

STATEMENT OF THE STATE OF ISRAEL PURSUANT TO THE COURT'S ORDER OF 3 FEBRUARY 2023 RELATING TO THE ADVISORY PROCEEDINGS INITIATED BY UN GENERAL ASSEMBLY RESOLUTION 77/247

The State of Israel attaches great importance to the peaceful settlement of disputes and to the significant role carved out for the International Court of Justice for this purpose. It moreover respects and welcomes the appropriate use of the Court's advisory function in a manner consistent with the Court's Statute.

Precisely for this reason Israel was among an absolute majority of States in the UN General Assembly that did not support resolution 77/247,¹ considering the request for an advisory opinion made therein as contrary to the established legal framework governing the Israeli-Palestinian conflict, and an abuse of international law and the judicial process.

The questions put to the Court by resolution 77/247 represent a clear distortion of the history and present reality of the Israeli-Palestinian conflict. Contrary to any conception of due process, the Court is asked simply to presume Israeli violations of international law – to accept, as given, plainly biased and flawed assertions directed against Israel alone.²

The prejudicial nature of the questions is evident not only in the contorted manner in which they are framed, but also in what they disregard. In pointing a finger at one side only, the questions overlook thousands of dead and wounded Israelis who have fallen victim to murderous Palestinian acts of hatred and terrorism – acts that continue to endanger Israel's civilians and national security on a daily basis.

¹ No less than 106 Member States voted against the resolution, abstained, or were not present during the vote.

² Advisory proceedings in any event do not afford a State the procedural protections for defending itself against such egregious allegations in the way that contentious proceedings do. The Court has already acknowledged "the difficulties of using the advisory jurisdiction of the Court for the task of trying a contentious case": *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982*, p. 356, para. 59. On difficulties of determining the facts in advisory proceedings and the Court possibly being unable for this reason to answer the question in whole or in part if it is to remain faithful to its judicial function, see C. Greenwood, 'Judicial Integrity and the Advisory Jurisdiction of the International Court of Justice', in G. Gaja and J. Grote Stoutenburg (eds.), *Enhancing the Rule of Law through the International Court of Justice* (2014) 63 at 68-70 (**Annex 1**).

The questions similarly ignore compelling evidence of ongoing official Palestinian incitement to violence against Jews and Israelis, including in school textbooks, the media, and religious institutions. They moreover fail to take account of the longstanding Palestinian “pay for slay” legislation, by which the Palestinian Authority’s own budget is used to financially support and reward terrorists based on the number of Israelis they have murdered.

Similarly, the questions turn a blind eye to the fact that Israel’s voluntary withdrawal from the Gaza Strip in 2005 was met with the brutal takeover by the Hamas terrorist organization which, together with the Islamic Jihad and other militant groups, has launched tens of thousands of rockets against Israeli civilian population and infrastructure and calls for the annihilation of the State of Israel. They make no reference to peacemaking initiatives advanced over many years that were scuttled by repeated rejections by the Palestinian leadership itself of far-reaching offers for the settlement of the conflict and the establishment of a Palestinian State alongside Israel.³ Equally absent is any acknowledgement of the acute inter-Palestinian political division that continues to frustrate any efforts to advance genuine dialogue and reconciliation.

The tendentious questions placed before the Court not only distort the factual reality: they fundamentally misrepresent the legal reality as well. Thus they fail to recognize Israel’s right and duty to protect its citizens, as well as the well-established principle – long enshrined in bilateral Israeli-Palestinian agreements and in the statements and resolutions of the UN and other international bodies

³ See, for example, Bill Clinton, *My Life* (2005) 944-945 (“Arafat’s rejection of my proposal after Barak accepted it was an error of historic proportions”) (**Annex 2**); Condoleezza Rice, *No Higher Honor: A Memoir of My Years in Washington* (2011) 724 (referring to Annapolis negotiations of 2007-2008 in saying that “[i]n the end, the Palestinians walked away from the negotiations”) (**Annex 3**). The Palestinians have similarly rejected or refused to respond to other compromise proposals, including those made to them in the Proximity Talks process (May-September 2010) and by the Quartet in September 2011; in the Amman rounds of January 2012; and during the Kerry Framework negotiations between July 2013 and April 2014. See also the account provided by Prince Bandar bin Sultan, Saudi Arabia’s former ambassador to the United States, who stated that “[the Palestinian leadership] did not want to reach a solution”: *Al Arabiya*, 5 October 2020, available at <https://english.alarabiya.net/features/2020/10/05/Full-transcript-Part-one-of-Prince-Bandar-bin-Sultan-s-interview-with-Al-Arabiya> (**Annex 4**).

– that any resolution of the Israeli-Palestinian conflict must effectively address Israel’s legitimate security concerns.⁴

Israel’s deep historical ties and own valid claims to the territory in question are likewise discounted,⁵ as are Israel’s rights and responsibilities in this territory pending a negotiated resolution of the conflict, including in the sphere of security, as recognized under international law and in Israeli-Palestinian agreements.⁶

Perhaps the most staggering omission of all is the failure of the questions to appreciate the very existence of the Israeli-Palestinian agreements, according to which the two sides have agreed to resolve through direct negotiations precisely the subject-matter placed before the Court, including such issues as the permanent status of the territory, security arrangements, settlements, and borders. Palestinian self-government exercised today by the Palestinian Authority over a substantial part of the territory in question, the specific division of authorities and responsibilities between the two sides in that territory, and ongoing Israeli-Palestinian cooperation in various spheres, are all grounded in these agreements. Despite all existing challenges, both sides, and the international community as a whole, continue to affirm the validity of the terms of reference and established legal framework embodied in these bilateral agreements.⁷ Indeed, as recently as March this year, in a joint statement issued together with Egypt, Jordan, and the United States, the Government of Israel and the Palestinian Authority

⁴ See, for example, Security Council resolution 242 (22 November 1967) (**Annex 5**); Security Council resolution 338 (22 October 1973) (**Annex 6**); *Declaration of Principles on Interim Self-Government Arrangements*, 13 September 1993 (**Annex 7**); *Interim Agreement on the West Bank and the Gaza Strip*, 28 September 1995 (**Annex 8**); Letter dated 7 May 2003 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2003/529 (30 April 2003) (transmitting a text prepared by the Quartet) (**Annex 9**).

⁵ Israeli-Palestinian agreements recognize and record that both Parties maintain their claims with respect to permanent status issues: see *Declaration of Principles on Interim Self-Government Arrangements*, 13 September 1993, Art. V (**Annex 10**); *Interim Agreement on the West Bank and the Gaza Strip*, 28 September 1995, Art. XXXI(6) (**Annex 11**). See also State of Israel, Office of the Attorney General, *The International Criminal Court’s Lack of Jurisdiction over the so-called “Situation in Palestine”*, 20 December 2019, paras. 27-29, available at <https://www.gov.il/BlobFolder/reports/20-12-2019/en/Memorandum-Attorney-General.pdf> (**Annex 12**).

⁶ See *ibid.*, at para. 39.

⁷ The resolution containing the request to the Court itself could not avoid stressing the need “to advanc[e] and accelerat[e] meaningful negotiations aimed at the achievement of a peace agreement that will bring a complete end to the Israeli occupation”; it further stresses “the need for full compliance with the Israeli-Palestinian agreements reached within the context of the Middle East peace process”, and urges Israel and the Palestinians to take steps “to promote conditions conducive to the credibility and success of the peace negotiations”: see respectively preambular paras. 11, 22, and 51.

“reaffirmed their commitment to all previous agreements between them, and reaffirmed their agreement to address all outstanding issues through direct dialogue”.⁸

It follows that the present situation is not only one in which Israel, as an interested party, has not given its consent to judicial settlement of its dispute with the Palestinian side; it is also one in which both interested parties have given their express and binding consent to resolving that dispute through another settlement means. The request for the Court’s advisory opinion perversely seeks to circumvent the lack of Israel’s consent, and to make a dead letter of the fundamental international legal principle underlying the indispensable need for it.

These glaring failings in the questions brought before the Court reflect the severe injustice and imbalance in the request made by resolution 77/247. They solicit an intervention by the Court in a manner manifestly inconsistent with its judicial function and prior pronouncements. Most alarmingly, they risk fundamentally delegitimizing the established legal framework governing the conflict and any future prospect of negotiations between Israelis and the Palestinians, which remains – as the Court itself has observed – the only viable path to peace.⁹

While the request made to the Court seeks to portray it as such, the Israeli-Palestinian conflict is not a cartoon narrative of villain and victim in which there are no Israeli rights and no Palestinian obligations. Entertaining such a falsehood can only push the parties further apart rather than help create conditions to bring them closer together. For all the difficulties and obstacles that exist, Israeli-Palestinian reconciliation will not be served by further undermining the core understanding that this is a tragic conflict in which two sides—not just one—have rights and responsibilities.

⁸ See *Joint Communiqué from the March 19 meeting in Sharm El Sheikh*, 19 March 2023, para. 5, available at <https://il.usembassy.gov/joint-communicue-from-the-march-19-meeting-in-sharm-el-sheikh/> (**Annex 13**); see also *Aqaba Joint Communiqué*, 26 February 2023, para. 1, available at <https://www.state.gov/aqaba-joint-communicue/> (“The two sides (Palestinian and Israeli sides) affirmed their commitment to all previous agreements between them, and to work towards a just and lasting peace”) (**Annex 14**).

⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, pp. 200-201, para. 162.

In these circumstances, to engage with the subject-matter of the request placed before the Court as though this is an appropriate use of the advisory function would not just be unwarranted; it would be harmful. Israel hopes and expects that the Court, in safeguarding its judicial integrity as well as the established legal framework governing the Israeli-Palestinian conflict and its negotiated resolution, will respond accordingly.

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A handwritten signature in blue ink, appearing to read "Modi Ephraim", written over a horizontal line.

Ambassador Modi Ephraim
Embassy of the State of Israel to the Netherlands
The Hague

July 24, 2023