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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 LEBANON

24 July 2023

[Translation by the Registry]

The Government of Lebanon,

Having regard to the Order made by the International Court of Justice on 3 February 2023 concerning the request for an advisory opinion, submitted to it by the United Nations General Assembly in its resolution 77/247 of 30 December 2022, regarding the legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem;

Having regard to the letter from the Registrar of the Court to the Ministry of Foreign Affairs and Emigrants, notifying it of the request for an advisory opinion, in accordance with Article 66, paragraph 1, of the Statute of the Court;

Whereas the Court decided in its Order that United Nations Member States “are considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion”, in accordance with Article 66, paragraph 2, of the Statute of the Court;

Whereas, in its resolution 77/247 of 30 December 2022, entitled “Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem”, the General Assembly of the United Nations decided¹,

“in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to 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?”;

Has the honour to transmit the following statement to the International Court of Justice:

1. This request addressed to the Court on the eve of the twentieth anniversary of the historic Advisory Opinion which it rendered in 2004 on the “legal consequences of the construction of a wall in the Occupied Palestinian Territory”² comes in a context of extreme political tension in the Middle East, in particular between Israel and Palestine.

2. This serious political tension is the result of the continuation and even the aggravation of Israel’s violations of international law in the occupied Palestinian territories. These violations have been denounced in several United Nations reports, the most recent being the two reports of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including

¹ Resolution adopted by the General Assembly on 30 Dec. 2022, 77th Session, A/RES/77/247, para. 18.

² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*.

East Jerusalem, and Israel³, which was set up by the Human Rights Council. Both reports provide a clear description of the policy of successive Israeli Governments to encourage settlement:

“The establishment, maintenance and expansion of Israeli settlements throughout the West Bank, including in East Jerusalem, has fragmented and isolated Palestinians from their lands as well as from other Palestinian communities. The Commission emphasizes that wherever settlements are located, they have a cascading impact on Palestinians throughout the West Bank. By largely failing to enforce the law, continuing to retroactively authorize outposts, ignoring settler violence originating in outposts and not applying legal sanctions against settlers breaking the law, Israel sends a clear message to settlers that outposts are a viable, quasi-legal option for erecting new settlements and expanding Israeli presence in the West Bank.”⁴

That report also mentions Israel’s expropriation of agricultural land and exploitation of Palestinian natural resources by Israel⁵. It further notes Israel’s discriminatory policy towards Palestinians⁶. The report states in conclusion that Israel’s actions constitute not only violations of human rights but also *de facto* annexation of Palestinian territories⁷.

3. From a legal point of view, it is to be noted that international law has evolved over the last twenty years, thanks to the work of the various bodies of the United Nations, in particular the Court and the International Law Commission (ILC). In that process, various concepts of international law have been clarified and codified. Of those concepts, two are particularly relevant to the advisory opinion requested from the Court in General Assembly resolution A/RES/77/247: peremptory norms of international law (*jus cogens*) and the international responsibility of States⁸.

4. The General Assembly, moreover, stated in the above-mentioned resolution the law applicable to the legal opinion, namely

“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”⁹.

5. In its Advisory Opinion on the construction of a wall, the Court listed the same rules as above¹⁰, and legal logic would suggest that the rules which applied to a measure taken by Israel in 2004 also apply to the current Israeli measures to which the General Assembly refers in its new request for an advisory opinion.

³ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/HRC/50/21, 9 May 2022; Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/77/328, 14 Sept. 2022.

⁴ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/77/328, 14 Sept. 2022, para. 30.

⁵ *Ibid.*, paras. 31-41.

⁶ *Ibid.*, paras. 45-117.

⁷ *Ibid.*, paras. 75-76.

⁸ Resolution adopted by the General Assembly on 30 Dec. 2022, 77th Session, A/RES/77/247.

⁹ *Ibid.*

¹⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 192-193, para. 136.

6. Lebanon presents its observations to the Court on this basis, addressing first the advisory jurisdiction of the Court and then the substantive questions, moving from the general to the specific in examining the rules of international law which have been violated by Israel.

I. THE JURISDICTION OF THE COURT AND THE PROPRIETY OF ITS INTERVENTION

A. The Court's jurisdiction to give the opinion sought

7. Article 96, paragraph 1, of the United Nations Charter provides that “[t]he General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question”.

8. Article 65, paragraph 1, of the Statute of the Court states that “[t]he 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”.

9. These articles set out the two prerequisites for establishing the advisory jurisdiction of the Court: (1) a request must be submitted by a competent authority, and (2) that request must concern a legal question.

10. The competence of the United Nations General Assembly to request an advisory opinion is clearly established by Article 96, paragraph 1, of the Charter, which expressly refers to it as one of the bodies which may present such a request. The Court, for its part, has clarified that the competence of the General Assembly covers questions of peace and security and that there is “an increasing tendency over time for the General Assembly and the Security Council to deal in parallel with the same matter concerning the maintenance of international peace and security”¹¹.

11. The Court has defined the legal character of a question on a number of occasions. For instance, in its Advisory Opinion on *Western Sahara*, it affirmed that questions “framed in terms of law and rais[ing] problems of international law . . . are by their very nature susceptible of a reply based on law . . . [and] appear . . . to be questions of a legal character”¹². More recently, the Court considered that “a request from the General Assembly for an advisory opinion to examine a situation by reference to international law concerns a legal question”¹³.

12. The Court has also made clear that, “in determining the jurisdictional issue of whether it is confronted with a legal question, 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”¹⁴.

¹¹ *Ibid.*, p. 149, para. 27.

¹² *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 18, para. 15, and *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, pp. 414-415, para. 25.

¹³ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 112, para. 58.

¹⁴ *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948*, p. 61; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 234, para. 13.

B. The propriety of the Court's intervention

13. The Court considers the jurisdiction conferred upon it by Article 65, paragraph 1, of its Statute to be discretionary, since that provision states that it “may give an advisory opinion”. That said, the Court has consistently observed that a reply to a request for an opinion should not, in principle, be refused¹⁵. It adds in another Advisory Opinion that only “compelling reasons [may lead it] to decline to respond to the request from the General Assembly”¹⁶.

14. The Court has declined to give an advisory opinion on only one occasion. That refusal concerned the World Health Organization's request for the Court to give an advisory opinion on the legality of the potential use of nuclear weapons in international armed conflicts. The Court's refusal to give the opinion sought was based on its lack of jurisdiction, and not on considerations of judicial propriety¹⁷. In every other instance, the Court, “itself an ‘organ of the United Nations’”, has responded favourably to requests for advisory opinions as “represent[ing] its participation in the activities of the Organization”¹⁸.

15. In view of the foregoing, Lebanon considers that the Court has jurisdiction to give an advisory opinion in the present proceedings, and that there are no compelling reasons that should lead it to decline to respond to the General Assembly's request.

II. THE MERITS

16. The United Nations General Assembly requests the opinion of the Court on

“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”,

and it asks the Court to identify how these “policies and practices of Israel” “affect” the “legal status of the occupation”, and what “legal consequences . . . arise for all States and the United Nations from this status”¹⁹. In order to do so, it will be necessary to determine the nature and content of the norms in question, before examining the legal consequences of their breach.

¹⁵ *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.

¹⁶ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019 (I), p. 22, para. 66; *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase*, Advisory Opinion, I.C.J. Reports 1950, p. 71; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, I.C.J. Reports 1999 (I), pp. 78-79, para. 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004 (I), p. 156, para. 44.

¹⁷ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996 (I), p. 235, para. 14.

¹⁸ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019 (I), p. 22, para. 65; *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase*, Advisory Opinion, I.C.J. Reports 1950, p. 71; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, I.C.J. Reports 1999 (I), pp. 78-79, para. 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004 (I), p. 156, para. 44.

¹⁹ Resolution adopted by the General Assembly on 30 Dec. 2022, 77th Session, A/RES/77/247, para. 18.

A. The norms of international law violated by Israel

17. By its prolonged occupation of Palestinian territories and its ongoing and systematic practices there, as noted in various resolutions and reports of the Security Council and the General Assembly, Israel is violating peremptory norms of international law and norms established in several international humanitarian law and human rights conventions.

1. Peremptory norms of international law

18. The notion of peremptory norms of international law (*jus cogens*) is gradually crystallizing. The Court's acknowledgment of the existence of such rules is increasingly explicit²⁰. The ILC, for its part, has made significant progress since 2017 in its work to define the concept of peremptory norms and determine their legal régime²¹. The ILC's final conclusions²² should be of assistance to the Court, the Commission even having drawn up a non-exhaustive list of eight peremptory norms and the legal consequences of their breach.

19. In the present case, Israel can be said to be in breach of at least four of the eight norms mentioned by the ILC: the prohibition of aggression, the basic rules of international humanitarian law, the prohibition of racial discrimination and apartheid, and, above all, the right to self-determination.

20. While the basic rules of international humanitarian law have been codified in the 1907 Hague Convention and the 1949 Geneva Conventions and their Additional Protocols, it should be noted from the outset that their characterization as peremptory norms prevents Israel from invoking any circumstance precluding the wrongfulness of its violations of those rules. Indeed, the ILC found in Conclusion 18 that no circumstance precluding wrongfulness under the rules on the responsibility of States for internationally wrongful acts may be invoked with regard to any act of a State that is not in conformity with an obligation arising under a peremptory norm of general international law (*jus cogens*)²³. The same applies to the norm prohibiting racial discrimination and apartheid²⁴.

(a) The prohibition of the use of force

21. The prohibition of the use of force is a well-established peremptory norm²⁵ and is clearly set out in Article 2, paragraph 4, of the United Nations Charter, which provides that

²⁰ *Reservations to the Convention on Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 52, paras. 89-91.

²¹ Fifth report on peremptory norms of general international law (*jus cogens*) by Dire Tladi, Special Rapporteur, International Law Commission (ILC), A/CN.4/747, 17 Jan. 2022.

²² Peremptory norms of general international law (*jus cogens*), Texts of the draft conclusions and Annex adopted by the Drafting Committee on second reading, Identification and legal consequences of peremptory norms of general international law (*jus cogens*), ILC, A/CN.4/L.967, 11 May 2022.

²³ *Ibid.*, Conclusion 18.

²⁴ The International Convention on the Elimination of All Forms of Racial Discrimination and the 1973 United Nations International Convention on the Suppression and Punishment of the Crime of Apartheid.

²⁵ Fourth report on peremptory norms of general international law (*jus cogens*) by Dire Tladi, Special Rapporteur, ILC, A/CN.4/727, 31 Jan. 2019.

“[a]ll Members shall refrain in their international relations from 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”.

22. In 1974, by its resolution 3314, the General Assembly adopted a definition of aggression that contains a non-exhaustive list of several forms of the illegal use of force. According to the annex to that resolution, aggression includes “any military occupation, however temporary, . . . any annexation by the use of force of the territory of another State or part thereof . . . [, and t]he blockade of the ports or coasts of a State”²⁶. Thus, Israel’s occupation of Palestinian territories and its blockade of the Gaza Strip constitute acts of aggression. This fact has been established on multiple occasions by the United Nations Security Council, which since 1967 has repeatedly called on Israel to end its occupation²⁷.

23. The General Assembly, for its part, has been more explicit in its condemnation of Israel’s occupation of Palestinian territories. For example, it recently recalled “the inadmissibility of the acquisition of land by force and therefore the illegality of the annexation of any part of the Occupied Palestinian Territory, including East Jerusalem, which constitutes a breach of international law, . . . and expresses its grave concern at recent statements calling for the annexation by Israel of areas in the Occupied Palestinian Territory”²⁸.

24. As for the Court, in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, it clearly affirmed the illegality of the use of force and of territorial acquisition resulting from the use of force, and also noted the customary nature of that prohibition²⁹.

25. Some may express doubts about the application of the norm prohibiting the use of force, on the ground that it is an inter-State norm, insinuating that the occupied Palestinian territories do not form part of a State. In response, one might note that Lebanon and 138 United Nations Member States recognize the State of Palestine, with Jerusalem as its capital. This would moreover be a timely opportunity for the Court to give its opinion on this point. The State of Palestine is a member of several international organizations, including UNESCO, the OPCW, the OIC, the League of Arab States and the PCA, and Palestine has observer State status in the United Nations. Furthermore, the prohibition of the use of force is not limited to relations between States but to any use contrary to the purposes and principles of the United Nations Charter³⁰.

26. Despite the successive resolutions of the Security Council, starting with resolution 242, Israel is continuing its occupation and policies clearly aimed at annexing Palestinian territories. It encourages settlements, the confiscation of land and the destruction of public and private buildings, with a view to making its presence an irreversible fait accompli.

²⁶ Definition of aggression, General Assembly resolution 3314, 14 Dec. 1974.

²⁷ Security Council resolutions 2334 (2016), 476 (1980), 471 (1980) and 242 (1967).

²⁸ General Assembly resolution A/RES/77/126, 77th Session, 15 Dec. 2022.

²⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 171, para. 87, and p. 182, para. 117.

³⁰ Art. 2, para. 4, of the United Nations Charter.

27. In view of the foregoing, Lebanon considers that the Court should reiterate in its advisory opinion that Israel has violated the fundamental principle of the illegality of the use of force, along with its corollary, the illegality of the annexation of territory by force.

(b) The right to self-determination

28. Lebanon considers that the right of the Palestinian people to self-determination is irrefutable, and there is no more eloquent way of affirming this fact than the Court's observation that "the existence of a 'Palestinian people' is no longer in issue" and that "[its] rights include the right to self-determination"³¹.

29. The right to self-determination is a peremptory norm of international law enshrined in various texts, including the United Nations Charter, which establishes this right as a foundation of friendly relations among nations³². This pillar of modern international law has several facets, all of which have been violated by Israel.

30. In its Advisory Opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, the Court examined the nature and especially the content of the right to self-determination. It recalled that this right is a customary rule and that resolution 1514 of the General Assembly has a "declaratory character"³³. This resolution adopted in 1960 was one of the first texts to set out the content and scope of the right to self-determination. It acknowledges that the self-determination of peoples entails the ability to determine freely their political status and pursue their economic and social development. The resolution also mentions that it is necessary to cease "[a]ll armed action or repressive measures of all kinds directed against dependent peoples . . . in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected", and it clearly states that "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations"³⁴.

31. Common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights also affirms the right of peoples to self-determination and reiterates the main elements of that right³⁵.

32. As mentioned above, Lebanon considers that Israel has violated all the constituent elements of the right of the Palestinian people to self-determination: (1) political and economic independence, (2) permanent sovereignty over natural wealth and resources, and (3) territorial integrity.

³¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 183, para. 118.

³² Art. 1, para. 2, of the United Nations Charter.

³³ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 132, para. 152.

³⁴ General Assembly resolution 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted on 14 Dec. 1960.

³⁵ Art. 1 of the ICCPR and the ICESCR.

33. Israel's decades-long prevarication despite the many agreements it has concluded and the appeals of the international community to recognize the independence of the Palestinian State³⁶ is a continuing violation of the first element of the right to self-determination. Its policy of confiscating agricultural land and exploiting the water and mineral resources of the occupied Palestinian territories³⁷ is a continuing violation of the second element of the right to self-determination, the permanent sovereignty of peoples over their natural resources. The third element of this right, territorial integrity, was recalled by the Court when it stated that "the right to self-determination of the people concerned is defined by reference to the entirety of a non-self-governing territory, as stated in the aforementioned paragraph 6 of resolution 1514 . . . The Court considers that the peoples of non-self-governing territories are entitled to exercise their right to self-determination in relation to their territory as a whole, the integrity of which must be respected by the administering Power"³⁸. However, through its settlement policy and the construction of infrastructure linking its settlements, Israel is encroaching on and dividing up Palestinian territories, including Jerusalem. This systematic and continuing violation of the integrity of the territory of the Palestinian people has been established and documented in several international investigative reports³⁹.

2. The conventional norms violated by Israel

34. As mentioned above, the international community and international courts, including the one to which the request for an advisory opinion is addressed, consider that conventions on international humanitarian law and human rights are treaties that reflect and codify peremptory customary norms⁴⁰.

(a) International humanitarian law

35. The 1907 Hague Conventions, and especially the Fourth Geneva Convention of 1949 and Additional Protocol II, contain several principles that Israel, as an occupying Power, has a duty to respect with regard to the civilians present on the territories that it occupies. The details of Israel's violations of these principles are, once more, based on the facts established by the Independent International Commission of Inquiry.

36. Article 49, paragraph 6, of the Fourth Geneva Convention provides that "[t]he Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies"⁴¹. On the basis of this article and several resolutions of the Security Council, the Court considered in 2004 that "the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem)

³⁶ See e.g. General Assembly resolution A/RES/77/25 adopted on 30 Nov. 2022.

³⁷ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/77/328, 14 Sept. 2022, paras. 31 to 41.

³⁸ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 134, para. 160.

³⁹ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/77/328, 14 Sept. 2022, paras. 5-6 and 14-15.

⁴⁰ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 256, para. 75, and especially p. 257, para. 79; *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain), Preliminary Objections, Judgment, I.C.J. Reports 1964*, p. 6, paras. 33-34.

⁴¹ Art. 49 of the Fourth Geneva Convention.

have been established in breach of international law”⁴². It would be appropriate for the Court to acknowledge that Israel continues to violate international law to this day⁴³.

37. It can also be said that Israel, through its systematic policy of destroying Palestinian territories, expropriating land and prohibiting access to natural resources, not to mention the violence that it has inflicted on Palestinians, is maintaining a “coercive environment”⁴⁴ that drives Palestinians to leave their homes, which is considered a crime of deportation or forcible transfer of population prohibited by the aforementioned Article 49 of the Fourth Geneva Convention.

38. One more fundamental principle of international humanitarian law has been consistently violated by Israel as an occupying Power: the prohibition to exploit the natural resources of occupied territories. The occupying Power must act as an administrator of the territories; any industrial or agricultural exploitation of them by that Power is considered pillage⁴⁵.

39. The destruction of Palestinian homes and agricultural land has been considered in several United Nations reports to constitute collective penalties prohibited by Article 33 of the Fourth Geneva Convention. The blockade imposed on the Gaza Strip can be considered such a penalty⁴⁶.

(b) Human rights

40. The Court previously confirmed in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* that, contrary to Israel’s claims, the human rights that have been codified in the various conventions since the two covenants on political, civil and socio-economic rights are applicable to the occupied Palestinian territories, including East Jerusalem⁴⁷. However, as can be seen from the numerous reports prepared by various competent bodies since 2004, including the Human Rights Council⁴⁸, the Committee on the Elimination of Racial Discrimination⁴⁹, the Committee on Economic, Social and Cultural Rights⁵⁰, the Committee

⁴² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 183-184, para. 120.

⁴³ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/77/328, 14 Sept. 2022, pp. 9-11, paras. 25-30.

⁴⁴ *Ibid.*, pp. 19-20, paras. 55-57.

⁴⁵ *Ibid.*, pp. 11-13, paras. 31-40.

⁴⁶ Art. 33 of the Fourth Geneva Convention and, e.g. the Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Human Rights Council, 45th Session, 15 July 2020, pp. 7 *et seq.*, paras. 24-27.

⁴⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 157, para. 46, and pp. 178-179, paras. 106-109.

⁴⁸ Human Rights Committee, Concluding observations on the fifth periodic report of Israel, CCPR/C/ISR/CO/5, 5 May 2022. UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, A/HRC/49/87, 12 Aug. 2022.

⁴⁹ Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/ISR/CO/14-16, 3 Apr. 2012; Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventeenth to nineteenth reports of Israel, CERD/C/ISR/CO/17-19, 17 Jan. 2020.

⁵⁰ Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Israel, E/C.12/ISR/CO/4, 12 Nov. 2019.

on the Elimination of Discrimination against Women, and the Committee on the Rights of the Child⁵¹, Israel continues to violate the rights established in these treaties.

41. For the sake of brevity, and to respect the reasoning of the General Assembly, we will address the principal rights violated by Israel, before turning to the discriminatory measures adopted by Israel in breach of the norms codified by the International Convention on the Elimination of All Forms of Racial Discrimination.

42. *The right to life* forms the very basis of the modern system of human rights, in which, according to the United Nations General Assembly in 1948, “[e]veryone has the right to life, liberty and security of person”. In 1966, the Covenant on Civil and Political Rights clarified this vital right, stating that “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”⁵² The many Palestinian lives that have been lost, most to shots fired by Israel’s occupying army or Israeli settlers, without this leading to the prosecution of those who killed them, clearly and directly engages the responsibility of Israel⁵³.

43. *The right to liberty* set out in Article 3 of the Universal Declaration of Human Rights and Article 9 of the Covenant on Civil and Political Rights is clearly being violated by Israel, which is arbitrarily detaining hundreds of Palestinians without trial or conviction⁵⁴.

44. *The right to freedom of movement*, provided for in Article 13 of the Universal Declaration of Human Rights, is consistently violated by Israel, which imposes draconian controls on the movement of Palestinians within the occupied territories and on their travel outside them. This policy aimed at driving Palestinians out of the occupied territories permanently is most aggressive in East Jerusalem.

45. *The rights of women and girls*: the coercive and violent environment created by the Israeli occupation has an especially severe effect on Palestinian women. The second report of the International Commission of Inquiry establishes this clearly: “[t]he cumulative effects of occupation practices, including restrictions on movement, have affected the equal rights of women and girls and impeded their self-reliance. Women and girls are specifically vulnerable to gender-based violence as they go about their everyday activities. Searches by male soldiers and harassment, including at checkpoints, have affected the movements of women and girls and have served to deprive them of equal access to family life, education, health care and employment. Women and girls have also been subjected to harassment and violent attacks by settlers.”⁵⁵

46. *The rights of the child*: children are another segment of Palestinian society that has been seriously affected by the Israeli occupation. The violence inflicted on the civilian population, and the

⁵¹ Committee on the Rights of the Child, Concluding observations on the second to fourth periodic reports of Israel, adopted by the Committee at its 63rd Session (27 May-14 June 2013), CRC/C/ISR/CO/2-4, 4 July 2013.

⁵² Art. 3 of the Universal Declaration of Human Rights and Art. 6, para. 1, of the International Covenant on Civil and Political Rights.

⁵³ Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, A/77/501, 3 Oct. 2022, p. 5, paras. 9-10.

⁵⁴ *Ibid.*, pp. 16-17, paras. 43-44, and Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/HRC/47/57, pp. 6-7, para. 23.

⁵⁵ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/77/328, p. 21, para. 59; see also the Report of the High Commissioner, pp. 7-9, paras. 24-32.

destruction of schools and hospitals, violate Palestinian children's right to life, education and a safe and healthy childhood. The UNICEF report dated 15 March 2023 describes the tragic situation of children in the occupied territories⁵⁶. The situation depicted in the report shows that Israel is violating the rights of the child mentioned, *inter alia*, in Articles 19, 24 and 28 of the Convention on the Rights of the Child⁵⁷.

(c) Israel's racially discriminatory policies

47. For years, Israel has adopted legislation and directives in the occupied territories, which also target its own Arab citizens, aimed at discriminating against some of the people who live under its control and even establishing the legal supremacy of one group, "Jews", over another human group, "Arabs"⁵⁸.

48. The Committee on the Elimination of Racial Discrimination repeatedly reminds Israel that it must respect its obligations under the Convention and "urges the State party [Israel] to give full effect to article 3 of the Convention to eradicate all forms of segregation between Jewish and non-Jewish communities and any such policies or practices that severely and disproportionately affect the Palestinian population in Israel proper and in the Occupied Palestinian Territory"⁵⁹.

49. Israel's segregationist policy has reached such a persistent level of injustice against Palestinians that several international experts and non-governmental organizations affirm that it constitutes apartheid, a crime that engages State responsibility for the breach of a peremptory norm, as the International Law Commission⁶⁰ has concluded, and also engages the criminal responsibility of those who commit that crime, since it is one of the crimes against humanity contemplated in the Statute of the International Criminal Court⁶¹.

50. After clearly placing the crime of apartheid in the context of international law and describing Israel's policy towards Palestinians, the former Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 concludes his report⁶² by stating:

"Applying each of the three steps of the amalgamated test from the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute, . . . the political system of entrenched rule in the Occupied Palestinian Territory that endows one racial-national-ethnic group with substantial rights, benefits and privileges while intentionally subjecting another group to live behind walls and checkpoints and under a permanent military rule *sans droits, sans égalité, sans dignité*

⁵⁶ Humanitarian situation report No. 3, UNICEF, reporting period 1 Jan. to 31 Dec. 2022, 15 Mar. 2023, available online at <https://www.unicef.org/appeals/state-of-palestine/situation-reports> (accessed 8 May 2023).

⁵⁷ Convention on the Rights of the Child, 20 Nov. 1989.

⁵⁸ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/77/328, 14 Sept. 2022, p. 16, paras. 46-47.

⁵⁹ Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventeenth to nineteenth reports of Israel, CERD/c/ISR/CO/17-19, 27 Jan. 2020, p. 4, para. 16, and p. 5, paras. 21-23.

⁶⁰ Peremptory norms of general international law (*jus cogens*), Texts of the draft conclusions and Annex adopted by the Drafting Committee on second reading, Identification and legal consequences of peremptory norms of general international law (*jus cogens*), ILC, A/CN.4/L.967, 11 May 2022.

⁶¹ Art. 7, para. (j), of the Rome Statute.

⁶² Human Rights Committee, Concluding observations on the fifth periodic report of Israel, CCPR/C/ISR/CO/5, 5 May 2022. UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, A/HRC/49/87, 12 Aug. 2022

et sans liberté (without rights, without equality, without dignity and without freedom) satisfies the prevailing evidentiary standard for the existence of apartheid.”

The Special Rapporteur sets out the three steps of that test:

“First, an institutionalized regime of systematic racial oppression and discrimination has been established. Israeli Jews and Palestinian Arabs in East Jerusalem and the West Bank live their lives under a single regime that differentiates its distribution of rights and benefits on the basis of national and ethnic identity, and that ensures the supremacy of one group over, and to the detriment of, the other . . . Second, this system of alien rule has been established with the intent to maintain the domination of one racial-national-ethnic group over another. Israeli political leaders, past and present, have repeatedly stated that they intend to retain control over all of the occupied territory in order to enlarge the blocs of land for present and future Jewish settlement while confining the Palestinians to barricaded population reserves . . . [T]hird, the imposition of this system of institutionalized discrimination with the intent of permanent domination has been built upon the regular practice of inhumane and inhuman acts. Arbitrary and extrajudicial killings. Torture. The violent deaths of children. The denial of fundamental human rights. A fundamentally flawed military court system and the lack of criminal due process. Arbitrary detention. Collective punishment. The repetition of these acts over long periods of time, and their endorsement by the Knesset and the Israeli judicial system, indicate that they are not the result of random and isolated acts but integral to the system of rule by Israel. This is apartheid.”⁶³

51. One of the key elements of the crime of apartheid committed by Israel is its refusal to permit Palestinians to return to the towns and villages they have been forced to leave, whether they are located in Israel or the occupied Palestinian territories, despite the endless appeals of the United Nations in this respect, including in General Assembly resolutions 194 (1948) and 3236 (1974).

52. This denial of Palestinians’ rights is especially flagrant given that, since its creation, Israel has encouraged all Jews, whatever their nationality, to settle in Israel or the occupied Palestinian territories, granting them Israeli nationality and various material incentives⁶⁴.

B. The legal consequences of Israel’s violations

53. The previous points show that Israel is continuing to violate peremptory norms of international law, norms that create *erga omnes* obligations. The Court previously acknowledged this fact in its 2004 Advisory Opinion, stating that “the obligations violated by Israel include certain obligations *erga omnes* . . . such obligations are by their very nature ‘the concern of all States’ and, ‘[i]n view of the importance of the rights involved, all States can be held to have a legal interest in their protection’”⁶⁵.

⁶³ *Ibid.*, p. 19, paras. 52-56.

⁶⁴ Amnesty International, *Israel’s apartheid against Palestinians: Cruel system of domination and crime against humanity*, 1 Feb. 2022, available online at <https://www.amnesty.org/en/documents/mde15/5141/2022/en/> (accessed 9 May 2023).

⁶⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 67, para. 155.

54. Accordingly, the nature of the obligations violated entails Israel's specific responsibility, but also the responsibility of third States. Indeed, the persistent and systematic nature of Israel's actions and policies constitutes an aggravated violation that gives rise to three types of obligations owed by States under Article 41 of the Draft Articles on the Responsibility of States, which were commended by the United Nations General Assembly in 2001⁶⁶. We will thus discuss the legal consequences for Israel first and then those for third States.

1. The legal consequences for Israel

55. As mentioned above, Israel is committing a serious breach of public international law that meets the definition set out in Article 40 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, since the violations in question have been systematic and persistent. Israel is under an obligation to cease these wrongful acts and offer assurances of non-repetition in accordance with Article 30 of the Draft Articles.

56. Specifically, in order to comply with the principle of non-use of force and its corollary, the inadmissibility of the annexation of territories, Israel is obliged in this instance to dismantle the settlements in the occupied Palestinian territories. The Court previously affirmed in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* that "Israel is accordingly under an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of [the establishment of settlements]"⁶⁷. Israel also has an obligation to bring to an end its violation of the right of the Palestinian people to self-determination and its occupation of Palestinian territories, and to recognize the State of Palestine.

57. Israel is committing a serious breach of international law as long as it continues to apply measures that discriminate against Palestinians and maintain a régime of apartheid in the occupied Palestinian territories. Israel must, *inter alia*, rescind or amend various laws that discriminate against Palestinians, such as the Law of Return (5710) and the Absentees' Property Law.

58. Moreover, Israel will remain in an illegal situation as long as it fails to apply the Security Council resolutions addressing the different aspects of its occupation of Palestinian territories, such as resolutions 242 (1967), 252 (1968), 271 (1969), 267(1969), 452 (1970), 298 (1971), 452 (1979), 446 (1979), 465 (1980), 471 (1980), 476 (1980), 478 (1980), 605 (1987), 904 (1994) and 2334 (2016). Indeed, "when the Security Council adopts a decision under Article 25 in accordance with the Charter, it is for member States to comply with that decision, including those members of the Security Council which voted against it and those Members of the United Nations who are not members of the Council. To hold otherwise would be to deprive this principal organ of its essential functions and powers under the Charter."⁶⁸

59. Israel's occupation of Palestinian territory is illegal as regards both its conduct and its purpose. Consequently, Israel is under an obligation to *bring an immediate and unconditional end to this illegal situation* for which it is internationally responsible, and to make reparation.

⁶⁶ James Crawford, *State Responsibility: The General Part*, Cambridge University Press, 2014, p. 106.

⁶⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 198, para. 153.

⁶⁸ [*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. 54, para. 116.]

2. The consequences for third States

60. Considering that the norms breached by Israel are peremptory norms, these breaches affect all States on account of their *erga omnes* character⁶⁹. Article 41 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts provides that:

“1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.

2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.”⁷⁰

61. The Court previously confirmed these three requirements that are incumbent on States in the event of the violation of an *erga omnes* obligation when it stated in its 2004 Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*:

“Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation . . . They are also under an obligation not to render aid or assistance in maintaining the situation . . . It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment . . . to the exercise by the Palestinian people of its right to self-determination is brought to an end.”⁷¹

62. In view of the foregoing, it can be said that Israel’s violations have the following consequences for third States:

- States must co-operate through all lawful means to ensure that Israel withdraws from the occupied Palestinian territories, ceases its settlement expansion policy and dismantles existing settlements, rescinds its discriminatory policies and, finally, grants Palestinians the right to self-determination.
- States must not recognize the *fait accompli* situation that Israel is creating in the occupied Palestinian territories or, especially, the change in the status of and demographic situation in East Jerusalem.
- States must also co-operate and endeavour, in compliance with the Charter and international law, either directly or through the United Nations, and especially the General Assembly and the Security Council, to ensure that Israel ends the system of apartheid that it is implementing in the occupied Palestinian territories.

63. In short, Israel’s occupation of Palestinian territory is illegal and must end immediately and without condition. Consequently, third States and international organizations are under an obligation to support, without delay, efforts aimed at bringing this occupation *to an immediate and*

⁶⁹ *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. 54, para. 116. [sic]

⁷⁰ Art. 40 of the 2001 Draft Articles on the Responsibility of States for Internationally Wrongful Acts; Peremptory norms of general international law (*jus cogens*), Texts of the draft conclusions and Annex adopted by the Drafting Committee on second reading, Identification and legal consequences of peremptory norms of general international law (*jus cogens*), ILC, A/CN.4/L.967, 11 May 2002, Conclusion 19.

⁷¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004 (I), p. 200, para. 159.

unconditional end and to refrain from any action or omission that contributes to maintaining this illegal situation.

3. The consequences for the United Nations

64. The United Nations, and in particular the General Assembly and the Security Council, should take all measures necessary to ensure that their relevant resolutions are implemented without delay, and should examine any additional measures required in order to:

- remove any obstacle to the Palestinian people's exercise of its right to self-determination;
- end Israel's prolonged occupation, settlement and annexation of Palestinian territory, including, in particular, measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem;
- end the system of racial segregation and discrimination implemented by Israel which amounts to apartheid;
- *immediately and unconditionally* end Israel's illegal occupation of Palestinian territories.

65. In conclusion, Lebanon considers that the Court has jurisdiction to give the advisory opinion requested in General Assembly resolution 77/2247, and requests the Court to do so in the light of the foregoing observations.

Ambassador of Lebanon to the
Kingdom of the Netherlands

Abdel Sattar Issa
