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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 THE GOVERNMENT OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA

[Translation by the Registry]

In operative paragraph 18 of its resolution A/RES/77/247 on "Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem", adopted on 30 December 2022, the General Assembly of the United Nations requested the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following two questions:

"*(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?".

The Government of the People's Democratic Republic of Algeria submits the following statement in response to the Court's Order of 3 February 2023 fixing the time-limits within which written statements concerning these two questions may be presented to the Court.

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INTRODUCTION

On 17 January 2023, by virtue of its resolution A/RES/77/247 of 30 December 2022, the United Nations General Assembly seised the International Court of Justice (ICJ) of a request for an advisory opinion on the question of the legal consequences that arise from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem.

The question is worded as follows:

> "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?"

On 17 January 2023, the Secretary-General of the United Nations transmitted the request to the President of the Court, who notified it to all Member States of the United Nations by letter of 19 January 2023. An Order of the distinguished Court, dated 3 February 2023, 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".

It is pursuant to this Order that the People's Democratic Republic of Algeria presents its written statement, in order to set out its point of view and observations on the questions raised by the General Assembly's request. As a preliminary matter, however, Algeria will first examine the request itself.

I. RESOLUTION 77/247 OF 30 DECEMBER 2022

This first part will cover three points in turn: the context in which the resolution was adopted (I.1), and an analysis of its content (I.2) and of the questions raised by the General Assembly (I.3).

I.1 The context of its adoption

At its plenary meeting on 16 September 2022, the General Assembly decided, on the recommendation of the Bureau, to include the item entitled "Israeli practices and settlement activities affecting the rights of the Palestinian people and other Arabs of the occupied territories" in the agenda of its seventy-seventh session and to refer it to the Special Political and Decolonization Committee (Fourth Committee).

On 10 November 2022, by a resounding majority, that Committee adopted draft resolution A/C.4/77/L.12/Rev.1, entitled "Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem". Algeria, together with 13 other

States, including Palestine, was responsible for this initiative, including in particular the wording of the questions addressed to the ICJ.

That draft resolution proposed requesting an advisory opinion from the ICJ on the legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem. It was adopted without amendment by the General Assembly on 30 December 2022, under the symbol A/RES/77/247.

I.2 Observations on its content

To provide a more complete and precise picture of the issues raised by resolution 77/247, it must be noted that the question of the "policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem", has long been an item on the United Nations agenda of work. One need only refer to the sixth to eighth preambular paragraphs of the General Assembly's request of 8 December 2003 concerning the construction of the wall to be reminded of this.

The issues in question have become even more acute and tragic through the combined effect of several events which, considered separately and together, contribute not only to the persistence, but especially to the escalation, of the innumerable violations arising from the *de facto* and *de jure* situation in the Occupied Palestinian Territory, including East Jerusalem.

In this regard, and without seeking to be exhaustive, Algeria will discuss the most pertinent examples of the ongoing, gross violations by Israel, the occupier, of the most basic rules and principles of international law affecting the daily lives of the Palestinian people.

In doing so, it notes that these aspects are referred to explicitly and at length in the preamble and operative part of resolution 77/247[1] and that they are summarized in paragraph 18 thereof, which will be examined more closely at a later point.

Noting at the outset that resolution 77/247 is composed of a lengthy preamble comprising 52 paragraphs and an operative part of 18 paragraphs, Algeria would make two observations. It would first highlight the differences between that resolution and General Assembly resolution ES-10/14[2], which was adopted on 8 December 2003 at the beginning of its resumed tenth emergency special session, and in which the Assembly had formulated its request relating to the construction of the wall.

The latter resolution, which was not supported by a preamble, comprised only 21 paragraphs. Algeria further observes that, despite the irrefutable fact that resolution 77/247 follows on from resolution ES-10/14, these differences are far from being purely formal or inconsequential.

The December 2022 resolution, which inevitably took account of the extension and expansion of Israel's policies and practices, resembles an explanatory statement, albeit one that is less concise than normal. It is more detailed, more precise and more reasoned. It is striking in its denunciatory tone towards the practices and policies of Israel, which are characterized by numerous violations of international law in the Occupied Palestinian Territory, including East Jerusalem.

Resolution 77/247 repeatedly underscores the strong paradox between the international law applicable to Israel's policies and practices, and the systematic, continuing and gross violation of this law by the Israeli authorities. It is as if each well-established element of international law recognizing

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[1] General Assembly resolution on Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, 30 Dec. 2022, A/RES/77/247.

[2] General Assembly resolution on illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory, 8 Dec. 2003, A/RES/ES-10/14.

the rights of the Palestinian people is countered by an element of fact which serves to deny them. This paradox can be seen in both the preamble and the operative paragraphs.

It is important to highlight the preamble's most noteworthy points. First, it recalls a number of legal sources and documents that were relied upon by the General Assembly and, before it, by the Fourth Committee.

More specifically, it should be noted that the preamble begins by referring to the relevant basic legal texts applicable to all States. With regard to this approach, it is highly symbolic and significant that the Universal Declaration of Human Rights is mentioned in the first paragraph of the preamble.

It should also be noted that the resolution then refers to the two 1966 Covenants and the Convention on the Rights of the Child, as well as various reports on Israeli practices and policies in the Occupied Palestinian Territory, including East Jerusalem.

Unlike the December 2003 request concerning the consequences of the construction of the wall, whose 17th and 19th preambular paragraphs referred to the report of the Special Rapporteur of the Commission on Human Rights of 8 September 2003 and the report of the Secretary-General of the United Nations, the December 2022 request relies on several documentary sources.

These sources are first cited in the sixth to eighth preambular paragraphs of resolution 77/247. They include the report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People, the report of the Secretary-General on the work of the Special Committee, the report of the Special Rapporteur of the Human Rights Council on the situation of human rights in the Palestinian territories occupied since 1967, as well as other relevant recent reports. Finally, the eighth preambular paragraph refers to the report of the international commission of inquiry established pursuant to Human Rights Council resolution S-30/1.

On the basis of this very solid documentation, the preamble proceeds to set out the numerous legal violations resulting from the policies and practices of Israel. In this regard, Algeria calls attention to the paragraphs of the preamble that refer, in particularly strong terms, to the failure to respect the Palestinian people's right to self-determination, and to violations of the fundamental rules of international humanitarian law and international human rights law.

The General Assembly has repeatedly used verbs and expressions such as "deplore" and "gravely concerned" to paint a damning portrait of the violations of international law imputable to Israeli policies and practices. The 19 operative paragraphs of the resolution, for their part, draw the necessary conclusions therefrom.

Algeria will now highlight the differences between the 2003 and 2022 resolutions.

The December 2022 resolution has drawn on the Advisory Opinion of 2004, as it is the basis for the many paragraphs noting or recalling Israel's various violations of international law. Such is the case of the first operative paragraph, for example, which "reiterates that [the] measures and actions taken by Israel . . . have no validity" and "demands that Israel, the occupying Power, comply fully with the provisions of the Fourth Geneva Convention of 1949".

This approach is even more apparent in paragraph 11, in which the General Assembly "demands that Israel, the occupying Power, comply with . . . international law, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice . . . and that it immediately cease the construction of the wall". Algeria moreover notes that this paragraph is surrounded by paragraphs [9], 12 and 13, which respectively emphasize the "acts of violence by militants and armed groups", "the need for respect for the territorial unity, contiguity and integrity of . . . the Occupied Palestinian Territory", and the need to "cease its imposition of prolonged closures and economic . . . restrictions".

This interplay between law and fact has guided the questions put to the Court by the General Assembly.

I.3 Observations on the questions put to the Court

Although the questions posed in December 2003 and December 2022 are very similar semantically and in terms of the issues raised, they do present some key differences. As one of the States having sponsored the two draft resolutions, Algeria has a few observations to make in this regard.

Algeria will then consider the substantive questions raised by the request, following the general outline of the questions that were originally suggested by the group of 14 States that sponsored the draft resolution in the context of the work of the Special Political and Decolonization Committee (Fourth Committee) and were subsequently adopted by the General Assembly.

These questions are directly related to the policies and practices of Israel that are set out in considerable detail in paragraph 18 *(a)*, namely "the ongoing violation by Israel of the right of the Palestinian people to self-determination, . . 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 . . . its adoption of related discriminatory legislation and measures".

The paragraph in question specifies that an advisory opinion is requested "*considering the rules and principles of international law*, including the Charter of the United Nations, international humanitarian law[and] international human rights law" (emphasis added). This formulation has been used in previous General Assembly requests, including the one relating to the construction of the wall.

Without analysing this phrase in detail, the Court considered, in paragraph 88 of its Advisory Opinion of 9 July 2004, that it refers to the question of the applicable law. It in fact establishes a causal link between the policies and practices of Israel and the applicable law. Its purpose is to specify the legal context in which these policies and practices are to be assessed by the Court.

Following this general overview, in the second part of its written statement, Algeria will first endeavour to demonstrate that the Court, which states the law, is acting within its mandate in responding favourably to the General Assembly's request (II). This is a necessary preliminary point for logical and historical reasons.

Next, in keeping with the approach taken and questions raised by the General Assembly, Algeria will examine the violations of the Palestinian people's right to self-determination (III).

It will then discuss the equally serious and gross violations of international humanitarian law (IV) and international human rights law (V), and how the policies and practices of Israel affect the status of the occupation (VI).

Lastly, Algeria will provide its views on the last question raised by the General Assembly, concerning the legal consequences that arise for all States and the United Nations from this status.

II. THE COURT IS ACTING WITHIN ITS MANDATE IN RESPONDING FAVOURABLY TO THE GENERAL ASSEMBLY'S REQUEST

Without seeking to be exhaustive, and fully aware of the objective limits to which written statements are subject, Algeria will endeavour to demonstrate that the Court is acting within its mandate in giving the advisory opinion requested by the General Assembly. It will examine and rebut

all the possible arguments that could be adduced in the present case in objection to the Court's advisory function.

The modal "could" is of course the appropriate term here, given that the discussion that follows is, from a procedural perspective, anticipatory in nature, since written statements may be submitted until 25 July 2023. Only from a procedural perspective, since a careful examination of past proceedings clearly shows an overlap of the objections raised. Algeria will return to this point below. On the basis of this examination, a number of observations can be made.

Algeria will set out the three observations that are most relevant to the request concerning Israeli policies and practices in the Occupied Palestinian Territory.

— The first is that the argument that the Court should decline to give an advisory opinion is put forward by a tiny minority of States.

— The second concerns the emergence of a trend towards the systematization of objections to the exercise of the Court's advisory function, to the extent that some written statements address such objections exclusively.

— The third concerns the recurrent nature of the legal arguments in favour of the Court declining to exercise its advisory function, despite there being major factual and legal differences between the matters submitted by the General Assembly.

This repetition is acknowledged by the Court itself, when it routinely refers, in dismissing the objections raised by some States, to the analyses it has provided in previous advisory opinions. It echoed this point in its Advisory Opinion on the construction of the wall, noting in paragraph 51 that "this is a submission of a kind which [the Court] has already had to consider several times in the past".

Algeria considers that due attention must be given to this repetition, indeed this trend towards the systematization of arguments effectively reflecting a certain reluctance with regard to the advisory function of the Court, and has thus devoted this part of its written statement to these points. Algeria has contributed to the discussion of this function, through the oral statement it presented in February 2004 in the context of the advisory proceedings on the request concerning the construction of the wall.

That statement addressed the question of the objections raised in the written statements of certain States, which concerned two main points: jurisdiction and the judicial propriety of rendering an advisory opinion.

In its statement, Algeria argued that all the objections to the exercise of the Court's advisory function made in the written statements should be dismissed. It will return to this point following a brief overview of some of the best-known advisory opinions that have the advantage of sharing some similarities with the General Assembly's December 2022 request.

However, Algeria will first make an important observation regarding the written statements' distortion of the methodological precautions taken by the Court in prefacing its response to each of the objections raised. In those preliminary remarks, the Court presents the different procedural responses that may be given to such objections. The distortion in question consists in using the Court's general theoretical presentation as a pretext to suggest that it has not necessarily agreed to respond favourably to the General Assembly's request.

Having made this observation, Algeria would first recall that, starting with its Advisory Opinion of 21 June 1971 on the *Legal Consequences for States of the Continued Presence of South*

Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)[3], the Court began using a formulation that it has gradually refined to the point of becoming nearly standard phrasing.

Indeed, in paragraph 19 of that Opinion, the Court specified that "[b]efore examining the merits of the question submitted to it the Court must consider the objections that have been raised to its doing so".

In paragraph 12 of its Advisory Opinion of 16 October 1975 concerning *Western Sahara*[4], the Court noted that it would "first consider certain matters regarding the procedure adopted in the present case".

In paragraph 54 of its most recent Advisory Opinion, rendered in 2019 with regard to the Chagos Archipelago, the Court stated that, when seised of a request for an advisory opinion, "it must first consider whether it has jurisdiction to give the opinion requested and if so, whether there is any reason why the Court should, in the exercise of its discretion, decline to answer the request".

For reasons that hardly need explaining, however, it is the Advisory Opinion of 9 July 2004 that will be the main focus of Algeria's observations in this section.

Paragraph [13] of that Opinion, which is reproduced verbatim in the above-mentioned passage from the Advisory Opinion on the Chagos Archipelago, provides that "[w]hen seised of a request for an advisory opinion, the Court must first consider whether it has jurisdiction to give the opinion requested and whether, should the answer be in the affirmative, there is any reason why it should decline to exercise any such jurisdiction". Subject to the key observation that follows, Algeria will follow that same approach in setting out its discussion in this part of its written statement.

In keeping with the overall logic and approach adopted by the Court in its various advisory opinions, but also, as previously mentioned, with a view to anticipating any objections that may be raised in an effort to have the Court decline the General Assembly's pending request, Algeria will endeavour to demonstrate below the tenuousness of these objections.

The first question to be considered is whether the Court has jurisdiction to give this advisory opinion (II.1). The second question that will be addressed by Algeria is the discretionary power of the Court, a matter of increasing importance to States that are reluctant to see the Court respond favourably to the General Assembly's request. That is, in any case, what emerges from a careful reading of the written and oral statements of some States (II.2).

II.1 The jurisdiction of the International Court of Justice to give an advisory opinion

In Algeria's view, it is necessary to consider this question which has continued to give rise to objections from some States, despite the relevance and clarity of the Court's analyses in dismissing them.

It will examine these objections, albeit briefly. Given the similarities, it would not be surprising if the types of arguments put forward in recent cases were to inspire any States that might seek to challenge the jurisdiction of the Court in the present case.

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[3] *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. 16.

[4] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12.

In considering these objections, Algeria would note that they were central to Israel's written statement of 30 January 2004 on the construction of the wall in the Occupied Palestinian Territory (II.1.1). The Court responded to them at length in paragraphs 22 to 43 of its Advisory Opinion in that case (II.1.2).

II.1.1 Israel's arguments against the jurisdiction of the Court

Entitled "Objections to jurisdiction", part two of Israel's written statement was divided into two chapters bearing the titles "The request is *ultra vires* the competence of the 10th Emergency Special Session and/or the General Assembly" and "The request does not raise a legal question within the scope of Article 96 (1) of the Charter and Article 65 (1) of the Statute".

According to the written statement, "the Court lacks jurisdiction" to consider the request for an advisory opinion for two reasons. First, "the request is *ultra vires* the competence of the 10th Emergency Special Session of the General Assembly" (II.1.1.1). Second, "in order for the Court to be able to exercise its advisory jurisdiction, a request must have been referred to the Court on a 'legal question'" (Written Statement [of Israel], p. 120, para. 10.4) (II.1.1.2).

II.1.1.1 *The General Assembly exceeded its competence*

The first argument, discussed at length, was that, "given the active engagement of the Security Council with the situation in the Middle East, including the Palestinian question, the General Assembly acted *ultra vires* under the Charter" (*Advisory Opinion, I.C.J. Reports 2004*, p. 148, para. 24). According to the written statement, the General Assembly thus failed to respect both the letter and the spirit of the Charter.

II.1.1.2 *The question posed is not a legal one*

The second argument highlighted the non-legal nature of the question posed by the General Assembly, notwithstanding the rhetorical repetition of the qualifier "legal".

It was put forward *inter alia* by States in the four cases mentioned above, and more particularly by Israel in the case concerning the construction of the wall. Emphasis was placed on the both highly political and biased nature of the General Assembly's approach.

This contention is thus aimed — sometimes implicitly, other times much more explicitly — at denying the General Assembly's right to request an advisory opinion. Many General Assembly requests are in fact strongly suspected of constituting misuse of the advisory procedure for the purpose of settling a bilateral dispute.

The advisory procedure is said to be mere legal window-dressing intended to circumvent contentious proceedings relating to a dispute that one of the parties specially concerned has not consented to settle. However, the lack of consent of one of the parties renders the giving of an advisory opinion incompatible with the fundamental rule of consent enshrined in the Court's Statute.

This analysis continues to be regularly put forward, even though the Court stated as far back as 1971, in its Advisory Opinion on the continued presence of South Africa in Namibia, that "[d]ifferences of views among States on legal issues have existed in practically every advisory proceeding; if all were agreed, the need to resort to the Court for advice would not arise".

Despite this dictum of the Court, the question has recurrently been central to the approaches taken by a number of States. As previously mentioned, it is addressed in Israel's written statement, where it is the subject of an entire chapter.

Paragraph 5.2 of chapter 5 states that "[t]he question referred to the Court in this case is not a 'legal question' within the scope of Article 96 (1) of the Charter and Article 65 (1) of the Statute. Israel's objection . . . is that the question referred to the Court is uncertain in its terms with the result that it is not amenable to a response by the Court". In accordance with paragraph 5.3 of the statement, "[f]or a question to constitute a legal question . . . it must be reasonably specific", as provided for in Article 65, paragraph 2, of the Court's Statute. According to that provision, "[q]uestions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required".

II.1.2 The response of the Court

II.1.2.1 *Regarding the first argument*

Having set out its reasoning in paragraphs 25 *et seq*., the Court goes on to state, in paragraph 28, that it considers that "the . . . practice of the General Assembly, as it has evolved, is consistent with Article 12, paragraph 1, of the Charter" and concludes that the General Assembly therefore "did not exceed its competence".

Subsequently, in an overall conclusion on this question in paragraph 42, the Court holds that it "has jurisdiction to give the advisory opinion requested by resolution ES-10/14 of the General Assembly".

II.1.2.2 *Regarding the second argument*

At the outset, Algeria would recall that the firm and consistent approach of the Court has always involved setting out the issues raised with regard to the question of its jurisdiction. There being no shortage of examples, Algeria will mention only a few, which moreover have points in common with the current request of the General Assembly.

In paragraph 15 of its 1996 Advisory Opinion on the legality of the use of nuclear weapons, the Court already clearly expressed its desire to satisfy itself as to the legal nature of the General Assembly's request.

In so doing, it took a rigorous approach, setting out the general matter at issue in the following terms: "The Court must furthermore satisfy itself that the advisory opinion requested does indeed relate to a 'legal question' within the meaning of its Statute and the United Nations Charter". However, it went on to recall paragraph 15 of its Advisory Opinion on Western Sahara, in which it stated 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 are] questions of a legal character".

Furthermore, in its 2010 Advisory Opinion on the *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo*, the Court stated, in terms never before used, that "[a] question which expressly asks the Court whether or not a particular action is compatible with international law certainly appears to be a legal question" (*I.C.J. Reports 2010*, pp. 414-415, para. 25). It added in paragraph 27, in terms that marked a major milestone, that "the fact that a question has political aspects does not suffice to deprive it of its character as a legal question".

"[T]he Court 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"; this dictum had already been pronounced repeatedly in previous proceedings.

Lastly, and in the same vein, the Court specifies in paragraph 27 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" (*ibid.*).

Algeria endorses the aforementioned approach, analyses and conclusions of the Court, *mutatis mutandis*, in the event that any such objections to jurisdiction may be raised. It considers that the Court has jurisdiction to deal with Israel's policies and practices in the Occupied Palestinian Territory, all the more so because — and this argument is of particular importance — the request concerns only questions which are extremely legal and precise in nature. Such is the case of those relating to the future of the Palestinian people's right to self-determination or the legal concepts, well-established in international law, of occupation, settlement and annexation.

A second type of objection, which is gaining ground among States that have expressed reluctance towards requests for advisory opinions, concerns the question of the judicial propriety of giving an advisory opinion, and thus the Court's discretionary power in this respect.

II.2 The Court's discretionary power to give an advisory opinion

As previously noted by Algeria with regard to the matter of jurisdiction, the Court has always undertaken to examine the propriety of exercising its judicial function.

Such was the case, for example, with the General Assembly's request for an advisory opinion on the legality of the use by a State of nuclear weapons. In paragraph 14 of the Advisory Opinion in question, the Court held, with regard to its discretion as to whether to accede to the General Assembly's request, that it "can only exercise this discretionary power if it has first established that it has jurisdiction in the case in question". This is an example of the pedagogical approach taken by the Court, which does not seek to evade any of the objections raised in the written statements submitted by States, some of which have attempted to distort the objective pursued by the Court.

This question figures prominently in Israel's arguments, which Algeria will present (II.2.1) and then rebut on the basis of the firm and consistent position of the Court (II.2.2), before providing its own observations on the matter (II.2.3).

II.2.1 Israel's arguments

Presented for the first time in its written statement of 30 January 2004 in the advisory proceedings on the consequences of the construction of the wall in the Occupied Palestinian Territory, these arguments were repeated in the written and oral statements presented on 27 February 2018 and 5 September 2018, respectively, that is, 14 years later, in the advisory proceedings resulting from the request submitted to the Court with regard to the Chagos Archipelago.

II.2.1.1 *The written statement of 30 January 2004*

According to this statement, there are three main reasons that should lead the Court to decline to give the advisory opinion requested by the General Assembly.

The first concerns the existence of "principles relevant to . . . the exercise by the Court of its discretion under Article 65 (1) of the Statute". According to this reasoning, the Court is bound to remain faithful to the requirements of its judicial character and must take into consideration the inherent limitations of its advisory function.

The second reason relates to the characteristics of the question asked, which concerns "a contentious matter in respect of which Israel has not given consent to the jurisdiction of the Court".

The third reason emphasizes that the request raises questions "which [cannot] be elucidated without hearing both parties", and that "there is insufficient evidence before the Court to enable it to make findings of fact".

II.2.1.2 *The written and oral statements of 27 February and 5 September 2018*

Before examining these statements, it is worth pointing out that they were foreshadowed by the statement by which Israel expressed its opposition to the General Assembly's request concerning the Chagos Archipelago.

Israel considered that resolution A/RES/71/292 "seeks to refer a bilateral dispute to the International Court of Justice" and that "[t]he underlying approach . . . represents . . . a misuse of the advisory opinion provision under Article 96 of the Charter of the United Nations".

The statements in question persistently and emphatically reiterate the arguments for declining to reply to the request of the United Nations General Assembly concerning the Chagos Archipelago, relying — although they deny it — on the very same ideas and stylistic elements used fourteen years earlier in connection with the request concerning the wall. Indeed, on the one hand, Israel claims in paragraph 1.5 of its written statement that the latter is "limited to issues of judicial propriety". On the other, it employs the stylistic device of *praeteritio* in adding: "In particular, it does not intend to deal with jurisdictional issues or the merits of the dispute underlying the case, which Israel indeed considers to be one of a purely bilateral nature".

In other words, the written statement refers to arguments that it claims it does not wish to address. In Algeria's view, this statement essentially sets out the "two cogent reasons [which] mandate that the Court should decline to give the advisory opinion requested in the present case". In addition to the first reason, which is that "the fundamental principle of consent to jurisdiction must not be circumvented", the second reason is that "the advisory opinion procedure is ill-equipped for the determination of complex and disputed issues of fact that is required in the present case, given the lack of adversarial procedures and protections available in contentious proceedings".

In an approach resembling an exercise in autosuggestion, Israel again summons up two "reasons", previously evoked in 2004 but now framed differently, in order to request the Court to decline to give an advisory opinion.

The first emphasizes absolute respect for the principle of State consent to the Court's jurisdiction, which would be flouted if the Court were to respond favourably to the General Assembly's request. The second "reason" consists in recalling that "the advisory opinion procedure is ill-equipped for the determination of complex and disputed issues of fact that is required in the present case" (p. 5, para. 3.1).

Moreover, for the sake of completeness, Algeria considers it worth noting that other arguments have been put forward to support the position that the Court should decline to give an advisory opinion. The Court addressed them in paragraphs 43 to 65 of its [2004] Advisory Opinion. Leaving aside those already presented by Israel, there are two others that Algeria will discuss, as they could be invoked again in the current proceedings.

The first, in chronological order, relates to the obstacles that an advisory opinion of the Court could place in the way of a political settlement. The second emphasizes that an opinion would lack any useful purpose. More specifically, as the Court states in paragraph 59, "the argument continues, the General Assembly would not need an opinion of the Court, because it has . . . already determined the legal consequences by demanding that Israel stop and reverse its construction, and further, because the General Assembly has never made it clear how it intended to use the opinion".

II.2.2 The Court's rejection of Israel's arguments

For the purpose of reviewing the positions taken by the Court, Algeria will recall the Court's view of its discretionary power in advisory proceedings. In its penultimate advisory opinion, dated 1 February 2012 (*Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development*), the Court very clearly and helpfully clarified this power in the following terms: "Article 65 of the Statute of the Court makes it clear that it has a discretion whether to reply to a request for an advisory opinion . . . That discretion exists for good reasons. In exercising that discretion, the Court has to have regard to its character, both as a principal organ of the United Nations and as a judicial body".

With this in mind, Algeria will begin by addressing the analyses presented by the Court in its Advisory Opinion of 9 July 2004 as they relate to the three above-mentioned objections of Israel in the proceedings relating to the construction of the wall and to the Chagos Archipelago, given the possibility that these objections may be raised in relation to the most recent General Assembly request.

In that Opinion, the Court rejected Israel's fallacious reasoning and spurious arguments in full. It proceeded with its usual rigour, of course, setting out the methodological precautions it had taken, in particular "the duty to satisfy itself, each time it is seised of a request for an opinion, as to the propriety of the exercise of its judicial function", by ensuring that there are no "compelling reasons" that could impede the exercise of its advisory jurisdiction. Having articulated this precaution and fulfilled its pedagogical duty, the Court nonetheless methodically rejected all the legal quibbles that had been raised.

Algeria will examine the objections of Israel in chronological order, since although the objections raised in the context of the Chagos Archipelago proceedings were not substantially different from those expressed in 2004, they may provide an indication of Israel's latest arguments in this regard.

The objection relating to the judicial function of the Court and the limits of its advisory function was the subject of paragraphs 43 *et seq.* [of the 2004 Advisory Opinion]. The Court discussed this argument, noting the contention that the presence "of specific aspects of the General Assembly's request . . . would render the exercise of the Court's jurisdiction improper and inconsistent with the Court's judicial function". The Court responded that, "as the 'principal judicial organ' of the United Nations . . . , the Court should in principle not decline to give an advisory opinion", and even added that it "has never, in the exercise of this discretionary power, declined to respond to a request for an advisory opinion" (p. 156, para. 44).

With regard to the second objection, regarding the fact that the request concerned a contentious matter between two parties, the Court "acknowledge[d] that Israel and Palestine have expressed radically divergent views on the legal consequences of Israel's construction of the wall". It also recalled that "[d]ifferences of views . . . on legal issues have existed in practically every advisory proceeding" (p. 158, para. 48). The Court further noted that the General Assembly's request "can[not] be regarded as only a bilateral matter between Israel and Palestine" but must be considered to be "of concern to the United Nations".

Thirdly, in paragraphs 56 to 58 of its Opinion, the Court rejected the argument concerning the lack of facts and evidence. In paragraph 56, it considered that "the question whether the evidence available to it is sufficient to give an advisory opinion must be decided in each particular instance". In paragraph 57, it stated that, "[i]n the present instance, the Court has at its disposal the report of the Secretary-General, as well as a voluminous dossier submitted by him to the Court, . . . [which] includes several reports based on onsite visits".

As regards the two objections to the effect that a favourable response would impede a political solution and an advisory opinion would lack any useful purpose, they are dealt with by the Court in paragraphs 51 to 54 and 59 to 62, respectively.

Referring to several advisory proceedings, the Court noted that the idea that an advisory opinion could impede a political solution had already been suggested on numerous occasions.

The Court considered first of all that "[i]t is not clear . . . what influence the Court's opinion might have on those negotiations" and that it "cannot regard this factor as a compelling reason to decline to exercise its jurisdiction".

Regarding the lack of useful purpose of an advisory opinion, the Court considered in paragraph 60, in a dictum of particular importance with regard to the current request, that "advisory opinions have the purpose of furnishing to the requesting organs the elements of law necessary for them in their action". It supports this reasoning by reference to a large body of jurisprudence.

This jurisprudence identifies the different objects that requests for opinions may have. A request may be intended "to guide the United Nations", it may be "put forward by a United Nations organ with reference to its own decisions and [may] see[k] legal advice from the Court on the consequences and implications of these decisions", or it may "furnish the General Assembly with [relevant] elements of a legal character" (pp. 162-163, para. 60).

Algeria fully endorses the reasoning and conclusions of the Court, particularly as regards the parallel that can be drawn between the arguments made in 2004 and those that might be put forward in the present proceedings. In any event, it would not change in the slightest the analyses provided by the Court in 2004 if, by chance, the same or similar arguments were to be adduced in order to request the Court to decline to render an advisory opinion.

Algeria concludes from all the arguments in this second part of its written statement that the Court must dismiss any objections that might be raised to contest the request of the United Nations General Assembly.

The Court, for its part, must also draw the necessary conclusions from the fact that, in customary fashion, Israel, a Member of the United Nations, has systematically rejected the decisions and resolutions of the General Assembly and the Security Council, and has denounced the reports of mandate holders and human rights treaty bodies, as well as the Court's own Advisory Opinion of 9 July 2004, having asserted that the ICJ lacks jurisdiction to deal with "politically contentious issues" without "the consent of all sides", and that, consequently, Israel would continue building the wall[5].

Israel's failure to respect the resolutions and decisions of the United Nations thus illustrates its contempt for international law and the principle of "good faith".

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[5] Israeli Ministry of Foreign Affairs, ["Saving Lives: Israel's anti-terrorist fence — Answers to Questions (January 2004)"], www.gov.il/en/Departments/General/saving-lives-israel-s-anti-terrorist-fence-answers-to-questions-jan-2004.

In this regard, the opinion of Judge Lauterpacht in the case concerning *Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa*[6] is of relevance to the present case, particularly as regards respect for the decisions of the United Nations: "Whatever may be the content of the recommendation . . . it is nevertheless a legal act . . . of the United Nations which Members of the United Nations are under a duty to treat with a degree of [appropriate] respect . . . [T]here is a legal obligation to act in good faith in accordance with the principles of the Charter"[7].

> "Thus . . . [a] State which consistently sets itself above the solemnly and repeatedly expressed judgment of the Organisation, in particular in proportion as that judgment approximates to unanimity, may find that it has overstepped the imperceptible line between impropriety and illegality, between discretion and arbitrariness, between the exercise of the legal right to disregard the recommendation and the abuse of that right, and that it has exposed itself to consequences legitimately following"[8].

In the discussion that follows, Algeria will show that Israel has repeatedly contravened the decisions and resolutions of the United Nations and its organs and disregarded the obligations arising therefrom, day after day committing flagrant and continuing violations of the rights of the Palestinian people, from the date of General Assembly resolution 194 (1947)[9] to this day.

III. VIOLATIONS OF THE RIGHT OF THE PALESTINIAN PEOPLE TO SELF-DETERMINATION, A PEREMPTORY NORM UNDER INTERNATIONAL LAW

III.1 General observations

Algeria has a number of observations that it would like to make.

It notes first of all that Part II (A) of the "material relating to the Request by the General Assembly for an Advisory Opinion of the Court" of 31 May 2023 includes a chapter entitled "Right to self-determination". This very valuable document contains a compilation of two types of texts. The first comprises all the General Assembly resolutions relating to the right of peoples to self-determination adopted between 30 November 1970 and 16 December 2021. The second comprises the resolutions adopted by the General Assembly since 1995 under the title "The right of the Palestinian people to self-determination". The first of these, resolution 49/149, is dated 7 February 1995, and the last, resolution 77/208, was adopted on 28 December 2022.

The General Assembly's request for an advisory opinion attaches great importance to the Palestinian people's right to self-determination, as it is the first legal element to which the General Assembly refers.

Algeria would moreover note that there are several references to this right in the preamble to resolution 77/247. More than ever before, the right to self-determination is the cornerstone of both general and special international law. But that was already the case when the General Assembly formulated its request for an advisory opinion in the early 2000s.

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[6] *Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa, Advisory Opinion, I.C.J. Reports 1955.*

[7] *Ibid.,* separate opinion of Judge Lauterpacht, p. 120.

[8] *Ibid.*

[9] United Nations General Assembly resolution 194 (III). Palestine — Progress Report of the United Nations Mediator, 11 Dec. 1948, A/RES/194.

In fact, it was central to the General Assembly's request of December 2003 and to the content of the Advisory Opinion of 9 July 2004. In that Opinion, the whole of paragraph 88 is devoted to the principle of self-determination of peoples. The Court began by recalling that this principle has been enshrined in the United Nations Charter and reaffirmed by the General Assembly in resolution 2625 (XXV), in terms quoted by the Court in the paragraph in question.

That resolution states that "[e]very State has the duty to refrain from any forcible action which deprives peoples referred to [in that resolution] . . . of their right to self-determination". The Court then mentions the embodiment of this right in the two 1966 Covenants, on civil and political rights and on economic, social and cultural rights, respectively. As noted by the Court, common Article 1 of the Covenants "reaffirms the right of all peoples to self-determination, and lays upon the States parties the obligation to promote the realization of that right and to respect it, in conformity with the provisions of the United Nations Charter". The Court subsequently refers to a number of advisory opinions.

Given the tremendous importance and "intransgressible" nature of this cardinal principle, Algeria, while endorsing the Court's analysis, considers it necessary to elaborate on this principle, namely by recalling its sources in basic treaties (III.2), resolutions (III.3), jurisprudence (III.4) and, lastly, the work of the International Law Commission (ILC) (III.5).

III.2 Basic treaty sources

Although citing these treaty sources may appear somewhat puzzling in light of the clearly peremptory nature of the right to self-determination, Algeria considers it necessary to do so briefly, focusing on the essentials.

First, Algeria would recall that, as far back as 1945, the United Nations Charter enshrined the principle of self-determination of peoples, notably by aiming, as provided in Article 1, paragraph 2, to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples".

Secondly, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights both proclaim that "[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

In reference to this provision, the Human Rights Committee, in its General Comment No. 12, noted that the right in question "is of particular importance because its realization is an essential condition for the . . . guarantee and observance of . . . human rights". It added that States set forth this right in "a provision of positive law . . . placed . . . as article 1 apart from and before all of the other rights in the two Covenants" and further characterized it as an "inalienable right".

III.3 Resolution-based sources

As previously indicated, Algeria will confine itself to the main resolutions that have a high normative value, reflecting the legal significance of the right to self-determination. These include, in chronological order, resolutions 1514, 2131, 2625 and 3314.

Resolution 1514 of 1960 consists of the Declaration on the granting of independence to colonial countries and peoples. It sets forth an absolute right which has been relied upon by the Court to establish its *erga omnes* nature.

The 1965 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty provides that "[a]ll States shall respect

the right of self-determination and independence of peoples and nations", adding that this right is "to be freely exercised without any foreign pressure, and with absolute respect for human rights and fundamental freedoms".

The 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations makes several references to the right of self-determination in its preamble and operative paragraphs.

Lastly, resolution 3314, on the definition of aggression, notably states in Article 7 that the rules it contains cannot "in any way prejudice the right to self-determination".

With regard to the Security Council, and again focusing on the essentials, Algeria would first note that the fifth preambular paragraph of the General Assembly's [current] request recalls "the relevant resolutions of the Security Council, and stress[es] the need for their implementation". They are expressly cited in the 34th paragraph of the preamble and in paragraphs 6 and 10 of the operative part [of resolution 77/247].

More specifically, but for illustrative purposes only, Algeria would recall some recently issued resolutions of the General Assembly, as mentioned earlier in this written statement. Resolution 77/208 of 15 December 2022, on "[t]he right of the Palestinian people to self-determination", "[r]eaffirms the right of the Palestinian people to self-determination, including the right to their independent State of Palestine". Its preamble recalled resolution 76/150 of 16 December 2021.

It also recalled resolution 67/19 of 29 November 2012, whose ninth preambular paragraph refers to "the inalienable rights of the Palestinian people, primarily the right to self-determination".

To reinforce this normative framework, it should be noted that Article 20, paragraph 1, of the African Charter on Human and Peoples' Rights provides that "[a]ll peoples shall have [the] right to existence" and that they "shall have the unquestionable and inalienable right to self-determination".

III.4 Sources in the jurisprudence of the International Court of Justice

In addition to the international conventions referred to above, it is important to note that the importance of the principle of self-determination is continuously reiterated whenever the opportunity arises. The International Court of Justice, for example, had new occasions to address the importance of this principle in two of its advisory opinions rendered at the request of the General Assembly, in 2010 and 2019.

The first was the Advisory Opinion of 22 July 2010 on the *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*. The second was the Advisory Opinion of 25 February 2019 on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*.

It should be noted that, in the Advisory Opinion on Kosovo, the Court stated that "[d]uring the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation" (*I.C.J. Reports 2010*, p. 436, para. 79).

In the 2019 Advisory Opinion on the Chagos Archipelago, the Court gave renewed impetus to the right to self-determination by stating with some emphasis, in paragraph 144, that it is "conscious that the right to self-determination, as a fundamental human right, has a broad scope of application", while adding that "it will confine itself, in this Advisory Opinion, to analysing the right to

self-determination in the context of decolonization", and reiterating the relevance of the founding texts in that regard.

Accordingly, the Court first recalled, in paragraph 146, that "respect for the principle of equal rights and self-determination of peoples is one of the purposes of the United Nations". Most importantly, in paragraph 150, it characterized resolution 1514 (XV) for the first time as a "defining moment".

Previously, in its Advisory Opinion of 21 June 1971 (*Legal Consequences for States of the Continued Presence of South Africa in Namibia, I.C.J. Reports 1971*, p. 31, para. 52), the Court had considered that declaration to be an "important stage" in the development of the right to self-determination. In its Opinion on the Chagos Archipelago, it added that "resolution 1514 (XV) . . . has a declaratory character with regard to the right to self-determination as a customary norm". It further observed that "[t]he wording used in resolution 1514 (XV) has a normative character" (para. 153). Further impetus can be found in the work of the ILC.

III.5 Sources in the work of the International Law Commission

Without seeking to be exhaustive, there are two major milestones that attest to the accelerated development of the right to self-determination as a peremptory norm of general international law in the work of the ILC.

III.5.1 The Draft Articles on Responsibility of States for Internationally Wrongful Acts

Algeria would draw attention to the importance of Part Two, Chapter III, of these Draft Articles, which deals with "serious breaches of obligations under peremptory norms of . . . international law", norms which include the right of peoples to decide their own destiny and thus their right to self-determination. Algeria will return to this point in Part VII.1.1.2 and Part VII.1.2 of its statement, below.

III.5.2 The work on "peremptory norms of general international law (*jus cogens*)"

The right to self-determination is included in the list of norms identified by the ILC as *jus cogens*. During the Sixth Committee discussions in 2018, one State, and only one, Israel, considered the inclusion of self-determination in the list of peremptory norms of international law to be "questionable" (A/C.6/73/SR.27).

The Special Rapporteur on the topic of *jus cogens* norms, in a very rigorous analysis, justified this inclusion on the basis of existing practice. To support his assessment, he referred in particular to the international jurisprudence on this subject. Algeria addressed this matter earlier, in its review of the relevant international jurisprudence. It returns to it now in relation to the analysis provided by the ILC Special Rapporteur, who highlighted the link that exists between the concepts of *jus cogens* and *erga omnes*, rightly considering that the latter derives from the former.

The Special Rapporteur relied in particular on the Court's 1995 Judgment in the *East Timor* case and on the advisory opinions most closely related to the current proceedings, namely those concerning *Namibia* (1971), *Western Sahara* (1975) and the *Wall* (2004). To support his arguments, he also referred to General Assembly resolutions 1514, 2131, 2625 and 3314. The latter, for example, states that nothing in the definition provided could "in any way prejudice the right to self-determination". The Special Rapporteur further referred to certain resolutions specifically concerning the Occupied Palestinian Territory.

IV. VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

Algeria will endeavour to demonstrate below that the policies and practices of Israel in the occupied Palestinian territories, including East Jerusalem, that were aimed at maintaining these territories under prolonged occupation are in violation of international humanitarian law.

In this part of its written statement, Algeria will begin by defining the international legal status of the Palestinian territories occupied by Israel (IV.1), putting the special status of East Jerusalem, the West Bank and the Gaza Strip into perspective, before demonstrating that the continuation of this occupation is illegal under international humanitarian law (IV.2) and discussing Israel's obligation to comply with the applicable rules in the occupied Palestinian territories (IV.3).

IV.1 The international legal status of the Palestinian territories under Israeli occupation: characterization of the situation of occupation of the West Bank and East Jerusalem under international law

During the war of aggression that lasted from December 1947 to January 1949, Israeli forces occupied the western part of Jerusalem, in violation of resolution 181. The Armistice Agreement of 3 April 1949 led to the *de facto* division of the city into two parts, East Jerusalem and West Jerusalem; meanwhile, the United Nations continued to advocate for the city to be given a special status.

On 9 December 1949, the General Assembly adopted resolution 303 (IV), entitled "Palestine: question of an international regime for the Jerusalem area and the protection of the Holy Places", in which it restated "its intention that Jerusalem should be placed under a permanent international regime, which should envisage appropriate guarantees for the protection of the Holy Places, both within and outside Jerusalem, and to confirm specifically the following provisions of General Assembly resolution 181 (II): [that] the City of Jerusalem shall be established as a *corpus separatum* under a special international regime and shall be administered by the United Nations".

Following the 1967 armed conflict — during which the Israeli armed forces occupied all the territories that had constituted Palestine under the British Mandate, including those known as the West Bank and the Gaza Strip, which represented roughly half the territory attributed to the Arab State under the Plan of Partition included in General Assembly resolution 181 (II) of 1947 — the Security Council, on 22 November 1967, unanimously adopted resolution 242 (1967), which emphasized the inadmissibility of the acquisition of territory by war and called for the "withdrawal of Israel armed forces from territories occupied in the recent conflict" and the "termination of all claims or states of belligerency".

From 1967 onwards, Israel took a number of measures in these territories which were aimed at altering the status of Jerusalem. The Security Council, after reaffirming on several occasions that the "principle of acquisition of territory by military conquest is inadmissible", condemned these measures and confirmed in resolution 298 (1971) of 25 September 1971, in the clearest possible terms, that:

> "[A]ll legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and legislation aimed at the incorporation of the occupied section, are totally invalid and cannot change that status".

Resolutions adopted by the Security Council since 1967[10] have established the unlawfulness of the Israeli occupation resulting from the Six Day War[11] and the illegality of the Israeli measures aimed at altering the status of Jerusalem[12]. Consequently, the current status of Israel with regard to these territories is nothing other than that of an occupier.

However, under international law, an occupying Power does not have sovereignty over the territory it occupies. It exercises its authority over that territory only temporarily[13]. The applicable criterion is that of effective control of the territory[14]. It is immaterial whether its day-to-day administration is exercised by local authorities. A territory that has been occupied continues to be so until either a definitive withdrawal takes place, or a final and acceptable settlement is reached. Yet neither of these has occurred in the present case.

In its 2004 Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court previously suggested that the separation barrier and its associated régime "create a 'fait accompli' on the ground that could well become permanent, in which case . . . it would be tantamount to *de facto* annexation"[15].

Twenty years later, the Court has every reason to believe that not only the situation created by the barrier, but also the control exercised by Israel, have become tantamount to *de facto* annexation, at least in the entire part of the Palestinian territory that is under direct Israeli territorial administration (Area C[16] under the Oslo Accords).

At its fifth emergency special session, the General Assembly adopted resolution 2253 (ES-V), entitled "Measures taken by Israel to change the status of the City of Jerusalem", in which it stated that it was "deeply concerned at the situation prevailing in Jerusalem as a result of the measures taken by Israel to change the status of the City", it considered that these measures were "invalid" and it called upon "Israel to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem".

Following the adoption by Israel, on 30 July 1980, of the basic law making Jerusalem, "whole and united", its capital, the Security Council, in its resolution 478 (1980) of 20 August 1980, "[d]ecide[d] not to recognize the 'basic law' and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem"[17]. In the same vein, the Security Council affirmed that the enactment of this law constituted a violation of international law and that "all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem . . . are null and void". It moreover "call[ed] upon [a]ll Member States to accept this decision"[18].

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[10] Security Council resolution 242 (1967), UN doc. S/RES/242 (22 Nov. 1967), para. 1.

[11] Security Council resolution 476 (1980), UN doc. S/RES/476 (30 June 1980), paras. 3 and 4; resolution 478 (1980) (No. 7), paras. 2, 3 and 5.

[12] Security Council resolution 2334 (2016), UN doc. S/RES/2334 (23 Dec. 2016), preamble.

[13] See, in particular, Arts. 4 and 47 of the Fourth Geneva Convention.

[14] Art. 42 of the Hague Regulations of 1907.

[15] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 184, para. 121.

[16] Area C is an administrative division of the West Bank, entirely under Israeli occupation. It was defined by the Oslo II Accord of 1995. Area C is under the administration of the Israeli district of Judea and Samaria, while the Palestinian population is directly administered by the Coordinator of Government Activities in the Territories.

[17] Security Council resolution 478 (1980), 20 Aug. 1980.

[18] *Ibid.*, para. 5 *(a)*.

The illegal occupation of East Jerusalem by Israel, endorsed in its domestic legislation in 1980, has repeatedly been condemned by the international community in a series of Security Council resolutions.

In resolution 2334 (2016), the Security Council again condemned the measures aimed at altering the status of the "Palestinian territory occupied since 1967, including East Jerusalem"[19], "underline[d] that it w[ould] not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations"[20], and "call[ed] upon all States . . . to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967"[21].

The international community has similarly condemned any unilateral acts recognizing an alteration of the status of Jerusalem, through General Assembly resolution ES-10/19[22], entitled "Status of Jerusalem"[23], which:

> "1. *Affirms* that any decisions and actions which purport to have altered the character, status or demographic composition of the Holy City of Jerusalem have no legal effect, are null and void and must be rescinded in compliance with relevant resolutions of the Security Council, and in this regard calls upon all States to refrain from the establishment of diplomatic missions in the Holy City of Jerusalem, pursuant to Council resolution 478 (1980);
>
> 2. *Demands* that all States comply with Security Council resolutions regarding the Holy City of Jerusalem, and not recognize any actions or measures contrary to those resolutions".

This resolution is in keeping with the implementation of international norms, with a view to ensuring compliance with international law, and confirms the collective non-recognition and unlawful nature of these measures. The preamble to resolution ES-10/19 states that "Jerusalem is a final status issue to be resolved through negotiations in line with relevant United Nations resolutions".

Israel's *de jure* annexation of East Jerusalem and certain parts of the West Bank in 1967 (by a Cabinet decision) and in 1980 (by a Knesset vote) constitutes *ipso facto* a violation of the principle of non-annexation, as reflected in the relevant law of occupation.

Shortly after the Knesset vote, the United Nations Security Council, in August 1980, condemned Israel "in the strongest terms", affirming that Israel's actions were contrary to international law and that its occupation of Jerusalem was "null and void" and "must be rescinded forthwith".

Israel, as the occupying Power, is continuing to fail to comply with its international obligations and with all the United Nations resolutions on the occupation of Jerusalem.

In this respect, the Israeli Prime Minister, confirming his intention not to renounce his policy of occupation, has stated that Israel intended to keep the whole of Jerusalem permanently.

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[19] *Ibid.*, fourth preambular paragraph.

[20] *Ibid.*, para. 3.

[21] Security Council resolution 478 (1980) (No. 7), para. 5.

[22] General Assembly resolution ES-10/19, Status of Jerusalem, 21 Dec. 2017, A/RES/ES-10/19.

[23] Vote: 129 votes in favour, 9 against, 35 abstentions.

As indicated in the report of the Director of the Field Operations and Technical Cooperation Division of the Office of the High Commissioner for Human Rights, the number of Israeli settlers in the occupied West Bank, including East Jerusalem, increased from 520,000[24] to more than 700,000[25] between 2012 and 2022. In 2022, there were more than 280 settlements and outposts in Palestinian territories and 138 settlements were officially recognized by the occupation authorities.

The creation and expansion of settlements in the Occupied Palestinian Territory is tantamount to Israel transferring its own population into the territory it occupies, which may constitute a war crime within the meaning of Article 8, paragraph 2 *(b)* (viii), of the 1988 Rome Statute of the International Criminal Court (ICC).

In this regard, both the General Assembly and the Security Council have declared on numerous occasions that any action or decision aimed at altering the character, status or demographic composition of the Holy City of Jerusalem has no legal effect and is null and void under international law. Any unilateral act relating to the status of Jerusalem is thus unlawful, given that it is contrary to the resolutions of the Security Council and to general international law. Moreover, as recalled by Judge Koroma in his separate opinion on the construction of the wall, it is "[e]qually important . . . that the international community as a whole bears an obligation towards the Palestinian people . . . not to recognize any unilateral change in the status of the territory"[26].

Beyond Jerusalem, Israel is actively endeavouring to achieve the *de facto* annexation of certain parts of the West Bank by means of its increasingly numerous settlements, as noted by the ICJ in its Advisory Opinion on the construction of the wall[27].

The preamble to resolution ES-10/19 moreover reaffirms that the acquisition of territory by force is inadmissible and contrary to the rules of general international law, which give rise to an obligation of non-recognition[28] and entail "the illegality of territorial acquisition resulting from the threat or use of force"[29].

In this connection, since resolution 242 of the United Nations Security Council[30], the principle of "the inadmissibility of the acquisition of territory by war" or by force has been recognized by the Security Council on several occasions.

The United Nations General Assembly unanimously affirmed this principle in the "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States"[31], adopted in 1970. And in its 2004 Advisory Opinion on the construction of the wall, the ICJ held, in paragraph 87, that "the illegality of territorial acquisition resulting from the threat or use of force" has acquired the status of customary international law.

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[24] See peacenow.org.il/en/settlements-watch/settlements-data/population (465,000 settlers in the West Bank) and peacenow.org.il/en/settlements-watch/settlements-data/jerusalem (229,377 in East Jerusalem).

[25] *Ibid.*

[26] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, separate opinion of Judge Koroma, p. 205, para. 7.

[27] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 184, para. 121.

[28] ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts and commentaries thereto, UN doc. A/56/10, pp. 115-116 (commentary to Art. 41, para. 2).

[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.

[30] Security Council resolution 242, 22 Nov. 1967.

[31] legal.un.org/avl/pdf/ha/dpilfrcscun/dpilfrcscun_ph_e.pdf.

In light of the foregoing in particular, Algeria would recall that the most serious violation committed by Israel is undoubtedly its constant striving to prevent the establishment of a Palestinian State, as it was provided for in General Assembly resolution 181 (1947)[32].

Another violation of the rights of the Palestinian people concerns the encroachment on the boundaries described in General Assembly resolution 181 of 1948 and, since 1967, the occupation of the West Bank, including East Jerusalem, and the Gaza Strip, which accounted for roughly half of the territory allocated to the Arab State under the Plan of Partition in General Assembly resolution 181 (II) of 1947.

The Security Council, the General Assembly and the Human Rights Council have consistently reaffirmed the inadmissibility of the acquisition of territory by force[33] and the overriding necessity of the withdrawal of Israel's armed forces from the occupied territories[34], censuring in the strongest terms all the measures that have been taken by Israel in violation of international law.

IV.2 The illegality of Israel's prolonged occupation of the occupied Palestinian territories

Algeria would recall that the question in paragraph 18 *(a)* of resolution 77/247 of 30 December 2022 refers to violations of the very principles of the law of occupation, such as prolonged occupation, as well as to violations of certain express provisions of that law, such as settlement and discriminatory practices, which, in some circumstances, undermine those same principles. The ICJ has thus been seised of the question of the legality of Israel's "prolonged occupation" of Palestinian territory.

Israel has occupied Palestinian territory for 56 years. Fifty-six long years replete with continued, gross violations of the rights of the Palestinian people. This duration has caused the occupation to be characterized as "prolonged" and has also rendered the occupation itself illegal. Under the legal frameworks specifically governing situations of occupation — international humanitarian law and the law on the use of force — an occupation must be temporary.

It is primarily in the light of these facts that Algeria will set out its own views on the illegality of the prolonged occupation of Palestinian territories under the relevant law in this area.

In international law, the legality of an occupation is determined by reference to a particular set of principles, namely that the occupying Power must have neither sovereignty over nor title to the occupied territory; that the occupying Power is obliged to manage public order and civilian life in the territory concerned and must do so for the benefit of the occupied population, with due regard to the latter's right to self-determination; and that the occupation must be temporary.

Thus, an occupying Power may under no circumstances acquire the right to conquer, annex or obtain sovereign title to any part of the territory it occupies ("belligerent occupation does not yield so much as an atom of sovereignty in the authority of the occupant"[35]). This is one of the most well-established principles of modern international law, enjoying universal recognition.

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[32] General Assembly, Resolution adopted on the report of the *Ad Hoc* Committee on the Palestinian Question, resolution 181 (II). Future government of Palestine, 29 Nov. 1947.

[33] See Security Council resolutions 242 (1967), 252 (1968), 267 (1969), 298 (1971), 476 (1980), 478 (1980) and 2334 (2016), and General Assembly resolutions 2628 (XXV), 2799 (XXVI) and 2949 (XXVII).

[34] See Security Council resolutions 242 (1967) and 476 (1980), and General Assembly resolutions 2628 (XXV), 37/86 and 41/162.

[35] A. Gross, *The Writing on the Wall: Rethinking the International Law of Occupation*, Cambridge, Cambridge University Press, 2017, p. 8.

According to the rules and principles of international humanitarian law, wartime occupation is a temporary situation which deprives the occupied Power of neither its statehood nor its sovereignty. Occupation as a result of war cannot imply any right whatsoever to dispose of territory[36].

Under international humanitarian law, belligerent occupation is supposed to be temporary; however, this legal régime does not fix an end-date for the occupation, but rather seeks to impose restrictions on the occupying Power's use of the occupied territory and to protect the civilian population.

International law and practice do not clearly define the point in time when a situation of belligerent occupation becomes illegal. However, there is an essential principle according to which the occupying Power cannot implement measures — *de jure* or *de facto* — that make the occupation permanent. In the *Namibia* case, the origins of which were admittedly different from those of the situation in the Occupied Palestinian Territory, the ICJ found in its Advisory Opinion that the continued presence of South Africa in Namibia was illegal. Moreover, it found that South Africa "incur[red] international responsibilities arising from a continuing violation of an international obligation" because it occupied the territory of Namibia "without title"[37].

Algeria would recall that, in a 2017 report, former Special Rapporteur Michael Lynk described the prolongation of Israel's occupation of Palestinian territories as a "red line" which, once crossed, makes the occupation illegal. In his view, by perpetuating the occupation and implementing changes in the occupied territory, including the establishment of settlements, the expropriation of land and the exploitation of natural resources, as well as the purported *de jure* annexation of East Jerusalem, Israel has crossed that line: "Israel's role as occupier in the Palestinian Territory — the West Bank, including East Jerusalem, and Gaza — has crossed a red line into illegality"[38].

Furthermore, in its September 2022 report, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, reached the same conclusions[39]:

> "The Commission finds 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. 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."

The Independent International Commission based its finding on: (i) the legal measures by which Israel has purportedly formally annexed East Jerusalem[40]; (ii) the establishment of settlements and outposts in the West Bank, and the attendant exploitation of natural resources, the building of settler-only roads and infrastructures, demographic engineering measures, and the extraterritorial

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[36] See International Committee of the Red Cross (ICRC), Commentary of 1958 to Art. 47 of Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, available at ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-47/commentary/1958?activeTab=1949GCs-APs-and-commentaries.

[37] *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*, pp. 51-52, paras. 108, 109, 111; p. 53, para. 115; pp. 54-56, paras. 117-127, and p. 58, para. 133.

[38] www.ohchr.org/en/press-releases/2017/10/israel-must-face-new-international-legal-push-end-illegal-occupation.

[39] Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 Sept. 2022 (issued 20 Oct. 2022), pp. 24-28, paras. 75-76.

[40] *Ibid.*, paras. 14-16.

application of Israeli domestic law to settlements and settlers[41]; and (iii) the unequivocal statements by Israeli officials of the intent to appropriate permanently portions of the West Bank[42].

Occupation is by definition a temporary and exceptional situation in which the occupying Power assumes the role of *de facto* administrator of the territory until conditions allow for the territory to be returned to the sovereign. This is what distinguishes occupation from annexation. In other words, the territory must be returned to the sovereign Power — the people of the territory — within a reasonable period, in order to ensure respect for the people's right to self-determination "as soon as possible"[43].

As pointed out by Special Rapporteur Michael Lynk, Israel's occupation of Palestinian territories is "without precedent or parallel in today's world . . . Modern occupations that have broadly adhered to the strict principles concerning temporariness, non-annexation, trusteeship and good faith have not exceeded 10 years."

The provisions of the law of occupation are clear: the occupying Power cannot treat the territory as its own, nor can it claim sovereignty over it. "Yet this has been Israel's pattern of governing the occupied Palestinian territory for most of its 50 years of rule"[44].

Israeli governments since 1967 have pursued the continuous growth of the settlements, and the scale of the financial, military and political resources committed to this enterprise belies any intention to make the occupation temporary. The ICJ anticipated this situation in its 2004 Advisory Opinion, in which it stated that "the wall and its associated régime create a 'fait accompli' on the ground that could well become permanent, in which case . . . it would be tantamount to *de facto* annexation". This is now a reality[45].

In view of the foregoing, Algeria has come to the conclusion that Israel considers the occupation to be permanent, while at the same time justifying its actions on the basis of the situation being temporary, which is merely a fiction. Moreover, as Professor Gershon Shafir[46] has noted, "temporariness remains an Israeli subterfuge for creating permanent facts on the ground", with Israel able to employ a seemingly indeterminate nature of the occupation's end-point to create a "permanent temporariness" that intentionally forestalls any meaningful exercise of self-determination by the Palestinians.

And as Special Rapporteur Michael Lynk noted in presenting his October 2017 report: "The international community has recoiled from answering Israel's splintering of the Palestinian territory and disfiguring of the laws of occupation with the robust tools that international law and diplomacy provide. International law, along with the peoples of Palestine and Israel, have all suffered in the process"[47].

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[41] *Ibid.*, paras. 24-47.

[42] *Ibid.*, paras. 48-53.

[43] Security Council resolution 1483 (2003), 22 May 2003, S/RES/1483 (2003), preambular para. 5, and para. 4.

[44] www.ohchr.org/en/press-releases/2017/10/israel-must-face-new-international-legal-push-end-illegal-occupation.

[45] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 184, para. 121.

[46] G. Shafir, *A Half Century of Occupation*, University of California Press, 2017, pp. 155 and 161.

[47] www.ohchr.org/en/press-releases/2017/10/israel-must-face-new-international-legal-push-end-illegal-occupation.

Arguments in support of this view regarding the permanence of Israel's occupation of Palestinian territories are certainly provided to the Court by the policy approaches[48] of the Israeli Government and the statements made by its members, in particular the announcements that the Jewish people have an exclusive and indisputable right to the whole of Eretz Israel (Palestine and the Golan Heights), that "the Jewish people have an exclusive and inalienable right to all parts of the Land of Israel"[49], including the Syrian Golan and Judea and Samaria, and that the Government intends to promote and develop settlements in the West Bank.

Violation of the principle of temporariness renders an occupation illegal under international humanitarian law and *jus ad bellum*. In light of the foregoing, the law of international responsibility imposes an obligation on Israel to put an end to its illegal actions and withdraw its military and civilian presence from the occupied territory[50].

IV.3 Israel's obligation to respect the applicable rules in the occupied territories

IV.3.1 The applicability of international humanitarian law

The General Assembly's question relating to an examination of the "law" and the consequences arising from the Israeli occupation in the light of international humanitarian law, international human rights law and the relevant resolutions of the General Assembly, the Security Council and the Human Rights Council does not limit but suggests the scope of the relevant law in this case.

The definition of occupation in international humanitarian law is largely based on elements of fact. According to the definition provided by Article 42 of the Hague Regulations of 1907, "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised".

It is beyond dispute, therefore, that military occupation does not entail any transfer to the occupying Power of the sovereignty of a State which has legitimate sovereignty over a territory. The Power holds only limited and temporary powers enabling it to manage the occupied territory.

The law of occupation includes the rules of customary international law enshrined *inter alia* in the 1907 Hague Regulations and the Fourth Geneva Convention. Palestine has been a party to the four Geneva Conventions and the first Additional Protocol thereto since 10 April 2014.

Israel is reluctant to acknowledge the applicability of the rules of international humanitarian law, and thus of the Fourth Geneva Convention, to the occupied territories[51] and prefers to speak of "disputed territories" or "*de facto* and not *de jure* application of the Fourth Convention".

As further regards international humanitarian law, although Israel is not a State party to Hague Convention IV of 1907 — to which the Regulations concerning the Laws and Customs of War on Land are annexed — the ICJ has considered that its provisions are of a customary nature, and the

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[48] www.adalah.org/uploads/uploads/Guiding_principles_government.pdf.

[49] information.tv5monde.com/international/israel-benjamin-netanyahu-presente-un-programme-encourageant-la-colonisation-en.

[50] Security Council resolution 242, 22 Nov. 1967.

[51] The Supreme Court of Israel never speaks of "occupied territories" or "occupation", but only of "belligerent occupation" and "zone" (*ha-Ezur*).

rules established by the Convention with regard to the régime of occupation are thus applicable to Israel[52].

Therefore, the provisions of the 1907 Hague Regulations have become part of customary law, and some of these provisions, particularly Section III, are especially relevant to the case at hand.

Article 42 of the Hague Regulations provides that "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised". A belligerent occupation has also been regarded as established when a territory is placed under the effective control of the armed forces of a foreign State.

It is the existence of effective control over a given territory that determines the beginning and end of a belligerent occupation and thus the applicability of international humanitarian law, in particular the law of occupation — the Hague Regulations[53], the Fourth Geneva Convention[54], the Additional Protocol[55] and the customary international law relating thereto.

Protected persons present in occupied territory must not be deprived of the rights to which they are entitled under international humanitarian law and international human rights law.

As recalled by Algeria in its February 2004 oral statement during the advisory proceedings on the request relating to the construction of the wall[56], "Israel's legal position consists in denying . . . the applicability of the Fourth Geneva Convention of 1949" on the basis of the fact that it has not been incorporated into Israeli domestic law.

However, its "non-incorporation does not prevent application", particularly in the light of international treaty law and the principle of "implement[ing] in good faith the treaties to which [States parties] have freely subscribed", in accordance with Article 26 of the Vienna Convention on the Law of Treaties.

In addition, many of the rules of the Convention of 12 August 1949 are of direct application[57] and need not be incorporated in order to be enforced, in particular the provisions of Part III, Section III, of the Fourth Convention, entitled "Occupied Territories".

Algeria would recall with emphasis that the core of international humanitarian law is made up of "intransgressible principles" which "are to be observed by all States"[58], language used by the ICJ in its Advisory Opinion of 8 July 1996. Similarly, in its judgment in the *Kupreškić* case, the International Criminal Tribunal for the former Yugoslavia considered that "most norms of international humanitarian law . . . are also peremptory norms of international law or *jus cogens*, i.e. of a non-derogable and overriding character"[59].

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[52] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 172, para. 89.

[53] Hague Regulations, Arts. 42-56.

[54] Fourth Geneva Convention, Arts. 47-78.

[55] First Additional Protocol, Arts. 14, 63, 69 and 85 (4) *(a)*.

[56] Oral statement made by Algeria in Feb. 2004 in the context of the advisory proceedings on the request concerning the construction of the wall, p. 37.

[57] Oral statement of Algeria, Feb. 2004, p. 39. See also P.-Y. Fux and M. Zambelli, *Mise en œuvre de la Quatrième Convention de Genève dans les territoires palestiniens occupés*, IRRC, Sept. 2002, Vol. 84, No. 847.

[58] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 257, para. 79.

[59] International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor* v. *Kupreškić et al.,* Trial Chamber, Judgement of 14 Jan. 2000, paras. 519-520.

As stated by Judge Higgins in her separate opinion [appended to the Advisory Opinion on the construction of a wall], "the obligations . . . imposed [by international humanitarian law] are . . . absolute[,] . . . [including in particular] the protection of civilians[, which] remains an intransgressible obligation of [international] humanitarian law"[60].

Under international humanitarian law, situations of occupation are officially classified as international armed conflicts, i.e. armed confrontations between two or more States[61]. In addition to international humanitarian law, human rights law[62] remains applicable in situations of occupation.

Consequently, an occupying Power must ensure that members of the local population enjoy all the rights they are entitled to claim under international law[63].

IV.3.2 The law applicable to the West Bank as an "occupied territory"

Israel does not define the West Bank as an "occupied territory", because of the supposed absence of a sovereign Power before 1967, when it took control of the territory. Consequently, Israel rejects the *de jure* applicability of the law of occupation and claims to be applying *de facto* the "humanitarian provisions" of the Fourth Geneva Convention[64].

Algeria strongly rejects this view, in particular in light of the historical background presented by Judge Kooijmans in his separate opinion appended to the Court's Advisory Opinion on the construction of the wall, which recalls that "the West Bank . . . was placed by Jordan under its sovereignty . . . [a] claim . . . relinquished only in 1988"[65]. And as suggested in the commentary of the International Committee of the Red Cross (ICRC)[66], the legal status of the occupation does not require the existence of a previous legitimate occupier on the territory in question.

Indeed, according to the ICRC, "the unclear status of a territory does not prevent the applicability of the rules of the Fourth Convention, including those relating to occupied territory. For the Fourth Convention to apply, it is sufficient that the State whose armed forces have established effective control over the territory was not itself the rightful sovereign of the place when the conflict broke out". Hence occupation exists once a territory is under the effective control of a State that is not its recognized sovereign.

This further strengthens the argument that the Fourth Geneva Convention applied from the moment Israel occupied the West Bank in 1967.

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[60] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, separate opinion of Judge Higgins, p. 210, para. 14, and p. 212, para. 19.

[61] Fourth Geneva Convention, Art. 2; ICTY, *Prosecutor* v. *Tadić*, Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1, 2 Oct. 1995, para. 70.

[62] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, pp. 242-243, para. 216.

[63] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 178-181, paras. 106-113. United Nations Human Rights Committee, Concluding Observations on the Fifth Periodic Report of Israel, CCPR/C/ISR/CO/5, 30 Mar. 2022, para. 7 *(b)*.

[64] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 173-174, paras. 90 and 93.

[65] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, separate opinion of Judge Kooijmans, pp. 221-222, para. 8.

[66] ICRC, First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 Aug. 1949, Commentary of 2016, para. 324.

Since 1967, the territory of the West Bank has thus been occupied by one of the High Contracting Parties within the meaning of the Fourth Geneva Convention, to which Jordan and Israel are both parties.

Moreover, and despite Israel's persistent opposition[67], the ICJ and various United Nations human rights bodies[68] have recognized that all its human rights treaty obligations have continued to apply to its conduct in the West Bank.

The ICJ[69], the United Nations Security Council[70] and the Israeli Supreme Court[71] have all characterized the West Bank as occupied territory in which the Hague Regulations and the Fourth Geneva Convention apply.

Furthermore, the ICJ has recognized that all the territories occupied since 1967, "[t]he territories situated between the Green Line . . . and the former eastern boundary of Palestine under the Mandate[,] . . . including East Jerusalem[,] . . . remain occupied territories and Israel . . . continue[s] to have the status of occupying Power"[72].

Algeria would recall, therefore, that the rules and principles that are of relevance in this case are to be found in the United Nations Charter, certain international treaties, customary international law, the Hague Regulations of 1907, the Fourth Geneva Convention of 1949, and the relevant resolutions adopted by the General Assembly, the Security Council and the Human Rights Council, and that they are applicable in the occupied Palestinian territories.

Israel, as the occupying Power, has once again failed to comply with its obligations under the provisions of the relevant law in this area.

IV.3.3 The particular situation in the Gaza Strip

One of the most notable violations of international humanitarian law is the blockade of Gaza, a densely populated strip of land forming an integral part of Palestinian territory. The closures and the land, sea and air blockade of Gaza, which amount to collective punishment[73], have entered their sixteenth year and continue to have extremely detrimental effects on freedom of movement and the exercise of economic, social and cultural rights, including the right to an adequate standard of living and to health, education, work and family life[74].

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[67] Government of Israel, Fifth Periodic Report Submitted by Israel under Article 40 of the Covenant Pursuant to the Optional Reporting Procedure, 30 Oct. 2019, paras. 23-26.

[68] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 178-181, paras. 106-113; United Nations Committee against Torture, Concluding Observations on the Fifth Periodic Report of Israel, CAT/C/ISR/5, 16 Feb. 2015, paras. 8-9; United Nations Committee on the Elimination of Discrimination against Women, Concluding Observations on the Sixth Periodic Report of Israel, CEDAW/C/ISR/6, 14 July 2017, paras. 14-15; United Nations Committee on Economic, Social and Cultural Rights, Concluding Observations on the Fourth Periodic Report of Israel, E/C.12/ISR/4, 14 Jan. 2019, paras. 9-10; United Nations Human Rights Committee, Concluding Observations on the Fifth Periodic Report of Israel, CCPR/C/ISR/CO/5, 30 Mar. 2022, para. 7 *(b)*.

[69] *Ibid.*, p. 172, para. 89, and p. 177, para. 101.

[70] Security Council resolution 2334, 23 Dec. 2016.

[71] HCJ 393/82, *Jam'iat Iscan Al-Ma'almoun* v. *IDF Commander in the Judea and Samaria Area*, 28 Dec. 1983; HCJ 7015/02, *Ajuri* v. *The Commander of IDF Forces in the West Bank*, 3 Sept. 2002.

[72] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 167, para. 78.

[73] A/HRC/46/63, para. 7; A/HRC/37/38, para. 4; A/HRC/34/36, para. 36.

[74] See A/73/420.

One of the consequences of the blockade has been to restrict considerably Palestinians' access to food, water, fuel, medicines, construction materials and other such essentials. It has also had disastrous consequences on the daily lives of Palestinians in Gaza, causing a serious humanitarian and health crisis.

In addition, the blockade has prevented Palestinians from leaving the Gaza Strip, causing family and social ties to be severed and obstructing access to education and medical care. For example, patients must obtain an Israeli exit permit to access specialized health services not available in Gaza and receive critical and sometimes life-saving care.

Moreover, with regard to the Gaza closures, the Israeli authorities have sought to "differentiate"[75] their policy approaches to Gaza and the West Bank, in particular by imposing greater restrictions on the movement of persons and goods from Gaza to the West Bank, and to promote the separation of these two parts of the Occupied Palestinian Territory. The Israeli army has published a "Procedure for settling inhabitants of Judea and Samaria in the Gaza Strip"[76], which states that "in 2006, a decision was made to implement a policy of separation between the Judea and Samaria Area [the West Bank] and the Gaza Strip, in light of the rise of Hamas in Gaza. The current policy is explicitly aimed at reducing crossings between these areas".

The Gaza Strip has also been the scene of repeated hostilities and numerous incidents constituting violations of international humanitarian law by Israel. Indeed, over the years, Israel has conducted several large-scale military operations in the Gaza Strip, some of which have been characterized by the deliberate targeting of civilians and civilian infrastructure, and the bombardment of densely populated residential areas. Airstrikes and ground attacks have also resulted in civilian casualties, including women and children, as well as substantial material damage to dwellings, schools, hospitals and critical infrastructure.

The principle of distinction, which is articulated in the Geneva Conventions, requires the parties to a conflict to distinguish at all times between civilians and combatants, and to take all possible precautions to spare civilians and civilian objects. Failure to respect this principle, including in particular the prohibition of the unnecessary destruction of civilian objects, constitutes a violation of international humanitarian law.

The excessive use of force by the Israeli forces during demonstrations at the Gaza border has also been criticized by human rights organizations. Live fire directed at unarmed demonstrators has killed or wounded a large number of people. Under international humanitarian law, the use of force must be proportionate and necessary in response to an imminent threat.

In any event, Israel continues to be an occupying Power within the meaning of international humanitarian law, despite the withdrawal of its military forces and settlements from the territory in 2005[77]. Accordingly, Israel is under an obligation to respect the human rights of the Palestinians living in Gaza, in particular their right to freedom of movement throughout the Occupied Palestinian Territory and abroad, which includes both the right to leave a country and the right to enter one's own country.

Israel is also obliged to respect the rights of Palestinians for which freedom of movement is a precondition, for example the right to education, work and health. The United Nations Human Rights

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[75] https://gisha.org/UserFiles/File/LegalDocuments/54868_response_excerpt_ENG.pdf.

[76] www.gov.il/BlobFolder/policy/procedureforsettlingresidentstaffinginthegazastrip/he/%D7%A0%D7%95%D7%94%D7%9C%20%D7%94%D7%A9%D7%AA%D7%A7%D7%A2%D7%95%D7%AA%20%D7%AA%D7%95%D7%A9%D7%91%20%D7%90%D7%99%D7%95%D7%A9%20%D7%91%D7%A8%D7%A6%D7%95%D7%A2%D7%AA%20%D7%A2%D7%96%D7%94.pdf (document available in Hebrew) *[translation by the Registry]*.

[77] B. Avni, "The O Word: Is Gaza Occupied Territory?", *N.Y. Sun*, 11 Feb. 2008, www.nysun.com/article/foreign-o-word-is-gaza-occupied-territory.

Committee noted in its General Comment on Article 12[78] that, although States may restrict freedom of movement for reasons of security or to protect public health, public order or the rights of others, these restrictions must be proportionate and "must not impair the essence of the right . . . the relation between right and restriction, between norm and exception, must not be reversed".

The violations of international humanitarian law committed by Israel in the Gaza Strip may have major legal consequences. Individuals responsible for war crimes, crimes against humanity or other serious violations of international law must be held personally accountable before international judicial bodies.

These violations raise important questions about compliance with obligations under international law. In addition to repeated calls for the establishment of the truth, the protection of victims' rights and the application of international law, the violations of international humanitarian law committed by Israel in the Gaza Strip have been condemned by numerous international organizations, including the United Nations and the European Union. The latter have called on Israel to put an end to the blockade, stop the airstrikes on civilian targets and treat Palestinian prisoners in accordance with international humanitarian law.

What is more, the former ICC prosecutor, Fatou Bensouda, announced on 20 December 2019 that the preliminary examination of the situation in Palestine had led to the determination that war crimes had been committed in the occupied Palestinian territories and that all the criteria laid down by the Rome Statute for the opening of an investigation had been met.

Two years later, in February 2021, the ICC decided to investigate the crimes committed by Israel in the course of the war in Gaza in the summer of 2014, during the repression of the March of Return in 2018, and in connection with the settlement of the occupied Palestinian territories. To date, the findings of that investigation have not been made public.

V. VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW

The second body of law that can be invoked is international human rights law, including as regards the application of certain human rights conventions in the Occupied Palestinian Territory.

Israel is a party to seven[79] of the main universal human rights treaties, having ratified the following: in 1979, the International Convention on the Elimination of All Forms of Racial Discrimination of 1965; in 1991, the International Covenant on Civil and Political Rights (ICCPR) of 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984 and the Convention on the Rights of the Child (CRC) of 1989; and in 2012, the Convention on the Rights of Persons with Disabilities of 2008.

Israel's human rights obligations in the Occupied Palestinian Territory arise from the jurisdiction and effective control that it exercises as the occupying Power. As indicated by the ICJ in 2004, Israel, as the occupying Power, exercises territorial jurisdiction over the Occupied Palestinian

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[78] Human Rights Committee, General Comment No. 27 (67), Freedom of movement (article 12), 18 Oct. 1999.

[79] International Covenant on Civil and Political Rights (entered into force 23 Mar. 1976), 999 UNTS 171 (ICCPR); International Covenant on Economic, Social and Cultural Rights (entered into force 3 Jan. 1976), 993 UNTS 3 (ICESCR); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (entered into force 26 June 1987), 1465 UNTS 85 (CAT); International Convention on the Elimination of All Forms of Racial Discrimination (entered into force 4 Jan. 1969), 660 UNTS 195; Convention on the Elimination of All Forms of Discrimination against Women (entered into force 3 Sept. 1981) 1249 UNTS 13; Convention on the Rights of the Child (entered into force 2 Sept. 1990) 1577 UNTS 3 (CRC); Convention on the Rights of Persons with Disabilities, United Nations General Assembly resolution 61/106 (24 Jan. 2007) UN doc. A/RES/61/106 (2007).

Territory and is therefore, on that basis, bound by human rights obligations owed to the local population[80].

The human rights treaty bodies that oversee the implementation of such treaties have also maintained that these instruments are binding on Israel in its actions in the occupied territories[81], in its capacity as the occupying Power.

Israel has disputed that its human rights obligations apply outside its national territory[82], and also rejects their co-applicability with international humanitarian law[83].

However, their application in the Occupied Palestinian Territory (that is to say, in the West Bank, including East Jerusalem, and the Gaza Strip) has constantly been affirmed in the relevant General Assembly resolutions[84], in reports of the Secretary-General[85] and the High Commissioner for Human Rights[86], and by various treaty bodies.

Israel disputes the application of international human rights law, arguing that it cannot apply in times of armed conflict. It therefore rejects the application of the 1966 Covenant on Civil and Political Rights and Covenant on Economic, Social and Cultural Rights, emphasizing that responsibility for applying them lies with the government in power in the West Bank and the Gaza Strip.

Israel has asserted that "humanitarian law is the protection granted in a conflict situation such as the one in the West Bank and Gaza Strip, whereas human rights treaties were intended for the protection of citizens from their own Government in times of peace"[87]. The Court has dismissed this argument and has consistently held in its jurisprudence that human rights conventions continue to apply in times of armed conflict[88], except in instances where provisions for derogation apply.

The ICJ has also observed that the obligations incumbent upon Israel under the International Covenant on Economic, Social and Cultural Rights include the obligation "not to raise any obstacle

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[80] See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 179-181, paras. 110 to 113.

[81] Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Israel (21 Nov. 2014), CCPR/C/ISR/CO/4, para. 5; Committee on Economic, Social and Cultural Rights, Concluding Observations on the Fourth Periodic Report of Israel (12 Nov. 2019), E/C.12/ISR/CO/4, para. 9; Committee on the Elimination of Racial Discrimination, Concluding Observations on the Combined Seventeenth to Nineteenth Reports of Israel (27 Jan. 2020), UN doc. CERD/C/ISR/CO/17-19, paras. 8-9.

[82] E/C.12/1/Add.27 (para. 8). See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 180-181, para. 112.

[83] Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Israel, Addendum, Information Received from Israel on Follow-Up to the Concluding Observations (9 Feb. 2017), UN doc. CCPR/C/ISR/CP/4/Add.1, para. 1; Committee on Economic, Social and Cultural Rights, Replies of Israel to the List of Issues (27 Aug. 2019) UN doc. E/C.12/ISR/Q/4/Add.1, para. 9; Committee on the Elimination of Discrimination against Women, Sixth Periodic Report of States Parties Due in 2017, Israel (15 June 2017) UN doc. CEDAW/ C/ISR/6, para. 8; Committee on the Elimination of Racial Discrimination, Summary Record of the 2788th meeting, UN doc. CERD/C/SR.2788 (10 Dec. 2019); Committee on the Rights of the Child, List of Issues to be Taken up in Connection with the Consideration of the Combined Second, Third and Fourth Periodic Reports of Israel (CRC/C/ISR/2-4) Addendum, Written Replies of Israel, Reply to the Issues Raised in part I, (22 May 2013), para. 2 *(c)*; Committee Against Torture, Fifth Periodic Reports of States Parties Due in 2013, UN doc. CAT/C/ISR/5. (16 Feb. 2015), Question No. 7.

[84] General Assembly resolution 71/98.

[85] A/69/348 (para. 5) and A/HRC/28/44 (para. 6).

[86] A/HRC/8/17 (para. 7) and A/HRC/12/37 (paras. 5 and 6).

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

[88] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*.

to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities"[89].

Algeria is of the view that a situation of armed conflict or occupation does not release a State from its human rights obligations[90], and it would recall that the simultaneous applicability of international human rights law and international humanitarian law in such situations has been confirmed on numerous occasions by human rights treaty bodies, in particular the Human Rights Committee in its concluding observations[91] on the fifth periodic report of Israel, as well as by the ICJ, which considers that "the protection offered by human rights conventions does not *cease* in case of armed conflict, *save* through the effect of provisions for derogation"[92].

And as was argued by the Independent International Commission in its 2022 report[93]: "In terms of duty bearers, [it] considers . . . that Israel remains in belligerent occupation of all [the] territories and is therefore the primary duty bearer within these territories, . . . given the jurisdiction and effective control exercised by Israel as an occupying Power and the extraterritorial applicability of a State's international human rights obligations".

Therefore, Israel is under an obligation to comply with human rights conventions and customary rules, which are binding in some instances and have the status of imperative rules of law.

Algeria will present below a non-exhaustive list of the policies and practices attesting to Israel's unceasing and deliberate violation of the Palestinian people's human rights.

V.1 The Israeli measures "aimed at altering demographic composition" persistently violate the rights of the Palestinian people

One of the basic principles of the law applicable to belligerent occupation is that the occupying Power must protect the fundamental interests of the population under occupation, which presupposes in particular prohibiting the transfer of its own civilian population into the territory it occupies[94]. Article 49 of the Fourth Geneva Convention is aimed at preventing the occupying Power from transferring part of its population into an occupied territory for political or racial reasons or in order to colonize that territory[95].

However, since the beginning of the occupation, Israel has adopted a series of policies and measures intended to "alter the demographic composition" of the occupied territories. This undertaking, which is contrary to international law, is the main driving force behind its prolonged occupation and its settlement policy.

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[89] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 181, para. 112.

[90] See, e.g. General Assembly resolution 71/98; A/69/348, para. 5; A/HRC/8/17, para. 7; A/HRC/12/37, paras. 5 and 6; A/HRC/28/44, para. 6; A/HRC/34/38, para. 7.

[91] CCPR/C/ISR/CO/5, para. 7.

[92] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 177 and 178, paras. 102 to 106 (emphasis added).

[93] Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 9 May 2022, A/HRC/50/21, p. 6, para. 22.

[94] Fourth Geneva Convention, Arts. 27 and 49.

[95] See ICRC, Commentary of 1958 to Art. 49 of the Convention relative to the Protection of Civilian Persons in Time of War.

Algeria will now address the issue of the Israeli "measures aimed at altering demographic composition", through a few illustrations of the practices Israel has engaged in since the start of the settlement process, which constitute flagrant breaches of international law.

V.2 The construction and expansion of Israeli settlements

The construction and expansion of Israeli settlements in the West Bank constitute a major violation of the law of occupation. The continued expansion of the settlements[96] is central to numerous violations of the Palestinian people's human rights.

Since the early years of occupation, Israel has implemented a policy of illegal settlements in the Occupied Palestinian Territory. Currently, the West Bank has a total of at least 590,000 settlers[97] (roughly 386,000 divided among some 130 settlements in Area C, and 208,000 in East Jerusalem)[98], which means that the settler population has more than doubled since the start of the Oslo process in 1993[99].

The Oslo Accords between Israel and the PLO provided that the issue of the settlements would be dealt with in the framework of the permanent status negotiations, which were to be concluded within five years. The interim agreement signed in September 1995 stipulated that none of the parties would take any measures likely to alter the status of the West Bank and the Gaza Strip[100].

The breakdown of the permanent status negotiations at Camp David in July 2000 enabled Israel to intensify and develop its settlement policy.

According to the different reports published by the Office of the High Commissioner for Human Rights, Israel spent several billion dollars on the construction of settlements and related infrastructures: roads, water supply and treatment systems, communications and electricity networks, security systems and educational and health-care establishments[101].

One of the basic principles of the law applicable to belligerent occupation is that the occupying Power must protect the fundamental interests of the population under occupation, which requires, among other things, prohibiting the transfer of its own population into the territory it occupies[102].

Accordingly, the settlement activity in the West Bank, including East Jerusalem, must not only be regarded as a breach of Israel's obligations under international human rights law or a grave breach of the sixth paragraph of Article 49 of the Fourth Geneva Convention, which prohibits the occupying Power from transferring its own population into the occupied territory. The construction and expansion of the Israeli settlements in the West Bank also constitute a war crime under the Rome Statute of the ICC and should be interpreted as a colonial enterprise which prevents the realization

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[96] See A/HRC/34/39 and A/71/355 (para. 34).

[97] Peace Now data on settlements, peacenow.org.il/settlements-watch/matzav/population.

[98] www.ohchr.org/en/news/2023/03/human-rights-council-hears-current-israeli-plan-double-settler-population-occupied.

[99] Report of the Middle East Quartet, July 2016, p. 4, available at: www.un.org/News/dh/infocus/middle_east/Report-of-the-Middle-East-Quartet.pdf.

[100] "Facts on the Ground since the Oslo Agreement, September 1993", *Palestine-Israel Journal of Politics, Economics and Culture*, Vol. 7, 4 Dec. 2000, www.pij.org/details.php?id=269.

[101] Yesh Din position paper "Plundered Pastures: Israeli settler shepherding outposts in the West Bank and their infringement on Palestinians' human rights", Dec. 2021. See also Peace Now data on settlements, peacenow.org.il/settlements-watch/matzav/population.

[102] Fourth Geneva Convention, Arts. 27 and 49.

of Palestinians' right to self-determination and deliberately continues the "dePalestinization" of the occupied territory[103].

Seeking to extend its population's reach, Israel even described the settlements as a "national value" in its 2018 Basic Law on the Jewish Nation-State[104], part of a plan that has been devised and developed since 1947, as made clear by the World Zionist Federation: "[I]t will now become necessary for us to conduct a race against time. During this period, everything will be mainly determined by the facts we establish in these territories and less by any other considerations. This is therefore the best time for launching an extensive and comprehensive settlement momentum"[105].

In justifying its official position on the settlements, Israel recalls that Jews have been present in the territory for thousands of years and that the Mandate for Palestine adopted by the League of Nations in 1922 recognized "the historical connection of the Jewish people with Palestine"[106].

Algeria joins Palestine in firmly condemning the Israeli settlements and endorses its observation that they have no legal validity, constitute flagrant breaches under international law, namely the Fourth Geneva Convention, and present a major obstacle to peace[107].

The continuous expansion of the settlements and related infrastructure strongly contributes to consolidating the occupation and renders the "two-State solution" increasingly unviable; as a result, over the last decade, the United Nations has "identified 3,372 incidents of violence committed by settlers. In 2022, settler violence reached the highest levels ever recorded by the United Nations"[108].

The Israeli authorities have publicly stated their country's intention to make the presence of the settlements irreversible and to annex all or part of Area C. Thus, in a speech to the settlers at Elkana on 17 May 2022, Prime Minister Bennett emphasized the permanent nature of the settlements by referring to them as already forming an integral part of the State of Israel: "With the help of God, we will also be here at the celebrations of Elkana's 50th and 75th, 100th, 200th and 2,000th birthdays, within a united and sovereign Jewish State in the Land of Israel"[109].

In the light of these elements, in her report published in 2022[110], the United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 called for a "paradigm shift" in the assessment of the Israeli occupation of Palestinian territory, recognizing its real nature as "an intentionally acquisitive, segregationist and repressive regime". Her conclusion

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[103] R. Wilde, Using the Master's Tools to Dismantle the Master's House: International Law and Palestinian Liberation, *The Palestine Yearbook of International Law Online*, Vol. 22, Issue 1, 2021.

[104] main.knesset.gov.il/EN/News/PressReleases/Pages/Pr13978_pg.aspx.

[105] World Zionist Federation, "Settlement in Judea and Samaria — strategy, policy and plans" (see A/36/341-S/14566).

[106] See Note by the Secretary-General on the question of Palestine: Text of Mandate (A/292). See also Israeli Ministry of Foreign Affairs, "Israeli Settlements and International Law", 30 Nov. 2015, available at www.gov.il/en/Departments/General/israeli-settlement-and-international-law.

[107] See S/PV.7853.

[108] Human Rights Council, *Le transfert par Israël de sa propre population dans le territoire qu'il occupe constitue un crime de guerre*, 28 Mar. 2023, www.ohchr.org/fr/news/2023/03/human-rights-council-hears-current-israeli-plan-double-settler-population-occupied#:~:text=Christian%20Salazar%20Volkmann%2C%20a%20indiqu%C3%A9,%C3%A0%20plus%20de%20700%20000 *[translation by the Registry]*.

[109] Speech by Prime Minister Bennett during a visit to the Elkana local council on 17 May 2022.

[110] United Nations General Assembly, Situation of human rights in the Palestinian territories occupied since 1967, 21 Sept. 2022, A/77/356, p. 21, paras. 70-71.

was that the Israeli occupation, as such, "entails an unlawful use of force and therefore can be seen as an act of aggression"[111], which requires immediate cessation and the provision of reparations.

The settlements constitute a transfer of the population of one State into the territory it occupies, which is a breach of international humanitarian law[112]. The illegal nature of the settlements under international law has been confirmed by various international bodies, including the ICJ[113], the Security Council[114], the General Assembly and the Human Rights Council[115].

V.3 Demolitions, evictions and risk of forced displacement of the Palestinian populations

Under international law, private property in occupied territory must be respected and cannot be confiscated by the occupying Power[116]. Eviction procedures in the instances in question and similar ones are based on the application of two Israeli laws, the Absentee Property Law and the Legal and Administrative Matters Law, which are to all appearances incompatible with this obligation[117]. The evictions are therefore contrary to the obligations incumbent on Israel under international law.

The manner in which Israel has administered the Occupied Palestinian Territory is typical of colonial practices. In her 2022 report, the United Nations Special Rapporteur noted that "[t]he profound illegality of the situation in the Occupied Palestinian Territory emanates from the intentional unlawful displacement of its native (and refugee) Palestinian inhabitants, coupled with alteration of the legal status, geographical nature and demographic composition of the occupied territory through fragmentation of land, seizure and exploitation of natural resources, impairment of Palestinian economic development, through and for a (growing) colonist minority"[118].

Algeria would emphasize that the imposition of settlers, settlements and settlement infrastructure in the topography and space of the Palestinians has in fact served to prevent the realization of the Palestinians' right to self-determination[119], violating a number of peremptory norms of international law[120].

The demolitions and evictions carried out pursuant to Israel's discriminatory planning régime have been condemned by the Human Rights Committee, which concluded that "the systematic practice of demolitions and forced evictions based on discriminatory policies have led to the separation of Jewish and Palestinian communities in the Occupied Palestinian Territory, which amounts to racial segregation"[121].

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[111] *Ibid.*, p. 21, para. 72.

[112] Fourth Geneva Convention, Art. 49, sixth paragraph.

[113] *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.

[114] United Nations Security Council resolutions 2334 (2016) and 465 (1980).

[115] Human Rights Council resolution 31/36 and previous resolutions, and Declaration of 17 December 2014 adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention, para. 8.

[116] Hague Regulations, Art. 46.

[117] United Nations General Assembly, Situation of human rights in the Palestinian territories occupied since 1967, 21 Sept. 2022, A/75/376, paras. 40-56.

[118] *Ibid.*, para. 35.

[119] [A/77/356, para. 35.]

[120] A/HRC/22/63, para. 38.

[121] CCPR/C/ISR/CO/5, para. 42.

V.4 The illegal operations involving the seizure and destruction of property in the occupied Palestinian territories

The destruction and illegal seizure of property in occupied territories have been component features of an Israeli policy of demolition of private Palestinian property in the occupied Palestinian territories since 1967.

The destruction of houses, agricultural land and other Palestinian property in the occupied territories, including East Jerusalem, is inextricably linked to Israel's long-standing policy of appropriating as much occupied land as possible, in particular by creating Israeli settlements.

The Israeli Committee Against House Demolitions has estimated that Israel destroyed 49,532 Palestinian structures in 2019[122].

Israel's demolition policy involves two types of measures: administrative demolitions and punitive demolitions. Officially, administrative demolitions of houses are carried out to "enforce the building codes and regulations which, in the occupied Palestinian territories, are established by the Israeli army". Punitive demolitions consist in demolishing the houses of Palestinians, or their neighbours or relatives, suspected of violent acts against Israelis.

Punitive demolitions of houses and the appropriation of property in an occupied territory, when not justified by military necessity and carried out unlawfully and wantonly are regarded as a form of "collective punishment" and constitute grave breaches of Article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), and thus as a war crime under international law.

It is interesting to note that Theodor Meron, a legal adviser to the Israeli Ministry of Foreign Affairs, informed the Israeli Prime Minister's Office, in a secret memorandum, that "house demolitions, even of suspected terrorists' residences, violated the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War . . . Undertaking such measures, as though they were in continuity with British mandatory emergency regulations, might be useful as '*hasbara*', or public diplomacy, but were 'legally unconvincing'"[123]. The United Nations Special Rapporteur on the right to adequate housing affirmed in a press release that "[t]he systematic demolition of Palestinian homes, erection of illegal Israeli settlements and systematic denial of building permits for Palestinians in the occupied West Bank amounts to 'domicide'"[124].

Israel has also used legal mechanisms — the Absentee Property Law and land registration procedures — to confiscate Palestinian lands and property. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has considered that an institutionalized régime of systematic racial oppression and discrimination against the people of Palestine has been established. These practices are used as a means of Judaizing parts of the occupied territory, in particular East Jerusalem[125].

Algeria would recall that the demolitions, and the forced evictions they entail, give rise to numerous violations of human rights, adversely affecting rights to adequate housing, water, sanitation, health, education, family life, residence and freedom of movement.

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[122] The Israeli Committee Against House Demolitions (ICAHD).

[123] www.haaretz.com/opinion/2015-05-19/ty-article/.premium/israel-knew-all-along-that-settlements-were-illegal/0000017f-e70e-d62c-a1ff-ff7f9ff80000.

[124] www.ohchr.org/en/press-releases/2023/02/un-experts-say-israel-should-be-held-accountable-acts-domicide.

[125] Amnesty International, Israel and the Occupied Territories — Demolition and dispossession: the destruction of Palestinian homes, p. 31.

The forcible transfer of Palestinian populations is sometimes also accompanied by violations of other provisions of international humanitarian law, such as the prohibition on the destruction of private and public property[126].

Pursuant to the provisions of the Fourth Geneva Convention, the occupying Power must administer public property in accordance with the rules of usufruct. It may thus use such property and dispose of it so long as this does not alter its substance[127]. Private property must be respected and cannot be confiscated[128]; the destruction of property by the occupying Power is expressly prohibited by international humanitarian law[129].

The seizure of property and destruction of Palestinian homes, infrastructure and orchards, for the purpose of establishing, developing and maintaining settlements and providing access thereto, also constitute flagrant breaches of the rules of usufruct.

Customary international law places an obligation on the occupying Power to respect private property[130] and prohibits the confiscation of private property by the army of occupation[131]. Land may be expropriated under customary law in the occupied territory, provided that the expropriation benefits the local population. The expropriation of private land for the establishment of settlements is clearly illegal[132].

The seizure of land for the establishment of settlements cannot be justified as a form of requisition[133], for a number of reasons. First, civilian installations do not constitute a "need of the army of occupation" (military installation). Secondly, a requisition (as opposed to confiscation or expropriation) is temporary in nature; however, requisitions of land for the establishment of settlements are not temporary[134] but have a long-term objective[135].

Algeria would emphasize that the establishment of settlements, the forcible displacement of populations, and the destruction and appropriation of property, when not justified by military necessity and when carried out on a large scale, unlawfully and wantonly, constitute grave breaches of the Fourth Geneva Convention and may qualify as war crimes under Articles 49, 53 and 147 of the Fourth Geneva Convention and the provisions of Articles 46 and 56 of the Hague Regulations,

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[126] Fourth Geneva Convention, Art. 53, and Convention respecting the Laws and Customs of War on Land, Art. 46.

[127] Convention respecting the Laws and Customs of War on Land, Art. 55; Fourth Geneva Convention, Art. 53; and customary international humanitarian law (ICRC), Rule 51.

[128] Convention respecting the Laws and Customs of War on Land, Arts. 46 and 56; Fourth Geneva Convention, Art. 53; and customary international humanitarian law (ICRC), Rule 51.

[129] Fourth Geneva Convention, Art. 53; and customary international humanitarian law (ICRC), Rule 51.

[130] Art. 46 of the Hague Regulations.

[131] *Ibid.*

[132] Art. 52 of the Hague Regulations.

[133] The concept of requisition is based on taking property for a limited period of time with the intention of returning it when that time expires. When the property is taken for permanent use by others, the fact that at some date in the future the property may conceivably be returned to its original owners does not mean that the owner is deprived of use of the property merely for a limited time. [D. Kretzmer and Y. Ronen, "Civilian Settlements", *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories*, online ed., Oxford Academic, 2021, fn 57].

[134] See jurisprudence of the Israeli Supreme Court: HCJ 290/89, *Jouha* v. *Military Commander in Judea and Samaria*, 3 July 1989.

[135] Land is not expressly mentioned in Art. 52 but is mentioned by the Supreme Court in HCJ 606/78 *Ayoub* v. *Minister of Defence*, 15 Mar. 1979, PD 33(2) 113, 129 (Beit El).

and such forcible displacements could engage the criminal responsibility of the individuals concerned[136].

In the same vein, the Human Rights Committee has considered that "the systematic practice of demolitions and forced evictions based on discriminatory policies have led to the separation of Jewish and Palestinian communities in the Occupied Palestinian Territory, which amounts to racial segregation"[137].

V.5 The discriminatory laws on the right to housing

The right to housing for Palestinians in East Jerusalem has been undermined by the Absentee Property Law[138], enacted in 1950, which allows the confiscation of property from Palestinians in areas where "the law of the State of Israel applies", if the owner of the property fled or was otherwise outside that area after 27 November 1947[139].

Since the annexation of East Jerusalem, which was illegal under international law, property belonging to Palestinians residing outside the city has been considered "absentee property" and, in some cases, transferred or sold to settler organizations[140]. Although the Legal and Administrative Matters Law permits claims for restitution of property in East Jerusalem owned by Jewish persons before 1948, it does not allow Palestinians to claim equivalent ownership rights in West Jerusalem.

By applying the Absentee Property Law and the Legal and Administrative Matters Law in East Jerusalem, Israel is abusing the limited authority that an occupying Power may have under international humanitarian law. These two laws appear to be incompatible with the obligation to respect, and not to confiscate, private property in an occupied territory[141]. In addition, confiscations under these laws are carried out on the sole basis of the nationality or origin of the owner, which makes them inherently discriminatory.

V.6 Acts amounting to annexation, including unilateral actions taken by Israel to dispose of parts of the Occupied Palestinian Territory as if it held sovereignty over it

Under international law, an occupying Power is entitled to use the natural resources of an occupied territory to a limited extent. Article 55 of the 1907 Regulations concerning the Laws and Customs of War on Land (Hague Regulations) stipulates that an occupying Power may only act as administrator and usufructuary of public buildings, real estate, forests and agricultural estates. In doing so, it must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct. Moreover, Articles 28 and 47 of the Hague Regulations, and Article 33 of the Fourth Geneva Convention, prohibit pillaging. This prohibition applies to all types of property, whether belonging to private persons or to the State[142]. Pillaging is also a war crime under Article 8 (2) *(b)* (xvi) of the Rome Statute of the ICC.

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[136] Fourth Geneva Convention, Art. 147, and Rome Statute of the International Criminal Court, Art. 8 (2) *(b)* (viii).

[137] CCPR/C/ISR/CO/5, para. 42.

[138] See www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/04-Absentees-Property-Law-1950.pdf.

[139] A/75/376, para. 51, and A/70/351, paras. 30 and 31.

[140] A/75/376, paras. 51 and 107; see also law.acri.org.il/pdf/unsafe-space-en.pdf, p. 35.

[141] Hague Regulations, Art. 46, and A/75/376, para. 51.

[142] See ICRC, Commentary of 1958 to Art. 33 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War.

Land is a key natural resource, integral to the Palestinian identity and economy. Currently, Palestinians are able to build on less than 1 per cent of the land in Area C, owing to Israeli planning policies and the expropriations carried out by Israel since 1967. Israel has dispossessed owners of their land throughout the West Bank for various purposes, including for the establishment of settlements and industrial zones, for farming and grazing land for settlers, and for roads, in violation of international law[143].

Where this coercion leads people to leave their homes, it may constitute an element of the crime of deportation or forcible transfer of population, a crime against humanity under Article 7 (1) *(d)* of the Rome Statute.

Quasi-governmental entities, for example, have played a role in expropriating land and managing its allocation to settlements[144]; this includes the Jewish National Fund, which was established in 1901 to purchase land in the region for Jewish settlement[145]. In August 2022, the Israeli media reported that the Jewish National Fund had voted to earmark 61 million shekels (US$16 million) for the purchase of land belonging to Palestinians in the Jordan Valley, located within a closed military zone.

Israel has also used land for its industrial and economic activity by creating industrial zones in various parts of the West Bank. It has encouraged companies to transfer their operations to these zones by offering them financial incentives, permits and licences which are rarely granted to companies providing services to Palestinians. Israel has taken strong measures to dissuade States and companies from distinguishing between Israeli-manufactured products and those coming from settlements[146].

Under the Oslo Accords, Israel was temporarily given responsibility for the planning, zoning and development of Area C. However, this responsibility still has not been transferred to the Palestinian Authority, severely limiting development opportunities for Palestinians[147]. Israel has used its planning and zoning powers to impose substantial restrictions on construction activities, which apply mainly to Palestinians, in order to limit their use of land and support the development of settlements.

VI. How the policies and practices of Israel affect the status of the occupation

Under international law, the occupation of a territory by a foreign Power is subject to certain obligations and restrictions. The occupation must be temporary and associated with an armed conflict, and it must not entail the annexation of the occupied territory or any permanent changes in its demographic composition or status. The occupying Power is also subject to certain obligations, such as respect for human rights, humanitarian law and the right to self-determination of the peoples

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[143] B'Tselem, State Business: Israel's Misappropriation of land in the West Bank through Settler Violence (Jerusalem, Nov. 2021), p. 7. See also B'Tselem, Land Grab, p. 47; Office for the Coordination of Humanitarian Affairs, "Area C of the West Bank: key humanitarian concerns", updated Aug. 2014.

[144] Uri Blau, "From N.Y.C. to the West Bank: following the money trail that supports Israeli settlements", *Haaretz*, 7 Dec. 2015.

[145] Peace Now, "Involvement of KKL-JNF and the Settlement Division in the Settlements", p. 2. Available at peacenow.org.il/wp-content/uploads/2020/02/KKL_Settlement-Division-Fact-Sheet.pdf.

[146] Middle East Monitor, "Israel threatens Norway with 'adverse' impact following change in settlement labels", 13 June 2022.

[147] See Office for the Coordination of Humanitarian Affairs, Special Focus: "Restricting Space: The Planning Regime Applied by Israel in Area C of the West Bank", Dec. 2009. See Office for the Coordination of Humanitarian Affairs, "Area C of the West Bank: key humanitarian concerns", updated Aug. 2014; TD/B/EX(71)/2, para. 33. See also Office for the Coordination of Humanitarian Affairs, "Humanitarian Bulletin: January-May 2021", available at www.ochaopt.org/content/humanitarian-bulletin-januarymay-2021.

under occupation, as well as the prohibition on transferring its own population into the occupied territory.

As an occupying Power, Israel is subject to the obligations provided for by international humanitarian law, in particular the Geneva Conventions of 1949, which establish the rights and duties of occupying parties. One such obligation is to respect the fundamental rights of the occupied population and not to take any action aimed at unilaterally altering the status of the occupied territory. In view of the reality on the ground, the Israeli occupation is clearly characterized by an undue prolongation and the expansion of Israeli settlements in the occupied Palestinian territories, which raises questions about the status of the occupation.

VI.1 The prolonged occupation

Israel's prolonged occupation of Palestinian territory, including by maintaining military and administrative control over Palestinian territories and building settlements in the West Bank and East Jerusalem, is considered illegal under international law and by the international community as a whole, which has expressed its views on this subject through United Nations resolutions.

These settlements are in breach of international humanitarian law, in particular the Fourth Geneva Convention, which prohibits the transfer of civilian populations into occupied territories. They create obstacles to the realization of the Palestinian people's right to self-determination, limit the sovereignty and autonomy of the Palestinian Authority and adversely affect the daily lives of Palestinians.

The measures aimed at altering the demographic composition and distribution, through the construction of Israeli settlements in the occupied territories, the demolition of Palestinian houses and the expropriation of Palestinian farms and agricultural property, are considered a breach of humanitarian law and may be an obstacle to peace by creating territorial divisions and fragmenting the Palestinian population.

Indeed, in addition to the territorial discontinuity between Gaza and the West Bank, the settlement networks, their road infrastructures and the separation wall have transformed Palestine into geographically non-communicating Bantustans, creating a situation in which a two-State solution is impossible. This division hampers the governance, economy and development of an independent and viable Palestinian State. It also complicates reconciliation efforts between Palestinian factions. At best, such territorial dismemberment diminishes the prospects for a viable Palestinian State.

In addition to being encouraged by Israeli policies, the illegal actions of settlers are also protected by the authorities, through the militarization of settlements and the arming of settlers, the construction of roads and military outposts, and the implementation of a legal arsenal ensuring that they go unpunished.

The aim is to create colonial enclaves through an aggressive strategy designed to dismember Palestine in order to make it impossible for a viable Palestinian State to emerge, or to create an entity that is organically dependent on Israel, without any territorial continuity or contiguity, or any defence or security capacity. Ultimately, this strategy is intended to impose a one-State solution, in which Palestinians will become subjects under a system of apartheid.

VI.2 The construction of Israeli settlements in the West Bank and East Jerusalem

The construction of Israeli settlements in the West Bank and East Jerusalem is considered a breach of international humanitarian law, in particular the Fourth Geneva Convention, which prohibits the settlement of occupied territories. In 2004, the ICJ moreover rendered an advisory opinion affirming that the construction of the Israeli separation wall in the West Bank was illegal and calling for it to be dismantled.

VI.3 The *de facto* annexation of certain parts of the Occupied Palestinian Territory, such as East Jerusalem

This annexation is also considered illegal under international law, which does not recognize the acquisition of territory by force. In particular, Israel's annexation of East Jerusalem in 1980 is not recognized by the international community. The United Nations regards East Jerusalem as an occupied territory, and measures taken by Israel to alter its character and status, such as the construction of settlements, are also considered to be illegal under international law.

VI.4 Israel's restrictions on the freedom of movement of Palestinians

This prolonged occupation, settlement and annexation has led to numerous human rights violations, in particular the adoption of discriminatory measures, including restrictions on freedom of movement.

Palestinians effectively face numerous restrictions on their movements as a result of the Israeli occupation. Checkpoints, roadblocks and a separation wall have been erected, limiting their mobility and complicating their everyday journeys. This has repercussions on access to essential services, schools, jobs, health care and agricultural resources. Israel has additionally imposed a system of permits and restrictions regulating Palestinians' movements in the West Bank and Gaza.

VI.5 Physical separation

The separation wall, which Israel considers to be a security measure, was largely erected within the West Bank, and not on the 1967 Green Line. This led to the confiscation of Palestinian land and the physical separation of Palestinian communities, affecting their daily lives and means of subsistence.

VI.6 The disproportionate use of lethal force

The use of lethal force by the Israeli security forces is common practice in the Occupied Palestinian Territory. Such force is often used whatever the gravity of the threat identified, and as a first rather than a last resort, in defiance of international norms[148].

It should be emphasized that, absent a threat of death or serious injury, murder by firearm constitutes a violation of the right to life. In the context of an occupation, it may also be characterized

[148] www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement.

as wilful killing within the meaning of the Fourth Geneva Convention (Article 147), and thus constitute a war crime[149].

VI.7 The plundering of Palestinian resources

The plundering of Palestinian natural resources is an integral part of Israel's settlement policy. In addition to its illegal exploitation of the fishery and gas resources on the Palestinian coasts of Gaza, Israel continues to over-exploit Palestinian and shared water resources. Israel also pollutes the Palestinian coasts and underground resources with wastewater, which explains why 79 per cent of the groundwater in Gaza is no longer potable and 30 per cent of diseases are water-borne.

The situation endured by Palestinians is completely at odds with the 2030 Agenda for Sustainable Development, since the occupying Power is continuing to hamper development through the confiscation of land and exploitation of natural resources in Palestinian territory.

VI.8 The blockade of Gaza

The blockade of the Gaza Strip was imposed by Israel in 2007 following its withdrawal from this integral part of Palestinian territory. The blockade has had a devastating impact on the economy of Gaza, leading to a shortage of food, water, medicine and other basic goods. It has also prevented Palestinians from leaving Gaza, limiting their work and educational opportunities and access to health care and basic services.

VI.9 The adoption and introduction of discriminatory and segregationist laws and policies

Israel has subjected the Palestinian population to a demographic threat and has imposed measures to control and reduce their presence and access to land in Israel and the occupied Palestinian territories. The demographic objectives in question can be seen in the official plans for the "Judaization" of certain areas of Israel and the West Bank, including East Jerusalem, plans that expose thousands of Palestinians to a risk of forcible transfer.

Israeli Jews and Palestinian Arabs in East Jerusalem live under a régime that differentiates the distribution of rights and benefits on the basis of national and ethnic identity and ensures the supremacy of one group over the other. The Israeli authorities treat Palestinians as an inferior racial group defined by its non-Jewish Arab status. This racial discrimination is enshrined in laws that affect Palestinians throughout Israel and the occupied Palestinian territories.

It should further be recalled that the Palestinian refugees and descendants of those refugees who were forcibly displaced during the 1947-1949 and 1967 conflicts continue to be deprived of the right to return to their former place of residence. This Israeli-imposed exclusion of these refugees is a flagrant breach of international law.

In addition, the 2018 Basic Law discriminates against non-Jews by stipulating that the exercise of the right to self-determination in Israel is unique to the Jewish people and establishing Hebrew as the country's only official language, downgrading Arabic to a language with "special status". Furthermore, while Israeli settlements in the Occupied Palestinian Territory are illegal under international law and moreover present an obstacle to the enjoyment of human rights by the

[149] See also Rome Statute, Art. 8 (2) *(a)* (i).

population as a whole, the Basic Law constitutionally elevates them to the status of a "national value".

In its concluding observations[150], the Committee on the Elimination of Racial Discrimination (CERD Committee) has also emphasized the discriminatory aspect of Israel's laws and practices and "urges the State party to review the Basic Law . . . with a view to bringing it into line with the Convention. According to general recommendation No. 21 (1996) on the right to self-determination, all peoples have the right to determine freely their political status . . . As regards the expansion of Jewish settlements, the Committee urges the State party to comply with its international legal obligations, including under the Geneva Convention relative to the Protection of Civilian Persons in Time of War".

In the same vein, the CERD Committee has expressed concern at the "maintenance of several laws that discriminate against Arab citizens of Israel and Palestinians in the Occupied Palestinian Territory, and that create differences among them, as regards their civil status, legal protection, access to social and economic benefits, or right to land and property. The Committee is also concerned about the adoption of Amendment No. 30 of 2018 to the already discriminatory Entry into Israel Law (Law No. 5712-1952), which grants the Israeli Minister of Interior broad discretion to revoke the permanent residency permit of Palestinians living in East Jerusalem"[151].

Israel's discriminatory policy also involves persistent segregation. Indeed, there are still Jewish and non-Jewish sectors, notably with two education systems in which teaching conditions are not the same, and two types of municipalities, namely Jewish municipalities and so-called "minority" municipalities, which raises questions with regard to Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

As regards the particular situation in the Occupied Palestinian Territory, policies and practices amounting to segregation are exemplified by the existence of two entirely separate legal systems and sets of institutions, one designed for the Jewish communities in illegal settlements, and the other for the Palestinian populations in Palestinian towns and villages. This gives rise to régimes based on a rigid separation between these two groups, who live on the same territory but do not enjoy either equal use of roads and infrastructure or equal access to basic services and water resources[152].

This separation[153] is clearly evidenced by the existence of a complex set of restrictions on freedom of movement resulting from the presence of the Wall, settlements, roadblocks and military checkpoints, and by the obligation to use separate roads and the enforcement of a permit system that has a detrimental impact on the Palestinian population.

In view of these practices, the CERD Committee has drawn Israel's attention to "its general recommendation 19 (1995) on Article 3 of the Convention, concerning the prevention, prohibition and eradication of all policies and practices of racial segregation and apartheid", and has urged the State party "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".

It should be recalled that the phrase "related discriminatory legislation and measures" in paragraph 18 *(a)* of resolution 77/247 includes any measures relating to policies and practices of racial segregation and apartheid that "severely and disproportionately affect the Palestinian

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[150] Committee on the Elimination of Racial Discrimination (CERD), Concluding observations on the combined seventeenth to nineteenth reports of Israel, Nov.-Dec. 2019, para. 14.

[151] *Ibid.*, para. 15.

[152] *Ibid.*, para. 23.

[153] *Ibid.*

population in Israel proper and in the Occupied Palestinian Territory"[154], with regard to which the CERD Committee has expressed concern, as mentioned above.

Moreover, the situation in the State of Palestine is the subject of an ongoing investigation by the ICC[155], in respect of which civil society organizations have provided the Prosecutor with evidence of the existence of a reasonable basis to believe that the crime against humanity of apartheid may have been committed in the occupied territories.

This notwithstanding, an inter-state communication[156] submitted to the CERD Committee by the State of Palestine against Israel, which concerns discriminatory policies and practices in the occupied Palestinian territories, is also under consideration in the Conciliation Commission[157]. In that document, the State of Palestine mentions its right to submit a communication regarding the CERD violations committed "against ethnic Palestinians living in 'Israel proper'".

VI.10 The prolongation and exacerbation of the political impasse

Israel's policies and practices have complicated peace efforts and contributed to a persistent political impasse between Israelis and Palestinians. Indeed, peace negotiations have been hampered by disputes relating to the occupation, the settlements, the refugee issue, security and other fundamental matters.

In addition to these examples, other, more pernicious, measures should be mentioned, such as the withholding of Palestinian tax and customs revenues, and the commercial dumping of Israeli products at the expense of Palestinian agricultural and industrial production, tactics which contribute to the poor living conditions and human insecurity of Palestinians.

Taken together, these policies and practices create major obstacles to the establishment of an independent, viable Palestinian State, compromising the Palestinian people's right to self-determination.

In view of the foregoing, the policies and practices of Israel which have been criticized by numerous States and international organizations have a negative impact on the legal status of the occupation, as they overstep the limits established by international humanitarian law and legitimize the criticism that Israel is failing to comply with its obligations as an occupying Power and to make any serious effort to reach a just and lasting solution to the Israeli-Palestinian conflict.

By violating the right of the Palestinian people to self-determination, by occupying, settling and annexing the Palestinian territory occupied since 1967, by altering the demographic composition, character and status of the Holy City of Jerusalem, and by imposing an iniquitous blockade on the Gaza Strip, Israel is breaching international law and reinforcing its own illegal occupation.

These breaches raise concerns about the duration of the occupation, the *de facto* annexation of Palestinian territories, the violation of the Palestinian people's right to self-determination, and

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[154] *Ibid*.

[155] ICC, Pre-Trial Chamber I, *Situation in the State of Palestine*, ICC-01/18: On 3 Mar. 2021, the Prosecutor announced the opening of the investigation into the Situation in the State of Palestine. This followed Pre-Trial Chamber I's decision on 5 Feb. 2021 that the Court could exercise its criminal jurisdiction in the Situation and, by majority, that the territorial scope of this jurisdiction extends to Gaza and the West Bank, including East Jerusalem.

[156] CERD, Inter-state communication, 12 Dec. 2019, CERD/C/100/3, www.ohchr.org/sites/default/files/Documents/HRBodies/CERD/CERD-C-100-3.pdf.

[157] The Conciliation Commission was set up in accordance with Art. 12 (1) *(b)* of CERD. See also www.ohchr.org/en/press-releases/2022/05/state-palestine-against-israel-conciliation-commission-holds-first-person.

Israel's obligation to respect international humanitarian law. They also make it increasingly difficult to bring about a two-State solution based on the 1967 boundaries.

Consequently, Algeria considers that the policies and practices of Israel call into question the legal status of the occupation since:

— by violating the Palestinian people's right to self-determination, Israel is not allowing the Palestinian population to decide its own future;

— by occupying, settling and annexing the Occupied Palestinian Territory, Israel is depriving the Palestinian population of its fundamental rights and making it impossible for them to live a decent and normal life;

— by altering the demographic composition, character and status of the Holy City of Jerusalem, Israel is seeking to erase the city's Palestinian identity and impede the creation of a Palestinian State;

— by subjecting Palestinians to a climate of widespread violence and a series of restrictions, including on freedom of movement, access to water and electricity, and the right to work, and by subjecting them to collective punishment;

— by violating international law, Israel is also exposing itself to international sanctions and making it more difficult to conclude a peace agreement with the Palestinians;

— by continuing these policies and practices, Israel is contributing to a climate of violence and conflict throughout the region, making the resolution of the Israeli-Palestinian conflict more difficult.

On this basis, Algeria calls for urgent and concrete action to ensure respect for international law and to promote a just and lasting solution to the conflict between Israel and Palestine.

VII. THE LEGAL CONSEQUENCES FOR ALL STATES AND FOR THE UNITED NATIONS

The last question raised in the General Assembly's request concerns the legal consequences of the policies and practices of Israel for all States and the United Nations. Although this question was not explicitly raised in 2003, Algeria considers that it was implied, since the General Assembly requested the Court to determine "the legal consequences arising from the construction of the wall", without further elaboration.

Algeria has already underscored the differences between the two resolutions. The first, which essentially concerned the construction of the wall, was characterized by its brevity, whereas the second relates to Israeli policies and practices which violate the foundations of the international legal order itself. As regards the legal consequences for States, the most recent resolution of December 2022 was inspired by the Advisory Opinion of 2004.

In paragraph 148 of that Opinion, the Court stated that it "will now examine the legal consequences resulting from the violations of international law by Israel by distinguishing between, on the one hand, those arising for Israel and, on the other, those arising for other States and, where appropriate, for the United Nations. The Court will begin by examining the legal consequences of those violations for Israel". Algeria will adopt this same approach below.

Algeria will thus respond to the last question in the request by examining in turn the legal consequences for Israel (VII.1), for other States (VII.2) and for the United Nations (VII.3).

VII.1 The legal consequences for Israel

Algeria will address two points: Israel's responsibility for ongoing, gross violations of peremptory rules of international law (VII.1.1) and its obligation of reparation (VII.1.2).

VII.1.1 Israel's responsibility is engaged for violations of peremptory norms of international law

In Algeria's view, it is essential to recall the conclusions reached by the Court in 2004. This is especially necessary given that the 2022 request frequently refers to the 2004 Opinion and expressly asks the Court to take it into account (VII.1.1.1). Algeria would also respectfully draw the Court's attention to the provisions of the ILC's Draft Articles on State Responsibility which are of relevance to Palestine (VII.1.1.2).

VII.1.1.1 *The Court's conclusions in its 2004 Advisory Opinion*

Before recalling the three operative provisions relating to Israel's responsibility, Algeria will summarize the main points of the analysis that led the Court to make these determinations.

Having examined the positions taken by States in their statements, the Court set out its own reasoning. A number of States, including Algeria, supported the idea that Israel should be called upon to end the construction of the wall. This is discussed in paragraphs 149 to 153 [of the 2004 Advisory Opinion], where the Court identified all the violations of international obligations entailed by the construction of the wall. Algeria would briefly summarize them as relating to the failure to respect the Palestinian people's right to self-determination, and to international humanitarian law and international human rights law.

They also concern the cessation of construction and the dismantling of the wall. The Court further noted that Israel's obligation to make reparation relates to "the damage caused to all the natural or legal persons concerned" (p. 198, para. 152).

This obligation of reparation goes hand in hand with the obligation to "return the land, orchards, olive groves and other immovable property" (p. 198, para. 153).

The three relevant operative provisions are formulated by the Court in the following terms:

> "A. . . . The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to international law; . . .
>
> B. . . . Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with paragraph 151 of this Opinion; . . .
>
> C. . . . Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem".

To conclude on this point, Algeria would underscore the decisive role played by the Advisory Opinion of 9 July 2004 in denouncing Israel's trivialization of lawlessness. It constitutes a particularly important contribution to the question of the cessation of unlawful acts as an integral part

of Israel's international responsibility. Indeed, it must be noted that it was in this Opinion that the Court first formulated the principle that a State which is responsible for committing an ongoing internationally wrongful act is under an obligation to put an end to that act. Algeria draws special attention to the Court's conclusion regarding the international responsibility incurred by Israel. Without referring to them expressly, the Court was heavily inspired by the general rules of customary international law enshrined in the Draft Articles on Responsibility of States for Internationally Wrongful Acts.

VII.1.1.2 *The International Law Commission's 2001 Draft Articles on State Responsibility*

The Draft Articles, regarded by international courts and legal writers alike as reflecting customary international law in this area, contain a detailed examination of the question of State responsibility for wrongful acts.

In Algeria's view, it is essential to mention the provisions of the Draft Articles that are of the most relevance to the decades-long treatment of the Palestinian people by the Israeli authorities. It would point out that the Draft Articles distinguish between the "general principles" governing the international responsibility of States contained in Chapter I, and the "serious breaches . . . of obligations . . . owed to the international community" provided for in Chapter III. These two types of provisions apply to the policies and practices of Israel in the Occupied Palestinian Territory, including Jerusalem.

With regard to Chapter I, Algeria would place particular emphasis on Articles 29 and 30, which are fully applicable to the current situation in Palestinian territory and provide a response to the last question in the General Assembly's request. According to Article 29, entitled "Continued duty of performance", "[t]he legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible State to perform the obligation breached".

Article 30 of the Draft Articles, entitled "Cessation and non-repetition", provides that "[t]he State responsible for the internationally wrongful act is under an obligation: *(a)* to cease that act, if it is continuing; *(b)* to offer appropriate assurances and guarantees of non-repetition, if circumstances so require".

As for Chapter III, Algeria notes the relevance of Article 41 with regard to the present situation in Palestine. It deals with situations involving serious breaches of obligations owed to the international community. That is clearly the case in Palestine. In addition, Algeria would recall that the Advisory Opinion on the construction of a wall characterized the right of peoples to self-determination as a "right *erga omnes*".

VII.1.2 Israel is under an obligation to make reparation

Algeria considers that Israel has an obligation to make full reparation for all the damage caused by its many wrongful acts. As stated by the Court in paragraph 152 of its Advisory Opinion on the construction of a wall, "the essential forms of reparation [in international law and] in customary law were laid down by the Permanent Court of International Justice" in its 1928 Judgment in the case concerning *Factory at Chorzów*. According to that decision, "[t]he essential principle contained in the actual notion of an illegal act . . . is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed".

This idea is reflected in Article 31 of the ILC's above-mentioned Draft Articles, entitled "Reparation". According to the first paragraph of that article, "[t]he responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act". The

second paragraph defines injury as including "any damage, whether material or moral, caused by the internationally wrongful act of a State".

Following on from that provision, Chapter II of Part Two of the Draft Articles addresses "forms of reparation". Algeria considers that Articles [34], 35 and 36 fully apply to Israel's policies and practices in the Occupied Palestinian Territory.

Article [34], whose title is notably "Forms of reparation", provides that "[f]ull reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction". With regard to "restitution", and pursuant to Article [35], "[a] State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed".

Article [36] covers situations where damage is not made good by restitution, *inter alia* because it is materially impossible to do so. In such instances, the first paragraph of this Article [36] specifies that "[t]he State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused". The second paragraph adds that "[t]he compensation shall cover any financially assessable damage".

VII.2 The legal consequences for other States

On this point, Algeria would recall the analyses and conclusions presented by the Court in its 2004 Advisory Opinion, which Algeria fully endorses.

With regard to its analyses, in paragraph 159, the Court mentions several obligations that must be upheld by States. They are, in sequence, the obligation not to recognize the illegal situation resulting from the construction of the wall, the obligation not to render aid or assistance in maintaining the situation thus created, and the obligation 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. The Court further specifies that States are under an obligation to ensure compliance with international humanitarian law, making an explicit reference to the Fourth Geneva Convention.

The conclusions of the Court are set out in point D of the operative paragraph, according to which "[a]ll States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction".

Last but not least, Algeria moreover wishes to call attention to the importance and relevance of paragraph 2 of [the commentary to Article 28] of the Draft Articles on State Responsibility, which concerns "other States" in the event of serious breaches by a State of obligations owed to the international community as a whole, to use the language of the Draft Articles. One need only read this passage to be fully convinced of the importance of its content with regard to Palestine.

According to the paragraph in question, the breach of such an obligation gives rise to obligations for all other States:

(a) "not to recognize as lawful the situation created by the breach";

(b) "not to render aid or assistance to the responsible State in maintaining the situation so created"; and

(c) "to cooperate [as far as possible] to bring the breach to an end".

Algeria considers that all these obligations must be confirmed by the Court, *mutatis mutandis*, in respect of the continuing policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem.

VII.3 The legal consequences for the United Nations

In paragraph 160 of its Advisory Opinion of 9 July 2004, the Court stated that it was "of the view that the United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated régime, taking due account of the present Advisory Opinion".

Algeria fully endorses the Court's analysis, noting that, in the present case, it is the policies and practices of Israel that are at issue. In other words, it is for the United Nations bodies concerned and involved to give thought to the means by which effect could be given to all the conclusions and recommendations previously made, as well as to new ways of putting an end to all the ongoing breaches of international law in its many facets.

In view of the foregoing, Algeria draws the following two main conclusions.

First, it considers that the ICJ has jurisdiction to reply to the request of the United Nations General Assembly. Second, it respectfully requests the Court to declare unlawful the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem.

These policies and practices are the very antithesis of the most fundamental rules of international law, namely those which are peremptory or *erga omnes*.

CONCLUSION

Motivated by a deep and sincere attachment to the principles of the rule of law in international relations, the peaceful settlement of international disputes, and decolonization, which are firmly anchored in the law and practice of the United Nations, Algeria voted in favour of resolution A/RES/77/247, which was adopted by the United Nations General Assembly on 30 December 2022.

In Algeria's opinion, the consequences of Israel's policies in the Occupied Palestinian Territory, including East Jerusalem, fall into various categories. The first concerns the engagement of Israel's international responsibility and its obligation to put an end to the wrongful acts in question.

The second relates to its obligation to make reparation, in the form of restitution and compensation as required by international law, for the damage caused by its serious and systematic breaches of essential obligations owed to the international community.

(Signed) Ahmed ATTAF,
Minister for Foreign Affairs and the National Community Abroad of the People's Democratic Republic of Algeria.

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