

INTERNATIONAL COURT OF JUSTICE

**LEGAL CONSEQUENCES ARISING FROM THE
POLICIES AND PRACTICES OF ISRAEL IN THE OCCUPIED PALESTINIAN
TERRITORY, INCLUDING EASTERN JERUSALEM
(REQUEST FOR ADVISORY OPINION)**

**Written Comments of the Principality of Liechtenstein
Pursuant to the Order of the Court of 3 February 2023**

17 July 2023

1. On 30 December 2022, the United Nations General Assembly adopted Resolution 77/247 by which it decided, in accordance with Article 96 of the Charter of the United Nations and pursuant to Article 65 of the Statute of the Court, to request the International Court of Justice (“**Court**”):

[T]o render an advisory opinion on the following questions, considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, 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 an Order of 3 February 2023, the Court decided: “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 and may do so within the time-limits fixed in this Order.” The Court fixed 25 July 2023 as the time limit for submission of written statements.

3. The Principality of Liechtenstein (“**Liechtenstein**”) wishes to take advantage of this possibility and submits the following observations to the Court within the time limit and in due form.

I. Introduction

4. Liechtenstein’s interest in providing a submission is based on its view of the important role that the Court serves in rendering advisory opinions and its general interest in strengthening the rule of law at the international level, for which purpose the Court can play an essential role. More specifically, Liechtenstein submits this Written Statement because, as a member of the international community, it holds the view that the international legal framework governing the right to self-determination and the law of occupation must be further clarified, *inter alia* to cite the *jus cogens* character of the right of self-determination and the *erga omnes* nature of the obligations stemming from it. It considers that self-determination and the legal consequences arising from prolonged occupation, settlement and annexation is a proper subject-matter for an advisory opinion given the critical role of the General Assembly in the maintenance of international peace and security.

5. Liechtenstein is strongly supportive of the advisory opinion function of the ICJ. Further, the dispute over the situation in the Middle East, which has been on the agenda of the United Nations since its very inception, clearly entails questions that need clarification. Issues related to the right of self-determination, occupation, settlement and annexation are at the heart of the ongoing dispute, and guidance from the Court on the relevant legal questions can help provide clarity both with respect to the situation in the Middle East and beyond, as well as contribute to the realization of a peaceful solution to the Middle East conflict that is in line with international law.

6. As a result, Liechtenstein is of the view that the General Assembly, and the international community, would benefit from an advisory opinion on the legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including Eastern Jerusalem.

7. Liechtenstein abstained for procedural grounds from the vote on General Assembly Resolution 77/247, which is the source of the request for an advisory opinion. The Resolution was, however, adopted by the General Assembly on 30 December 2022, and thus the matter has been duly referred to the Court.

8. Liechtenstein attaches great importance to public international law and the function of the Court in addressing matters of international law. With this submission, it wishes to contribute its views on the Court's competence and the exercise of its discretionary power to give the advisory opinion that has been requested.

II. The Court Has Jurisdiction to Issue an Opinion on the Questions Posed

A. The General Assembly is Competent to Make the Request

9. The Court has jurisdiction to issue an advisory opinion pursuant to Article 65(1) of the Statute of the Court because it has been requested to do so by the duly authorized United Nations General Assembly. Article 65(1) of the Statute of the Court sets out its advisory jurisdiction, allowing the ICJ to provide advisory opinions on legal questions upon request by bodies authorized by the UN Charter.¹ Under Article 96(1) of the UN Charter, the General Assembly is one such authorized body.² Article 65(1) of the Statute of the Court provides:

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.

10. In accordance with these provisions, the Court has jurisdiction on the basis that (i) the General Assembly is authorized by Article 96(1) of the Charter to make a request for an

¹ Statute of the International Court of Justice, art. 65(1) (“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.”).

² United Nations Charter, art. 96(1) (“The General Assembly ... may request the International Court of Justice to give an advisory opinion on any legal question.”).

advisory opinion and it has done so by General Assembly Resolution 77/247, adopted on 30 December 2022; (ii) the General Assembly is competent to make the request since the request concerns matters within the scope of the General Assembly's activities; and (iii) the request is for an opinion on legal questions. Liechtenstein considers it necessary to comment only in relation to the last two of these points, given that the aforementioned resolution was passed by a recorded vote of 87 in favor, 26 opposed, and 53 abstentions, and was thus properly adopted by the required majority of UN Member States present and voting, in accordance with Rule 86 of the General Assembly's Rules of Procedure.³

B. The Request is for an Opinion on Legal Questions

11. Paragraph 1 of Article 96 authorizes the General Assembly to make a request for an advisory opinion “on any legal question.” The Court has held that questions which are “framed in terms of law and [which] raise problems of international law” are “by their very nature susceptible of a reply based on law.”⁴ Resolution 77/247 requests the Court to interpret rules and principles of international law regarding fundamental aspects of the international legal order and of the United Nations system, including the right to self-determination. The questions asked in the Resolution are indisputably legal in nature.

12. That a request for an advisory opinion may have a political dimension does not negate the legal nature of the request. Indeed, in the *Kosovo* Advisory Opinion, the Court found it “cannot refuse to respond to the legal elements of a question which invites it to discharge an essentially judicial task, namely, in the present case, an assessment of an act by reference to international law.”⁵ In considering jurisdiction over a legal question, the Court has made clear that “it is not concerned with the political nature of the motives which may have inspired the request or the political implications which its opinion might have.”⁶

³ Rule 86 of the General Assembly's Rules of Procedure defines the terms “members present and voting” at paragraphs 2-3 of Article 18 of the UN Charter to mean members casting affirmative or negative votes and excluding those that abstain.

⁴ *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12 (“**Western Sahara Advisory Opinion**”), para. 15. See also *Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996*, p. 66, para. 15-16; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95 (“**Chagos Advisory Opinion**”), para. 58 (“The Court considers that a request from the General Assembly for an advisory opinion to examine a situation by reference to international law concerns a legal question.”); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136 (“**Construction of a Wall Advisory Opinion**”), para. 37 (“[T]he Court observes that this question is directed to the legal consequences arising from a given factual situation considering the rules and principles of international law The question submitted by the General Assembly has thus, to use the Court's phrase in its Advisory Opinion on *Western Sahara*, ‘been framed in terms of law and raise[s] problems of international law’; it is by its very nature susceptible of a reply based on law; indeed it is scarcely susceptible of a reply otherwise than on the basis of law. In the view of the Court, it is indeed a question of a legal character”).

⁵ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 403 (“**Kosovo Advisory Opinion**”), para. 27. See also *Construction of a Wall Advisory Opinion*, para. 41.

⁶ *Ibid.*

13. Thus, in the *Wall* Opinion, a question that asked for the Court’s opinion on the “legal consequences” of Israel’s construction of a wall in Occupied Palestinian Territory was deemed to be within the Court’s jurisdiction since it requested that the Court “identify the existing principles and rules, interpret them and apply them ... thus offering a reply to the question posed based on law.”⁷

14. The questions set out in Resolution 77/247 are of a legal nature because they concern a determination of the legal consequences of prolonged occupation, settlement and annexation, including measures aimed at altering the demographic composition, character and status thereof and how these policies and practices affect the legal status of occupation and the consequences arising therefrom for all States and the United Nations. To address these questions, the Court will need to assess principles of international law, including international humanitarian law and international human rights law.

III. There Are No Compelling Reasons Preventing the Court from Providing an Advisory Opinion

15. Under Article 65(1) of the Statute of the Court, the Court retains discretionary authority to decline to issue an opinion even where it otherwise has jurisdiction.⁸ The purpose of advisory opinions is to furnish the organ which has made the request with the elements of law necessary for its action.⁹ Thus, the Court’s discretion to decline to issue an opinion is used very sparingly.¹⁰ As the Court held, “the reply of the Court, itself an ‘organ of the United Nations’, represents its participation in the activities of the Organization, and, in principle, should not be refused.”¹¹ The Court has further held that only “compelling reasons” should serve as a basis for the Court to decline to issue an opinion.¹² Indeed, the present Court has never refused to give an advisory opinion.

16. There is no compelling reason for the Court to decline to issue an advisory opinion here. Advisory opinions regarding the right to self-determination are of great importance to the General Assembly. They are sought to assist the General Assembly in its activities; and they are given to the requesting organ, rather than to States. More specifically, the General Assembly has repeatedly recognized that the United Nations has “a permanent responsibility towards the

⁷ *Construction of a Wall Advisory Opinion*, para. 38 (citing *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 13).

⁸ *Id.*, para. 44.

⁹ In its 1951 Opinion concerning the Genocide Convention, the Court observed: “The object of this request for an Opinion is to guide the United Nations in respect of its own action.” See *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion*, I.C.J. Reports 1951, p. 15, at p. 19.

¹⁰ *Chagos Advisory Opinion*, para. 65; *Kosovo Advisory Opinion*, para. 30; *Construction of a Wall Advisory Opinion*, para. 44.

¹¹ *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (first phase), Advisory Opinion*, I.C.J. Reports 1950, p. 65, at p. 71.

¹² *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 14; *Judgments of the Administrative Tribunal of the I.L.O. upon complaints made against the U.N.E.S.C.O.*, *Advisory Opinion*, I.C.J. Reports 1956, p. 77, at p. 86.

question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy.”¹³

17. Moreover, the Court has found that the motives of individual States sponsoring or voting in favor of a resolution requesting an advisory opinion “are not relevant to the Court’s exercise of its discretion whether or not to respond.”¹⁴ Motives are thus as irrelevant with respect to the Court’s discretion to render an advisory opinion as they are with respect to the Court’s jurisdiction.

18. There are thus no compelling reasons why the Court should not render the advisory opinion, which has been requested of it. The questions put to the Court are both urgent and relevant, and are likely to have a practical and contemporary effect as well as to contribute to the general development of international law.

IV. Conclusions

19. Liechtenstein accordingly submits that:

- a. The General Assembly’s request for an advisory opinion satisfies the conditions of the Statute of the Court and the UN Charter both as regards the competence of the requesting organ and as regards the substance of the request; and the Court accordingly has jurisdiction in this case.
- b. There are no “compelling reasons” why the Court should not render the advisory opinion which has been requested of it.

20. The Principality of Liechtenstein reserves the right to furnish information and/or to make any further submissions on the questions submitted to the Court for an advisory opinion in a possible second written statement, the time-limit for which has been fixed for 25 October 2023.

Brussels, 17 July 2023

Ambassador
Embassy of Liechtenstein in Belgium

¹³ See, for example, the Preambles of the following General Assembly Resolutions: General Assembly, Committee on the Exercise of the Inalienable Rights of the Palestinian People, A/RES/57/107 (3 December 2002); General Assembly, Committee on the Exercise of the Inalienable Rights of the Palestinian People, A/RES/58/18 (3 December 2003); General Assembly, Committee on the Exercise of the Inalienable Rights of the Palestinian People, A/RES/74/10 (3 December 2019); General Assembly, Committee on the Exercise of the Inalienable Rights of the Palestinian People, A/RES/75/20 (2 December 2020); General Assembly, Committee on the Exercise of the Inalienable Rights of the Palestinian People, A/RES/77/22 (30 November 2022).

¹⁴ See *Kosovo Advisory Opinion*, para. 33.