Parties to the Convention,<sup>133</sup> and this Court.<sup>134</sup>

76. In regard to the specific measures adopted by the Israeli Government, and particularly relevant to answer the questions posed by the General Assembly, the Court must examine the duty of the occupying power to maintain public order and safety within the occupied territory;<sup>135</sup> the duty of the Occupying Power to provide humanitarian relief;<sup>136</sup> the prohibition of coercion<sup>137</sup> and corporal punishment against protected persons;<sup>138</sup> the prohibition against collective punishments;<sup>139</sup> the duty to maintain in force the penal laws of the occupied territory,<sup>140</sup> and to subject detainees to a fair trial;<sup>141</sup> the duty to guarantee that detainees serve their sentence within the occupied territory and under humane conditions;<sup>142</sup> the prohibition against destruction or confiscation of private property,<sup>143</sup> and against pillage,<sup>144</sup> as well as the prohibition against deportation or transfer of the Occupying Power's own civilian population into the occupied territory,<sup>145</sup> and the related prohibition against individual, mass forcible transfers and deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not.<sup>146</sup>

77. It must be noted that the main purposes of the law of occupation under IHL are "(a) to closely regulate an occupation to ensure that the territory achieves, or is restored to, a

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<sup>131</sup> *E.g.*, UN Security Council Res. 237 (1967) (14 June 1967) UN Doc S/RES/237(1967); and UNSC Res. 2334 (2016) (23 December 2016) UN Doc S/RES/2334 (2016).

<sup>132</sup> Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and the other occupied Arab territories, UNGA Res. 71/96 (6 December 2016) UN Doc A/RES/71/96.

<sup>133</sup> Annex to the letter dated 29 December 2014 from the Permanent Representative of Switzerland to the United Nations addressed to the Secretary-General, UNGA, Sixty-ninth session, UN Doc A/69/711 – S/2015/1, para. 4.

<sup>134</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 11), para. 101.

<sup>135</sup> Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (adopted 18 October 1907, entered into force 26 January 1910) 205 CTS 277 (1907 Hague Convention IV) art 43; and Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (GCIV) art 27.

<sup>136</sup> GCIV arts 59, 61 and 62.

<sup>137</sup> GCIV art 31.

<sup>138</sup> GCIV art 32.

<sup>139</sup> 1907 Hague Convention IV art 50; and GCIV art 33.

<sup>140</sup> GCIV art 64.

<sup>141</sup> GCIV arts 71-75.

<sup>142</sup> GCIV art 76.

<sup>143</sup> 1907 Hague Convention IV art 46; and GCIV art 53.

<sup>144</sup> 1907 Hague Convention IV art 47.

<sup>145</sup> GCIV art 49.

<sup>146</sup> *Ibid.*

state of sovereignty; (b) to prevent the territory from becoming a fruit of conquest; and (c) to safeguard the protected people under occupation.”<sup>147</sup>

78. Thus, it follows, that the core obligations of the Occupying Power during an occupation are to administer the public property and natural resources of the occupied State in accordance with the rules of usufruct;<sup>148</sup> the prohibition to forcibly transfer and deport protected persons or to transfer parts of its own civilian population into the occupied territory;<sup>149</sup> and the prohibition to deprive the population of the occupied territory of the protections provided by IHL through any change introduced as the result of the occupation of a territory or by any annexation of the whole or part of the occupied territory.<sup>150</sup> If these duties and prohibitions are violated, then the Occupying Power would have breached their fundamental obligations as alien rulers, and the occupation itself should be deemed illegal.<sup>151</sup>

### C. INTERNATIONAL HUMAN RIGHTS LAW

79. As has been recognized by this Court,<sup>152</sup> the Secretary-General,<sup>153</sup> the UN High Commissioner for Human Rights,<sup>154</sup> the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem and Israel,<sup>155</sup> and by the Special Rapporteurs,<sup>156</sup> international human rights law applies to the OPT. As put forward by Special Rapporteur Lynk, “international human rights law, including the overarching right to self-determination, continues to apply in times of conflict and

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<sup>147</sup> A/72/556 (n 74), para. 22.

<sup>148</sup> 1907 Hague Convention IV art 55.

<sup>149</sup> GCIV art 49.

<sup>150</sup> GCIV art 47.

<sup>151</sup> A/72/556 (n 74), para. 65.

<sup>152</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 11), para. 106; and *Armed Activities in the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 168, paras. 178 and 179.

<sup>153</sup> UNHRC ‘Report of the Secretary-General on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem’ (13 April 2017) UN Doc A/HRC/34/38, paras. 5-9.

<sup>154</sup> UNHRC ‘Report of the United Nations High Commissioner for Human Rights on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan’ (15 March 2023) UN Doc A/HRC/52/76, para. 4; UNGA ‘Report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan’ (3 October 2022) UN Doc A/77/493, para. 3.

<sup>155</sup> UNHRC ‘Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel’ (9 May 2023) UN Doc A/HRC/53/22, para. 5; and A/HRC/50/21 (n 27), para. 20.

<sup>156</sup> A/HRC/53/59 (n 91), para. 15; E/CN.4/2002/32 (n 36), para. 9.

throughout an occupation.”<sup>157</sup> This means that humanitarian and human rights law are meant to be complementary where possible, subject only to legitimate derogations.<sup>158</sup>

80. The Court has recognized that State’s obligations under human rights law apply extraterritorially whenever a State exercises jurisdiction on foreign territory.<sup>159</sup> Accordingly, as the Occupying Power, Israel’s obligations under the International Covenant on Civil and Political Rights (“ICCPR”), the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”), the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and other applicable rules of international human rights law, fully apply within the Occupied Palestinian Territory.<sup>160</sup>
81. In relation to the questions posed by the General Assembly to the Court, amongst all applicable human rights, the right of self-determination is of special importance.
82. The right of self-determination comprises the right of all peoples to “freely determine their political status and freely pursue their economic, social and cultural development.”<sup>161</sup> Thus, in essence, the right of self-determination is the right to develop as a people within a political community of their own, that usually takes the form of an independent State, free of alien subjugation and exploitation.<sup>162</sup>
83. The right of self-determination is enshrined in several bodies of law, and has been deemed part of customary international law.<sup>163</sup> It is recognized as one of the purposes of the United Nations in Article 1(2) of the United Nations Charter; it is affirmed in common Article 1 of the ICCPR and the ICESCR that mandate States Parties to promote the

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<sup>157</sup> A/72/556 (n 74), para. 23.

<sup>158</sup> A/72/556 (n 74), para. 23.

<sup>159</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 11), para. 109.

<sup>160</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 11), paras. 106-113.

<sup>161</sup> Declaration on the granting of independence to colonial countries and peoples, UNGA Res. 1514 (XV) (14 December 1960) UN Doc A/RES/1514(XV), para. 2. *See also*, Common Article 1, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) and International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR); and Human Rights Committee, General Comment No.12: Article 1 (Right to self-determination), para. 2.

<sup>162</sup> A/77/356 (n 86), para. 19

<sup>163</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Separate Opinion of Judge Robinson, I.C.J. Reports 2019, paras. 40-42.

realization of this right; and it has been reiterated in several General Assembly resolutions, including the Declaration on the granting of independence to colonial countries and peoples (Resolution 1514 (XV)), and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (Resolution 2625(XXV)). The Human Rights Council has also adopted several Resolutions concerning the right of the Palestinian people to self-determination. In the last version, Resolution 52/34 (co-sponsored by Chile), the Council reaffirmed “the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine”.

84. Moreover, because it protects one of the most fundamental values of the international community,<sup>164</sup> and its realization is a necessary condition<sup>165</sup> for the realization of other basic human rights,<sup>165</sup> the right of self-determination has often been hailed as a cornerstone right,<sup>166</sup> with an undisputed *erga omnes* character, recognized by this Court in repeated occasions.<sup>167</sup> Hence, the international community as a whole has a legal interest in its protection.

85. Likewise, the idea that the right of self-determination is an instance of a *jus cogens* norm is widely supported under international legal scholarship.<sup>168</sup> Even though this Court has not explicitly commented on the status of the right of self-determination as a norm of *jus cogens*, it has declared that the breach of such right carries as a consequence the same obligations that are traditionally associated with serious breaches of a *jus cogens* norm,<sup>169</sup> namely those enshrined in Article 41 of the Articles on the Responsibility of States for Internationally Wrongful Acts.

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<sup>164</sup> *Ibid.* para. 77.

<sup>165</sup> See, UNCHR ‘General Comment No.12: Article 1 (Right to self-determination)’, para. 1; and A/77/356 (n 86), para. 15.

<sup>166</sup> See, A/HRC/47/57 (n 70), para. 39; A/77/356 (n 86), para. 15; *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 102, para. 29.

<sup>167</sup> *E.g.*, *East Timor (Portugal v. Australia)* (n 166), para. 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 11), para. 155; and *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, p. 139, para. 180.

<sup>168</sup> See, Separate Opinion of Judge Robinson (n 163), paras. 50; and 77; ILC, ‘Yearbook of the International Law Commission, 2001, vol. II, Part Two’, UN Doc A/CN.4/SER.A/2001/Add.1, p. 85, para. 5; ILC ‘Report of the International Law Commission Seventy-third session’ (18 April–3 June and 4 July–5 August 2022) UN Doc A/77/10, Annex to the Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*); A/HRC/47/57 (n 70), para. 39; and A/77/356 (n 86), para. 23.

<sup>169</sup> *E.g.*, *Continued Presence of South Africa in Namibia* (n 16), para. 112-125; and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 11), para. 159.

86. The right of self-determination has a political and an economic component that comprises the capacity of a people to choose its own government and govern themselves without external interference, and to collectively enjoy their natural wealth and resources, respectively.<sup>170</sup> In this sense, the Palestinian people's right of self-determination has continually been affirmed by the General Assembly,<sup>171</sup> including their right to external self-determination in the form of an independent State of Palestine.<sup>172</sup>
87. In addition to the right of self-determination, the Court should also consider Palestinians' right to life;<sup>173</sup> the right to personal integrity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment,<sup>174</sup> including during detention;<sup>175</sup> the right to the enjoyment of the highest attainable standard of physical and mental health;<sup>176</sup> the right to housing<sup>177</sup> and to own and enjoy property;<sup>178</sup> the right to liberty and security, including the right not to be subjected to arbitrary arrest or detention;<sup>179</sup> the right to a fair trial;<sup>180</sup> the right to engage in political activity;<sup>181</sup> the freedom of speech;<sup>182</sup> the freedom of movement;<sup>183</sup> the right to work;<sup>184</sup> the right to education;<sup>185</sup> the right to be free from arbitrary interference with one's privacy and family life;<sup>186</sup> the freedom of thought, conscience and religion;<sup>187</sup> the freedom of association;<sup>188</sup> the rights of the child;<sup>189</sup> the right to an adequate standard of living;<sup>190</sup> the protection of the family;<sup>191</sup> and the right to

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<sup>170</sup> A/77/356 (n 86), para. 16.

<sup>171</sup> *E.g.*, UNGA Res. 77/208 (28 December 2022) UN Doc A/RES/77/208; UNGA Res. 76/150 (5 January 2022) UN Doc A/RES/76/150; UNGA Res. 67/19 (4 December 2012) UN Doc A/RES/67/19; and UNGA Res. 58/292 (6 May 2004) UN Doc A/RES/58/292.

<sup>172</sup> *E.g.*, A/RES/77/208 (n 171); A/RES/76/150 (n 171); and A/RES/67/19 (n 171).

<sup>173</sup> ICCPR art 6.

<sup>174</sup> ICCPR art 7.

<sup>175</sup> ICCPR art 10.

<sup>176</sup> *Ibid.*

<sup>177</sup> ICESCR art 11.

<sup>178</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 17.

<sup>179</sup> ICCPR art 9.

<sup>180</sup> ICCPR art 14.

<sup>181</sup> ICCPR art 25.

<sup>182</sup> ICCPR art 19.

<sup>183</sup> ICCPR art 12.

<sup>184</sup> ICESCR art 6. *See also*, ICESCR arts 7 and 8, concerning related rights to work.

<sup>185</sup> ICESCR art 13.

<sup>186</sup> ICCPR art 17.

<sup>187</sup> ICCPR art 18.

<sup>188</sup> ICCPR art 22.

<sup>189</sup> ICCPR art 24; and the Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

<sup>190</sup> ICESCR art 11.

<sup>191</sup> ICESCR art 10.



development;<sup>192</sup> amongst others. Special attention is to be given to the prohibition of discrimination on any grounds,<sup>193</sup> including on the basis of gender,<sup>194</sup> and race, color, descent, or national or ethnic origin,<sup>195</sup> as this is a matter explicitly included in the questions submitted by the General Assembly.

#### D. INTERNATIONAL CRIMINAL LAW

88. Lastly, considering the gravity of the situation in the Occupied Palestinian Territory, and in particular Israel's intensifying efforts to transfer its civilian population into the OPT, to the detriment of the Palestinian indigenous and refugee population in the area, international criminal law also has bearing in the analysis that the Court must make of the questions posed to it by the General Assembly.
89. Occupation during an armed conflict is in essence a temporary *de facto* situation. Thus, the main purpose of occupation law is to preserve the sovereignty, and social, economic, and political structure of the occupied State.<sup>196</sup> This is the rationale behind Article 49 of the Fourth Geneva Convention that expressly prohibits the deportation or transfer of the civilian population of the Occupying Power into the territory it occupies.
90. The purpose of this provision is to "preserve the demographic and social structure of the occupied territory and to forbid the attempts by an occupying power to treat the territory as a fruit of conquest."<sup>197</sup> In this sense, the prohibition comprises "any measures taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory."<sup>198</sup>
91. The consequences of a breach of this prohibition are dire for the native population who is impeded to freely determine the future of its own territory, and barred from retaining its own identity.<sup>199</sup>

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<sup>192</sup> Declaration on the right to development, UNGA Res. 41/128 (4 December 1986) UN Doc A/RES/41/128.

<sup>193</sup> ICCPR art 26.

<sup>194</sup> ICCPR art 3; ICESCR art 3; and Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

<sup>195</sup> International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entered into force 4 January 1969) 660 UNTS 195.

<sup>196</sup> A/HRC/47/57 (n 70), para. 38.

<sup>197</sup> A/HRC/47/57 (n 70), para. 36.

<sup>198</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 11), para. 120.

<sup>199</sup> A/HRC/47/57 (n 70), para. 39.

92. For this reason, Article 85(4)(a) of Protocol I Additional to the Geneva Conventions, listed the transfer of its civilian population by the Occupying Power into the occupied territory as a grave breach of IHL. This conduct was later also recognized as a war crime.<sup>200</sup>
93. The Israeli Government has pursued a policy of establishing settlements in the OPT and *de facto* annexation for decades, and has been operating in full knowledge of the illegality of its settlements,<sup>201</sup> and the international obligations that compel it. Therefore, the relevance of this increasingly growing body of law should not be understated in the legal analysis of the situation in the OPT.

#### IV. CHILE'S VIEWS ON QUESTION A)

94. Question (a) of the request for an advisory opinion reads:

What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation measures?

95. The previous sections show that Israel has violated the right of the Palestinian people to self-determination, through its prolonged occupation, the establishment of illegal settlements, *de facto* annexation of the Palestinian territory since 1967, and all the measures taken with the purpose to deprive the Palestinian people of the right to determine their own political status and to be free to pursue their economic, social, and cultural development without external interference.
96. It is clear from Israel's statements and actions<sup>202</sup> that its violations of the right of self-determination of the Palestinian people are the result of a State policy, that precisely seeks to impede the Palestinians' ability to enjoy their natural wealth and resources, and the exercise of their political will. Indeed, current Special Rapporteur Albanese has stated that the nature of the Israeli occupation is "that of an intentionally acquisitive,

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<sup>200</sup> Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 art 8(2)(b)(viii).

<sup>201</sup> *E.g.*, UNSC Statement by the President of the Security Council (20 February 2023) UN Doc S/PRST/2023/1; UNSC Res. 2334 (23 December 2016) UN Doc S/RES/2334(2016); and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 11), para. 120.

<sup>202</sup> A/HRC/49/87 (n 71), para. 9.

segregationist and repressive regime designed to prevent the realization of the Palestinian people's right to self-determination.”<sup>203</sup>

97. This State policy comprises the arbitrary demolition of houses, the confiscation of land, the expansion of settlements, the pillaging of natural resources, a policy of arbitrary detention against Palestinians, the continued harassment of human rights defenders and political activists, the closure of territories, and the imposition of an intricate system of checkpoints and barriers, all of which have been systematically reported by different experts, including the Special Rapporteurs and the current and previous United Nations High Commissioners for Human Rights.
98. Former UN High Commissioner for Human Rights, Michelle Bachelet, took note of the gravity of the situation in the OPT in her statement delivered on 25 March 2022 at the Human Rights Council Forty-ninth Session. In that statement, she referred to Israel's continued use of collective punishment practices, the blockade of Gaza, the punitive demolitions of homes of Palestinians in the West Bank, the persistent expansion of settlements and the practice of forced evictions (which amount to a war crime) which puts the community under extreme pressure to move and leave their homes, the increased number of Palestinians killed by Israeli Security Forces in law enforcement incidents, the non-proportional use of lethal force, the new repressive measures applied against human rights organizations, the continued alleged ill-treatment or torture of detainees, the increased settlers violence with the practical support of Israeli Security Forces and with almost total impunity.<sup>204</sup>
99. Similarly, current UN High Commissioner for Human Rights, Mr Volker Türk noted on its 15 March 2023 Report to the Human Rights Council that the transfer by Israel of its own civilian population into the OPT is not only prohibited under international humanitarian law, but also amounts to a war crime that may engage the individual criminal responsibility of those involved.<sup>205</sup> He also asserted that settler violence has reached the highest levels ever recorded, and that Israel has repeatedly failed in its responsibility as the occupying Power to protect Palestinians and their property.<sup>206</sup>

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<sup>203</sup> A/77/356 (n 86), para. 73.

<sup>204</sup> UN Office of the High Commissioner for Human Rights (OHCHR), Statement delivered by Michelle Bachelet, United Nations High Commissioner for Human Rights (25 March 2022) [www.ohchr.org/en/statements/2022/03/occupied-palestinian-territory](http://www.ohchr.org/en/statements/2022/03/occupied-palestinian-territory), accessed 18 July 2023.

<sup>205</sup> A/HRC/52/76 (n 154), para. 58.

<sup>206</sup> *Ibid.* para. 61.

100. In turn, the Israeli policy of settlements has also been condemned by the Human Rights Council. On its most recent resolution (Resolution 52/35), co-sponsored by Chile, the Council reaffirmed that the Israeli settlements “are illegal under international law, and constitute a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace, and to economic and social development”, and demanded that Israel “immediately cease all settlement activities in all the Occupied Palestinian Territory, including East Jerusalem”.
101. Israel’s policy of closures not only restricts the freedom of movement of the Palestinian population but has also greatly impinged on the right to education, the right to work and access to health of the Palestinian population. All these measures, together with the imposition of obstacles to trade with the outside world, seriously affect the economic, social, and cultural development of the people of Palestine.
102. Already in 1994, Special Rapporteur Felber reported on some of these measures, namely, the demolitions of houses, the confiscation of land, the expansion of settlements and the closure of territories.<sup>207</sup> These policies have increased over time, as is clear from Section II. Moreover, Israel has imposed restrictions of movement on the Palestinian population who needs to be granted permits to exit and enter the closed areas. Today the economy of Palestine depends totally on that of Israel. Access and control of the natural resources of the Palestine people have fallen to a great extent in the hands of Israel.
103. In parallel, the UN High Commissioner for Human Rights has documented patterns of systematic discrimination in law, policy and practice by Israel, encompassing almost every sphere of life for the Palestinians.<sup>208</sup> He has reported discriminatory law enforcement practices,<sup>209</sup> discriminatory provision of building permits,<sup>210</sup> discriminatory policies on demolitions and forced evictions,<sup>211</sup> discriminatory laws on confiscation,<sup>212</sup> and discriminatory Israeli land and planning policies and measures.<sup>213</sup> Special Rapporteur Lynk also reported the existence of an “institutionalized regime of systematic racial oppression and discrimination”,<sup>214</sup> while other relevant actors including the Secretary-

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<sup>207</sup> E/CN.4/1994/14 (n 29).

<sup>208</sup> A/HRC/52/76 (n 154).

<sup>209</sup> *Ibid.* para. 13.

<sup>210</sup> *Ibid.* para. 30.

<sup>211</sup> *Ibid.* para. 33.

<sup>212</sup> *Ibid.* para. 34.

<sup>213</sup> *Ibid.* para. 49.

<sup>214</sup> A/HRC/49/87 (n 71), para. 31.

General<sup>215</sup> and the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel<sup>216</sup> have also reported on Israel's discriminatory laws, policies and practices.

104. The Human Rights Council has also denounced Israel's discriminatory policies and practices. In its latest Resolution on the topic (Resolution 52/3), which was co-sponsored by Chile, the Council noted that the Israeli policy of closures, the imposition of severe restrictions and checkpoints, and the permit regime were applied in a discriminatory manner affecting the Palestinian population. Therefore, it demanded that Israel ceases its illegal actions including the forcible transfer of Palestinian inhabitants and the revocation of residency permits of Palestinians living in East Jerusalem through various discriminatory laws; and urged Israel to ensure that water resource allocation in the OPT is not discriminatory, amongst other measures.

105. All these measures have been imposed within a normative framework put in place by the State of Israel, which includes the enactment of legislation and administrative measures, together with the application and interpretation of international law and domestic rules by Israeli State organs in a way that makes all these practices and policies seem legal in the eyes of Israel.

106. According to Article 3 of the Articles on State Responsibility for Internationally Wrongful Acts developed by the International Law Commission, the characterization of an act of a State as internationally wrongful is governed by international law and such characterization is not affected by the characterization of the same act as lawful under domestic law. These acts entail the international responsibility of Israel, as the acts are attributable to the State of Israel, and amount to a breach of its obligations under international law.

107. At the same time, the aforementioned policies have not only affected the Palestinians right of self-determination, and other basic human rights, but also constitute grave breaches of IHL,<sup>217</sup> and in the specific case of the establishment of settlements, a war crime. Without a doubt, the facts detailed in Section II clearly show that Israel has not only failed to maintain public order and safety within the OPT, and to provide

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<sup>215</sup> A/77/493 (n 154), para. 27.

<sup>216</sup> A/77/328 (n 93), para. 76.

<sup>217</sup> Chile has affirmed this position in several interventions before the organs of the United Nations, *e.g.*, its intervention at the 49<sup>th</sup> session of the Human Rights Council, on 25 March 2022.

humanitarian assistance to its population, but has actively pursued policies that go directly against straightforward prohibitions enshrined in the law of occupation.

108. With regard to the question about the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, including the violation of specific humanitarian law and human rights obligations, the position of Chile is the following:

A. LEGAL CONSEQUENCES WITH REGARD TO ISRAEL

109. Israel is bound to comply with its obligation to respect the right of the Palestinian people to self-determination and its obligations under international law, including the law on the use of force, humanitarian law and human rights law. Moreover, Israel has incurred in international responsibility and is therefore under the obligation to cease the violation of these international obligations, offer appropriate assurances and guarantees of non-repetition, and make full reparation for the injury caused in the form of restitution, compensation, and/or satisfaction.

B. LEGAL CONSEQUENCES WITH REGARD TO THIRD STATES

110. Given the *jus cogens* and *erga omnes* character of the right of self-determination, the basic rules of international humanitarian law, the prohibition against the use of force, and the prohibition of racial discrimination, and other international human rights provisions including the prohibition on torture, all States have the obligation to cooperate to bring this situation to an end through lawful means, the duty not to recognize as lawful the situation created by the breach of those obligations, and the duty to not render aid or assistance in maintaining said situation.

111. Additionally, as already recognized by this Court in the Wall Advisory Opinion,<sup>218</sup> all States parties to the Fourth Geneva Convention are under an obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.

C. LEGAL CONSEQUENCES WITH REGARD TO THE UNITED NATIONS

112. The political organs of the United Nations and all other organs and specialized agencies of the organization, within the scope of their functions and powers, shall take

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<sup>218</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 11), para. 159.

measures to contribute to end the violation of the self-determination of the Palestinian people, including the end of measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and the end of related discriminatory legislation measures.

## V. CHILE'S VIEWS ON QUESTION (B)

113. Question (b) of the request for an advisory opinion reads:

How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?"

114. The situation of the Palestinian territory occupied since 1967 has been traditionally analyzed through the lens of the international law applicable to occupation by foreign military forces. International Humanitarian Law is the law governing the effects of war, with the purpose of protecting the victims of armed conflict. In this context, international humanitarian law contemplates occupation as a status resulting from hostilities in which civilians in occupied territories need rules to protect them.

115. Articles 47 to 78 of the Fourth Geneva Convention regulate the situation of occupied territories. International humanitarian law regards occupation as a matter of fact, establishing rules that govern the conduct of the occupying power. Insofar as occupation was not envisaged to become a permanent situation, the rationale behind the rules established by the Fourth Geneva Convention, applicable on occupied territories, was that occupation would cease at the same time as the end of the war.

116. As explained by Special Rapporteur Michael Lynk, "while the lawful occupant of the Palestinian territory may have been the appropriate diplomatic and legal portrayal of the occupation in its early years, it has since become wholly inadequate both as an accurate legal characterization of what the occupation has become and as a viable political, diplomatic and legal catalyst to compel Israel to completely and finally terminate the occupation in accordance with its international obligations".<sup>219</sup>

117. Israel has attempted to justify this 56-year-old occupation as a necessary measure to protect its security. However, as stated by Special Rapporteur Lynk, "[t]he primary engine of Israel's ongoing occupation –the settlement enterprise– detracts from, rather

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<sup>219</sup> A/72/556 (n 74), p. 7.

than enhances, Israel's security."<sup>220</sup> He has also noted that the Israeli settlements "are the engine of this forever occupation",<sup>221</sup> and that "the inexorable Israeli occupation has become indistinguishable from annexation".<sup>222</sup>

118. Furthermore, Special Rapporteur Albanese<sup>223</sup> and the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel have found the Israeli occupation to be unlawful. Indeed, the Commission recently stated that "there are reasonable grounds to conclude that the Israeli occupation of Palestinian territory is now unlawful under international law owing to its permanence and to actions undertaken by Israel to annex parts of the land de facto and de jure".<sup>224</sup> The Commission also noted that actions by Israel "that are intended to create irreversible facts on the ground and expand its control over territory are reflections as well as drivers of its permanent occupation".<sup>225</sup> These actions include the Israeli's authorities "silencing of civil society voices that challenge government policies and narrative is intrinsically linked to the goal of ensuring and enshrining the permanent occupation at the expense of the rights of the Palestinian people".<sup>226</sup>

119. In this context, and taking into account the policies and practices of Israel in the OPT, the occupation of Palestinian territory is illegal on the following grounds: (i) it has lasted for more than 56 years, and is perpetuated intentionally by Israel in order to continue its illegal settlement policy and practices; (ii) it is not justified as a measure necessary for Israel's protection; (iii) the settlements policy evidences that occupation is aimed at the annexation of territory by Israel; (iv) Israel has violated its obligation to act in the best interests of the population under occupation.

#### A. LEGAL CONSEQUENCES WITH REGARD TO ISRAEL

120. In accordance with the Articles on State Responsibility of States for Internationally Wrongful Acts, Israel has the following obligations: (i) to cease the unlawful occupation of Palestinian territory, (ii) to offer appropriate assurances and guarantees of non-repetition, (iii) to restitute the Palestinian territory where settlements

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<sup>220</sup> *Ibid.* p.17.

<sup>221</sup> A/HRC/47/57 (n 70), para. 74.

<sup>222</sup> A/HRC/49/87 (n 71), para. 51.

<sup>223</sup> A/HRC/53/59 (n 91), para. 14.

<sup>224</sup> A/77/328 (n 93), para. 75.

<sup>225</sup> *Ibid.*

<sup>226</sup> A/HRC/53/22 (n 155), para. 69.



have been built; (iv) to make full reparation for the damages caused as a consequence of this illegal occupation.

B. LEGAL CONSEQUENCES WITH REGARD TO THIRD STATES

121. As regards the legal consequences of the illegal occupation of Palestinian Territory that arise for all States, the first is the duty of non-recognition as lawful of the annexation of Palestinian territory by Israel. States also have the obligation to contribute to bring that situation to an end through lawful means. At this point it is pertinent to recall that the Court in the Namibia Advisory opinion, in relation to the illegality of the presence of South Africa in the territory of Namibia declared that:

“A binding determination made by a competent organ of the United Nations to the effect that a situation is illegal cannot remain without consequence. Once the Court is faced with such a situation, it would be failing in the discharge of its judicial functions if it did not declare that there is an obligation, especially upon Members of the United Nations, to bring that situation to an end.”<sup>227</sup>

122. In order to bring the situation to an end, States are under the obligation to refrain from lending any support or any form of assistance to Israel with reference to its occupation of the Palestinian Territory.

123. Additionally, and as already explained in Section IV, all States parties to the Fourth Geneva Convention are under an obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.

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<sup>227</sup> *Continued Presence of South Africa in Namibia* (n 16), para. 117.

C. LEGAL CONSEQUENCES WITH REGARD TO THE UNITED NATIONS

124. As regards the legal consequences of Israel's illegal occupation of Palestinian Territory arising for the United Nations, its political organs and all other organs and specialized agencies should, within the scope of their functions and powers, take measures to contribute to end the illegal occupation of Palestine territory and take adequate measures to maintain and restore peace and security in the region.

THE HAGUE, 24 July 2023

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