

INTERNATIONAL COURT OF JUSTICE

**LEGAL CONSEQUENCES ARISING FROM THE POLICIES AND
PRACTICES OF ISRAEL IN THE OCCUPIED PALESTINIAN
TERRITORY, INCLUDING EAST JERUSALEM**

(Request for Advisory Opinion)

WRITTEN STATEMENT BY

THE COOPERATIVE REPUBLIC OF GUYANA

25 July 2023

INTRODUCTION

1. The Co-Operative Republic of Guyana submits this written statement in accordance with the Court's Order dated 3 February 2023 in the advisory opinion proceedings concerning *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*.
2. On 30 December 2022, the General Assembly adopted resolution A/RES/77/247 which requested the Court:

“to render an advisory opinion on the following questions, considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004:

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

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

3. Guyana's submission addresses three of the specific issues addressed in the General Assembly's request. Part I addresses the *jus cogens* prohibition on the annexation of territory and Israel's violation of that prohibition in the Palestinian territory occupied since 1967 (“the OPT”). Part II addresses the *jus cogens* right of the Palestinian people to self-determination and Israel's violation of that right through its prolonged occupation and annexation of the OPT. Part III addresses the effect of Israel's of these peremptory norms on the legal status of the occupation.

Part I: The Prohibition on Annexation and Israel's Violation of that Prohibition in the OPT

A. The Prohibition on Annexation

1. *The Prohibition on Annexation is a Jus Cogens Norm of Universal Application*

4. The prohibition on annexation of territory is a *jus cogens* norm of universal application and a fundamental cornerstone of the international legal order. The prohibition on the acquisition of territory through the use of force is a necessary corollary of both the sovereign equality of States and the prohibition on the use of force against the territorial integrity or political independence of any State enshrined in Article 2 of the Charter of the United Nations.
5. The prohibition on annexation is reflected in the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation amongst States in Accordance with the Charter of the United Nations, which the General Assembly adopted in 1970. This provides that:

“The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognised as legal.”¹

6. There is no doubt as to the status and legal consequences of the prohibition on annexation. As the Max Planck Encyclopaedia of Public International Law explains:

“In view of the pertinent consistent and uniform State practice it is beyond any doubt that, under present international law, the prohibition of annexation and the obligation not to recognize it as lawful (Stimson Doctrine) extend beyond treaty obligations and form part of customary international law. Considering the essential relevance of these two principles in terms of the effective implementation of the prohibition of

¹ Declaration on Principles of International Law concerning Friendly Relations and Co-operation with among States in accordance with the Charter of the United Nations A/RES/2625(XXV) (24 October 1970). As the Court observed in the *Military and Paramilitary Activities in and against Nicaragua* case, “the adoption by States of this text affords an indication of their *opinion juris* as to customary international law on the question” (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. *Merits, Judgment*. *I.C.J. Reports 1986*, p. 101, para. 191).

the threat or use of force as the most fundamental norm of present international law, there are convincing reasons to consider them as *ius cogens* norms.’²

7. The prohibition on annexation applies to all territory, including the territory of former mandates. In its Advisory Opinion on the *International Status of South West Africa*, the Court held that “the principle of non-annexation” was “of paramount importance” in the context of mandates.³ In his separate concurring opinion in the advisory opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (“the 2004 Wall Opinion”), Judge Al-Khasawneh cited this passage of the *South West Africa* Advisory Opinion and stressed that: “In this regard, it should be recalled that the principle of non-annexation is not extinguished with the end of the mandate but subsists until it is realized.”⁴
8. The absolute prohibition on annexation of territory has been reiterated by the General Assembly and the Security Council in the context of Israel’s prolonged occupation of the OPT. As the Court noted in its 2004 Wall Opinion: “both the General Assembly and the Security Council have referred, with regard to Palestine, to the customary rule of ‘the inadmissibility of the acquisition of territory by war’”. Indeed, “[i]t is on this basis that the Council has several times condemned the measures taken by Israel to change the status of Jerusalem”.⁵

2. *Annexation May Arise Through the Creation of a Permanent “Fait Accompli” on the Ground*

9. Annexation is not confined to situations where a State formally declares sovereignty over territory which it has invaded. Annexation can also occur where a State, having occupied the territory of another State by force, proceeds to treat that occupied territory as though it were its own sovereign territory and manifests an intention to exercise permanent dominion over the territory. This is because occupation – unlike annexation

² Max Planck Encyclopaedia of Public International Law, *Annexation* (January 2020), para. 21.

³ *International status of South-West Africa, Advisory Opinion, I.C.J. Reports 1950*, p. 131.

⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 237, para. 9 (Separate Opinion of Judge Al-Khasawneh).

⁵ *Ibid.*, p. 182, para. 117.

– is an inherently temporary state of affairs. As the ICRC commentary on Article 47 of the Fourth Geneva Convention puts it:

“The occupation of territory in wartime is *essentially a temporary, de facto situation*, which deprives the occupied power of neither its statehood nor its sovereignty; it merely interferes with its power to exercise its rights. *That is what distinguishes occupation from annexation*, whereby the Occupying Power acquires all or part of the occupied territory and incorporates it in its own territory.”⁶

10. It follows that where an occupying Power evinces an intention to remain in the occupied territory indefinitely, and where it treats the occupied territory as though it were its own rather than as territory belonging to another state, this constitutes a violation of the *jus cogens* prohibition on annexation.
11. The Court’s 2004 Wall Opinion provides an instructive example of the scope and application of this principle. The Court had to consider the legal status and consequences of the wall which Israel had begun to construct in the occupied West Bank. Israel claimed that the wall was not intended to be permanent. The Court “note[d] the assurance given by Israel that the construction of the wall does not amount to annexation and that the wall is a temporary nature”. The Court stated, however, that:

“it nevertheless cannot remain indifferent to certain fears expressed to it that the route of the wall will prejudice the future frontier between Israel and Palestine, and the fear that Israel may integrate the settlements and their means of access. The Court considers that the construction of the wall and its associated régime create a ‘fait accompli’ on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to *de facto* annexation.”⁷

12. The Court therefore recognized in the 2004 Wall Opinion that irrespective of the formal characterization by Israel of its acts in the OPT – and irrespective of its alleged intentions regarding the duration of those acts – the creation of a permanent regime on the ground in the OPT would constitute unlawful annexation of that territory even if it

⁶ J. Pictet, *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (ICRC, 1958), at 275.

⁷ 2004 Wall Opinion, p. 184, para. 121.

were not accompanied by a formal declaration of sovereignty or purported *de jure* annexation by Israel.

B. Israel's Annexation of East Jerusalem and the West Bank

13. Israel has occupied the OPT for some 56 years – making it by some distance “the longest belligerent occupation in the modern world”.⁸ The evidence clearly establishes that, through the acts it has committed during the course of that prolonged occupation, Israel has annexed East Jerusalem and the West Bank. Indeed, this is clear from the words of Israel’s own leaders – who have made no secret of the true nature of Israel’s ongoing presence there – and from the detailed findings of numerous United Nations bodies, including the Security Council and the General Assembly, charged with investigating or monitoring Israel’s actions in the OPT. It is also clear from Israel’s acts in the occupied territory, in particular the extension of its own laws to East Jerusalem and the West Bank and its construction of hundreds of settlements, populated by many hundreds of thousands of Israeli settlers, which Israeli leaders themselves have said are intended to establish a permanent Israeli presence and dominance throughout the occupied territory.

14. The events which preceded Israel’s occupation of the OPT are well-known and were succinctly summarized by the Court in the 2004 Wall Opinion.⁹ After Israel’s armed forces seized control of East Jerusalem and the West Bank in June 1967, Israel immediately proclaimed sovereignty over East Jerusalem and began extending its laws to both East Jerusalem and the West Bank. Israel’s actions prompted immediate and trenchant international condemnation, including in a series of resolutions by the General Assembly and the Security Council.¹⁰

⁸ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 21 October 2019, A/74/507, para. 158, <https://daccess-ods.un.org/tmp/5921782.25517273.html>.

⁹ 2004 Wall Opinion, pp. 165-166, paras. 70-72.

¹⁰ See for example UN General Assembly resolution (ES-V) 2253 of 4 July 1967 and resolution 2254 (ES-V) of 14 July 1967; and UN Security Council resolution 242 (1967) of 22 November 1967, resolution 252 of 21 May 1968, and resolution 298 (1971) of 25 September 1971.

15. Despite emphatic and unequivocal demands for it to withdraw from East Jerusalem and the West Bank, Israel did the opposite: it engaged in a concerted programme to increase its presence and to tighten its control over the occupied territory. In both East Jerusalem and the West Bank Israel embarked upon a programme of confiscating Palestinian land and constructing a vast network of settlements into which it transferred huge numbers of Israeli settlers. The latest figures show that Israel has established a total of 12 settlements in East Jerusalem, which collectively house some 230,000 Israeli settlers, and has established more than 270 settlements in the West Bank, which collectively house almost half a million Israeli settlers.¹¹
16. There is no doubt as to either the purpose of the settlements or their illegality under international law. The settlements are intended by Israel to establish a physical and demographic presence throughout East Jerusalem and the West Bank which is permanent, ever-expanding and irreversible. By constructing thousands of buildings – including homes, workplaces, schools, hospitals, entertainment and religious venues – and implanting hundreds of thousands of Israeli settlers, Israel has created a vast, interconnected and sprawling network of towns and cities dramatically altering the physical and demographic character of the OPT. The settlements reflect a deliberate attempt to establish irreversible “facts on the ground” and thereby assimilate the territory to Israel. occupied territory. According to the UN Special Rapporteur on the situation of human rights in the Palestinian territories, the settlements “serve the broader goal of the Government of Israel of staking an impermissible sovereignty claim over parts of the occupied territory”.¹² As the Special Rapporteur put it in a report published in October 2020:

“the settlements are the primary political instrument – the pervasive ‘facts on the ground’ – employed by the Government of Israel to advance its de

¹¹ In March 2023, the UN High Commissioner for Human Rights reported that: “During the past 10 years, the settlement population in the occupied West Bank, including East Jerusalem, has grown from 520,000 in 2012 to just under 700,000. The population lives in 279 Israeli settlements spread across the West Bank, including 14 settlements in East Jerusalem, with a total population of more than 229,000 persons. ...Settlement expansion has continued year upon year over the course of the decade”. (See UN High Commissioner for Human Rights, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, 15 March 2023, A/HRC/52/76, paras. 5-6, <https://daccess-ods.un.org/tmp/5483590.36445618.html>).

¹² Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2020, A/75/532, para. 54, <https://daccess-ods.un.org/tmp/8906415.70091248.html>.

facto and de jure annexation claims and to deny Palestinian self-determination”.¹³

17. The illegality of Israel’s settlements in the OPT has been universally recognized. Article 49, paragraph 6 of the Fourth Geneva Convention provides that an occupying Power “shall not...transfer parts of its own civilian population into the territory it occupies”. As the Court explained in the 2004 Wall Opinion, this prohibits “any measures taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory.”¹⁴ The Court had no difficulty in concluding that, “the information provided to the Court shows that, since 1977, Israel has conducted a policy and developed practices involving the establishment of Settlements in the Occupied Palestinian Territory, contrary to the terms of Article 49, paragraph 6” and that “the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law”.¹⁵ The Court’s conclusion is the same as the conclusions repeatedly reached by the General Assembly and the Security Council during the decades of Israel’s settlement programme.¹⁶

18. Israel’s leaders have made innumerable statements declaring that East Jerusalem and West Bank are part of Israel’s sovereign territory. Israel’s current Prime Minister, Benjamin Netanyahu, for example, has declared that Israel “will forever keep Jerusalem united *under Israel’s sovereignty*”¹⁷; that “United Jerusalem...has always been – and always will be – ours...Jerusalem will remain only *under Israel’s sovereignty*”¹⁸; and that “[t]he Jewish people are not occupiers in their own land nor occupiers in our eternal capital Jerusalem”.¹⁹ He has made similar repeated declarations with respect to the West Bank. For example, the Prime Minister has proclaimed that Israeli settlements in

¹³ *Ibid.*, para. 62.

¹⁴ 2004 *Wall Opinion*, p. 184, para. 120.

¹⁵ 2004 *Wall Opinion*, p. 184, para. 120.

¹⁶ See 2004 *Wall Opinion*, p. 183, para. 120. See further paragraphs 20 and 21 below.

¹⁷ Prime Minister’s Office, *PM Netanyahu’s Remarks at the State Ceremony at Ammunition Hill Marking 48 Years to the Reunification of Jerusalem* (17 May 2015) (emphasis added), <https://www.gov.il/en/departments/news/speechjerusalem170515>.

¹⁸ Prime Minister’s Office, *Address by PM Netanyahu on the occasion of Jerusalem Day State Ceremony, Ammunition Hill, Jerusalem* (21 May 2009) (emphasis added), <https://www.gov.il/en/departments/news/speechjeru210509>.

¹⁹ Reuters, *Netanyahu says Israel not bound by ‘despicable’ U.N. vote* (31 December 2022), <https://www.reuters.com/world/middle-east/un-vote-israels-occupation-a-victory-palestinians-say-2022-12-31/>.

the West Bank “will be an *inseparable part of the state of Israel* for eternity”²⁰; has demanded “recognition for *our sovereignty* over the Jordan Valley”²¹ and repeatedly announced the Israeli Government’s “intention...*to apply Israeli sovereignty* to the Jordan Valley and the northern Dead Sea”²² and stressed the importance of “*applying Israeli sovereignty* over all of the communities in Judea and Samaria”.²³

19. These intentions are clearly shared by other senior members of Israel’s government. For instance, Israel’s current Minister of Finance, Bezalel Smotrich, who also serves as a Minister for the Coordination of Government Activities in Territories and the Civil Administration, has long advocated a policy of “victory by settlement”.²⁴ He recently declared that Israel would oversee “the construction of thousands more” settlement units in “Judea and Samaria” with a very specific aim, namely: “to develop the settlement and *strengthen the Israeli hold on the territory*.”²⁵

20. Numerous independent UN organs have explicitly characterized Israel’s conduct in East Jerusalem and the West Bank as annexation. By way of example, the General Assembly has repeatedly condemned Israel’s “annexation” of that territory:

- As long ago as 1971, the General Assembly adopted resolution 2851 (XXVI) which “Strongly call[ed] upon Israel to rescind forthwith all measures and desist from all policies and practices such as... [*t*]he annexation of any part of the occupied Arab territories”²⁶;

²⁰ New York Times, *Netanyahu Says Some Settlements to Stay in Israel* (24 January 2010) (emphasis added), <https://www.nytimes.com/2010/01/25/world/middleeast/25middeast.html>.

²¹ Prime Minister’s Office, *Excerpts from PM Netanyahu’s Remarks to the Makor Rishon Economic, Society and Innovation Conference in Jerusalem* (8 December 2019) (emphasis added), https://www.gov.il/en/departments/news/event_conference081219.

²² BBC, *Arab nations condemn Netanyahu's Jordan Valley annexation plan* (11 September 2019) (emphasis added), <https://www.bbc.co.uk/news/world-middle-east-49657915>.

²³ Prime Minister’s Office, *Cabinet Approves PM Netanyahu’s Proposal to Establish the Community of Mevo’ot Yeriho & PM’s Remarks at the Start of the Cabinet Meeting* (15 September 2019) (emphasis added), https://www.gov.il/en/departments/news/event_jordan150919.

²⁴ Jerusalem Post, *MK’s controversial plan nixes two-state solution, calls for annexation* (11 September 2017), <https://www.google.com/search?client=safari&rls=en&q=MK%E2%80%99s+controversial+plan+nixes+two-state+solution%2C+calls+for+annexation&ie=UTF-8&oe=UTF-8>.

²⁵ B. Smotrich, Twitter (18 June 2023) (emphasis added).

²⁶ UNGA resolution 2851 (XXVI) (20 December 1971).

- In 1974²⁷, 1975²⁸, 1976²⁹, 1977³⁰, 1978³¹ and 1979³², the General Assembly adopted resolutions which expressed “the gravest concern at” and “condemned” regarding Israel’s “*annexation of parts of the occupied territories*”;
- In 1983, the General Assembly adopted a resolution which declared that “all Israeli policies and practices of, or aimed at, *annexation* of the occupied Palestinian and other Arab territories, including Jerusalem” are “illegal and in violation of international law and of the relevant United Nations resolutions”³³;
- In 1994, the General Assembly adopted a resolution which declared that “all Israeli policies and practices of, or aimed at, *annexation of the occupied Arab territories since 1967*” are “illegal and in violation of international law and of the relevant United Nations resolutions”,³⁴
- In resolutions adopted in 2003³⁵, 2004³⁶, 2005³⁷, 2006³⁸, 2007³⁹, 2008⁴⁰, 2009⁴¹, 2010⁴², 2011⁴³, 2012⁴⁴, 2013⁴⁵, 2014⁴⁶, 2015⁴⁷, 2016⁴⁸, 2017⁴⁹, 2018⁵⁰ the General Assembly successively “*Reiterate[d]* its opposition to”, “*Deplore[d]*” and

²⁷ UNGA resolution 3240 (29 November 1974).

²⁸ UNGA resolution 3525 (15 December 1975).

²⁹ UNGA resolution 31/106 (16 December 1976).

³⁰ UNGA resolution 32/91 (13 December 1977).

³¹ UNGA resolution 33/113 (18 December 1978).

³² UNGA resolution 34/90 (12 December 1979).

³³ UNGA resolution 38/180 (19 December 1983).

³⁴ UNGA resolution 48/59 (31 January 1993).

³⁵ UNGA resolution 58/98 (17 December 2003).

³⁶ UNGA resolution 59/123 (10 December 2004).

³⁷ UNGA resolution 60/106 (8 December 2005).

³⁸ UNGA resolution 61/118 (14 December 2006).

³⁹ UNGA resolution 62/108 (17 December 2007).

⁴⁰ UNGA resolution 63/97 (5 December 2008).

⁴¹ UNGA resolution 64/93 (10 December 2009).

⁴² UNGA resolution 65/104 (10 December 2010).

⁴³ UNGA resolution 66/78 (9 December 2011).

⁴⁴ UNGA resolution 67/120 (18 December 2012).

⁴⁵ UNGA resolution 68/82 (11 December 2013).

⁴⁶ UNGA resolution 69/92 (5 December 2014).

⁴⁷ UNGA resolution 70/89 (9 December 2015).

⁴⁸ UNGA resolution 71/97 (6 December 2016).

⁴⁹ UNGA resolution 72/86 (7 December 2017).

⁵⁰ UNGA resolution 73/98 (7 December 2018).

“*Condemn[ed]*” the “settlement activities in the Occupied Palestinian Territory, including East Jerusalem” and “and *the de facto annexation of land*” there.

- In resolutions adopted in 2020⁵¹, 2021⁵² and 2022⁵³, the General Assembly went even further by “*Stress[ing]*”:

“that the occupation of a territory is to be a temporary, de facto situation, whereby the occupying Power can neither claim possession nor exert its sovereignty over the territory it occupies, recalls in this regard the principle of the inadmissibility of the acquisition of land by force and therefore *the illegality of the annexation of any part of the Occupied Palestinian Territory, including East Jerusalem*, which constitutes a breach of international law, undermines the viability of the two-State solution and challenges the prospects for a just, lasting and comprehensive peace settlement, and expresses its grave concern *at recent statements calling for the annexation by Israel of areas in the Occupied Palestinian Territory*”.

The resolutions further stated that the General Assembly

“*Condem[ed]* in this regard settlement activities in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan and any activities involving the confiscation of land, the disruption of the livelihood of protected persons, the forced transfer of civilians *and the annexation of land, whether de facto or through national legislation*”;

and

“*Call[ed]* upon all States, consistent with their obligations under international law and the relevant resolutions, not to recognize, and not to render aid or assistance in maintaining, the situation created by measures that are illegal under international law, including *those aimed at advancing annexation in the Occupied Palestinian Territory, including East Jerusalem*”

21. To similar effect, the Security Council has condemned Israel’s actions in the OPT as being incompatible with the prohibition on the acquisition of territory by force. For example:

⁵¹ UNGA resolution 75/97 (18 December 2020).

⁵² UNGA resolution 76/82 (9 December 2021).

⁵³ UNGA resolution 77/126 (12 December 2022).

- In 1968, the Security Council adopted resolution 262 “*Reaffirm[ed]*” that “that acquisition of territory by military conquest is inadmissible” and which declared that “all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status”;
- In 1971, the Security Council adopted resolution 298 which once again “*Reaffirm[ed]* the principle that acquisition of territory by military conquest is inadmissible” and which “*Confirm[ed]* in the clearest possible terms that all 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”;
- In 1980, following Israel’s adoption of the Basic Law: Jerusalem, Capital of Israel, which declared Jerusalem to be the “complete and united...capital of Israel”, the Security Council adopted resolution 478 which once more “*Reaffirm[ed]* again that the acquisition of territory by force is inadmissible” and which “*Censure[d]* in the strongest terms the enactment by Israel of the "basic law" on Jerusalem and the refusal to comply with relevant Security Council resolutions”;
- In 2016, the Security Council adopted resolution 2334 which “*reaffirm[ed]*...the inadmissibility of the acquisition of territory by force” and condemned “all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including, inter alia, the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant resolutions”. The Security Council further reiterated that Israel’s construction of settlements in the OPT “has no legal validity and constitutes a flagrant violation under international law”.

22. The UN Secretary-General has published numerous reports concerning Israel’s settlements in the OPT, which explicitly describe Israel’s conduct in East Jerusalem and the West Bank as “annexation”. For example:

- In 2009, the UN Secretary-General published a report which stated:

“International law prohibits the annexation of territory occupied pursuant to an armed conflict. *Israel’s annexation of East Jerusalem* constitutes a flagrant violation of international law.

According to the Office for the Coordination of Humanitarian Affairs, 12 settlements have been constructed in East Jerusalem since *its annexation*, and the settler population stands at approximately 195,000.”⁵⁴
- In 2010, the UN Secretary-General published a further report which reiterated that:

“*Israel’s annexation of East Jerusalem* immediately after the 1967 war is a flagrant violation of international law. Contrary to its obligations under international law, Israel has constructed 12 settlements in East Jerusalem since *its annexation*”⁵⁵
- In 2015, the UN Secretary-General published a further report which found that:

“Occupation is supposed to be temporary because the annexation or acquisition of territory by force is strictly prohibited under international law. The specific prohibition of transferring the population of the occupying Power into occupied territory aims at countering attempts at de facto annexation. In the West Bank, including East Jerusalem, the establishment and maintenance of the settlements amount to a slow, but steady *annexation of the occupied Palestinian territory*...

In the case of East Jerusalem, the continued settlement advances in Jerusalem and around the Jerusalem periphery, appears to have been intended to alter the demographic composition there...in the context of *an illegal annexation condemned by the Security Council*.”⁵⁶
- In 2020, the UN Secretary-General published a further report which found that:

“Since *Israel annexed East Jerusalem*, property in East Jerusalem owned by Palestinians residing outside the city has been determined by Israeli authorities to

⁵⁴ Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 6 November 2009, A/64/516, paras. 22-23 (emphasis added), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/598/11/PDF/N0959811.pdf?OpenElement>.

⁵⁵ Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 14 September 2010, A/65/365, para. 18 (emphasis added), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N10/532/26/PDF/N1053226.pdf?OpenElement>.

⁵⁶ Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 31 August 2015, A/70/351, paras. 17-18 (emphasis added), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/268/50/PDF/N1526850.pdf?OpenElement>.

be “absentee property” on the basis of claims initiated by settler organizations, and in some cases transferred or sold to settler organizations. Notwithstanding the *illegality of annexation under international law*, the Supreme Court of Israel accepted such confiscations”.⁵⁷ The report also referred to: “The *Israeli Government’s stated intention to move ahead with annexation* of parts of the occupied West Bank”.⁵⁸

23. Various independent persons and bodies charged with investigating Israel’s activities in the OPT have reached the same conclusions. Successive UN Special Rapporteurs, for example, have characterised Israel’s actions in East Jerusalem and West Bank as “annexation”. To take the reports published in the last five years as an example:

- In October 2018, the Special Rapporteur concluded that: “As part of its continuing efforts to ensure that *its de jure annexation of East Jerusalem* is irreversible, Israel has over the past five decades extended its national laws and civil authority to the occupied section of the city; issued numerous declarations of permanent sovereignty; transformed the physical features and historic character of East Jerusalem; moved some of its national institutions, including the Ministry of Justice; and embarked upon an intensive programme of creating and expanding Israeli settlements.”⁵⁹ In respect of the West Bank, the Special Rapporteur added: “The Israeli political leadership has become much more uninhibited over the past two years in expressing out loud what the actions of the Government of Israel have been proclaiming for years. *Annexation* is in the air, and intention is now being openly expressed in words as well as in deeds.”⁶⁰
- In October 2019, the Special Rapporteur highlighted the “increased calls by the Prime Minister of Israel and senior members of his Government for the *annexation of parts or all of the West Bank*”.⁶¹ The Special Rapporteur stated that, “the

⁵⁷ Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 1 October 2020, A/75/376,, para 51 (emphasis added), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/253/41/PDF/N2025341.pdf?OpenElement>.

⁵⁸ *Ibid.*, para. 39 (emphasis added).

⁵⁹ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 37 (emphasis added), <https://daccess-ods.un.org/tmp/8394666.91017151.html>.

⁶⁰ *Ibid.*, para. 58 (emphasis added).

⁶¹ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 21 October 2019, A/74/507, para. 15, <https://daccess-ods.un.org/tmp/5921782.25517273.html>.

extension by Israel of its laws and civil authority to occupied East Jerusalem is part of its continuing efforts to ensure that *the de jure annexation of East Jerusalem* is irreversible”.⁶² In a section specifically concerned with “Annexation”, the Special Rapporteur further stated that: “The Security Council has affirmed the legal principle on at least eight occasions, most recently in its resolution 2334 (2016), that the acquisition of territory by force is inadmissible. Although it denounced *the annexation by Israel of East Jerusalem* in 1980 and of the Syrian Golan Heights in 1981 as unlawful, Israel has not reversed these *de jure annexations*, nor has its political leadership been impeded from *intensifying its de facto annexation of the West Bank* through ongoing land confiscation and its burgeoning settlement enterprise. Moreover, the Israeli political leadership continues to regularly express its support for *formally annexing parts or all of the West Bank*”.⁶³

- In October 2020, the Special Rapporteur described “the persistent refusal of Israel to unwind *its annexation of East Jerusalem*”, noting that despite condemnation by the Security Council “Israel has continued to *intensify its annexation of East Jerusalem* through the creation and expansion of 12 civilian settlements, the presence of 215,000 Jewish settlers and the construction of a wall separating East Jerusalem from the West Bank, and by solidifying the political and infrastructural integration of East and West Jerusalem”.⁶⁴ The Special Rapporteur also referred to “the announcement by Israel of its *planned annexation of parts of the West Bank and the Jordan Valley*”.⁶⁵
- In October 2021, the Special Rapporteur published a further report which concluded that Israel’s “five-decade-old occupation has become *indistinguishable from annexation*”.⁶⁶ He noted that there was “plentiful economic and political evidence” that “Israeli policies and practices towards the Palestinians” pursue “a strategy of *de facto annexation and permanent control over the Palestinian territory*”.⁶⁷ The

⁶² *Ibid.*, para. 22 (emphasis added).

⁶³ *Ibid.*, para. 63 (emphasis added).

⁶⁴ *Ibid.*, paras. 41-42 (emphasis added)

⁶⁵ *Ibid.*, para. 8 (emphasis added).

⁶⁶ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2021, A/76/433, para. 57, <https://www.ohchr.org/en/documents/country-reports/a76433-report-situation-human-rights-palestinian-territories-occupied>.

⁶⁷ *Ibid.*, para. 48.

Special Rapporteur referred to the European Union’s “opposition to *the de jure annexation plans made by Israel*” in respect of the West Bank; although he noted that this had “done little to alter the thickening occupation and *the reality of de facto annexation*”.⁶⁸ He also referred to that fact that: “Former Secretary-General Ban Ki-Moon stated in June 2021 that: ‘Israel has pursued a policy of *incremental de facto annexation* in the territories it has occupied since 1967’”.⁶⁹

- In August 2022, the Special Rapporteur published a further report which reiterated his finding that: “in recent decades, the inexorable Israeli occupation has become indistinguishable from annexation”.⁷⁰ The Special Rapporteur described how: “Since the beginning of the occupation in June 1967, the rule of Israel over the Palestinian territory has been epitomized by two core features. The first is the *establishment of designed-to-be irreversible “facts-on-the-ground”*: the creation of 300 civilian settlements, with 700,000 Jewish settlers, meant to demographically engineer an unlawful sovereignty claim through the annexation of the occupied territory while simultaneously thwarting the Palestinians’ right to self-determination.”⁷¹ He summarized the position in the following terms: “The occupation by Israel has been conducted in profound defiance of international law and hundreds of United Nations resolutions, with scant pushback from the international community. Its 55-year-old occupation burst through the restraints of temporariness long ago. *Israel has progressively engaged in the de jure and de facto annexation of occupied territory.*”⁷²

24. Most recently, in September 2022 the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel submitted a report to the General Assembly which addressed Israel’s “purported *de jure and de facto annexation of*” the OPT.⁷³ The report described amongst other things Israel’s “purported

⁶⁸ *Ibid.*, para. 43.

⁶⁹ *Ibid.*, para. 33.

⁷⁰ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, 12 August 2022, A/HRC/49/87, para. 51, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/448/72/PDF/G2244872.pdf?OpenElement>.

⁷¹ *Ibid.*, para. 35.

⁷² *Ibid.*, para. 11.

⁷³ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, p. 2, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/591/34/PDF/N2259134.pdf?OpenElement>.

*de jure annexation of East Jerusalem*⁷⁴ and the “*de facto annexation policies*” which “successive Governments of Israel” had adopted.⁷⁵ The Independent Commission concluded that:

- “[T]here 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.*”⁷⁶
- “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 settlement enterprise is the principal means by which those results are achieved.”⁷⁷
- “Statements made by Israeli officials provide further evidence that *Israel intends the occupation to be permanent*, as does the absence of actions intended to end the occupation, including in respect to a “two-State solution” or any other solution.”⁷⁸
- “Israel *treats the occupation as a permanent fixture and has – for all intents and purposes – annexed parts of the West Bank*, while seeking to hide behind a fiction of temporariness. Actions by Israel constituting *de facto annexation* include expropriating land and natural resources, establishing settlements and outposts, maintaining a restrictive and discriminatory planning and building regime for Palestinians and extending Israeli law extraterritorially to Israeli settlers in the West Bank.”⁷⁹
- “The International Court of Justice anticipated such a scenario in its 2004 advisory opinion, in which it stated that the wall was creating a *fait accompli* on the ground

⁷⁴ *Ibid.*, para. 16 (emphasis added).

⁷⁵ *Ibid.*, para. 51 (emphasis added).

⁷⁶ *Ibid.*, para. 75 (emphasis added).

⁷⁷ *Ibid.* (emphasis added).

⁷⁸ *Ibid.* (emphasis added).

⁷⁹ *Ibid.*, para. 76 (emphasis added).

that could well become permanent and tantamount to *de facto* annexation. This has now become the reality.”⁸⁰

- “In the view of the Commission, *the permanent occupation and de facto annexation by Israel*, including the actions undertaken by Israel as identified in the present report, cannot remain unaddressed.”⁸¹

25. Guyana submits that the findings summarized above, and many others like them, demonstrate that there is no doubt that Israel has annexed East Jerusalem and the West Bank, contrary to international law.

Part II. The Right to Self-Determination of the Palestinian People and Israel’s Violation of that Right

A. The Right to Self-Determination

26. Like the prohibition on annexation, the right to self-determination is also a *jus cogens* norm of universal application. In the 2004 Wall Opinion, the Court noted that:

“the principle of self-determination of peoples has been enshrined in the United Nations Charter and reaffirmed by the General Assembly in resolution 2625 (XXV)...Article 1 common to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights reaffirms the rights 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.”⁸²

27. As the Court observed in the *East Timor* case, the principle of self-determination “has an *erga omnes* character” and “is one of the essential principles of contemporary international law”.⁸³ In its 2019 advisory opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, the Court observed that it therefore follows that “all States have a legal interest in protecting that right”.⁸⁴ The

⁸⁰ *Ibid.*, para. 76 (emphasis added).

⁸¹ *Ibid.*, para. 84 (emphasis added).

⁸² 2004 Wall Opinion, pp. 171-172, para. 88.

⁸³ *East Timor (Portugal v. Australia), Judgment, I. C.J. Reports 1995*, p. 102, para. 29.

⁸⁴ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 139, para. 180.

Court added that: “[T]he right to self-determination, as a fundamental human right, has a broad scope of application”.⁸⁵

28. The *jus cogens* character of the right to self-determination is reflected (amongst other things) by the fact that it is expressly included in the list of *jus cogens* norms in the ILC’s Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of International Law (*Jus Cogens*).⁸⁶ Indeed, in his separate concurring opinion the *Chagos* Advisory Opinion, Judge Cançado Trindade observed that: “On several occasions, from the early sixties, *jus cogens* was directly attached to the right to self-determination” by the ILC. In the *Chagos* advisory proceedings no fewer than 17 States (plus the African Union) made submissions specifically in support of the proposition that the right to self-determination has the status of *jus cogens*.⁸⁷ Judge Cançado Trindade conducted a detailed analysis of those submissions and of the history of the right to self-determination and had no hesitation in concluding that the right “indeed belongs to the realm of *jus cogens*, and entails obligations *erga omnes*, with all legal consequences ensuing therefrom”.⁸⁸ This conclusion accords with the views of learned commentators.⁸⁹

B. Israel’s Violation of the Right to Self-Determination of the Palestinian People

29. There is no doubt that the right to self-determination applies to the Palestinian people. Nor is there any doubt that Israel has systematically violated this right through its conduct in the OPT. Indeed, the Court expressly confirmed both the existence and the violation of that right in the 2004 Wall Opinion, which held that the rights of the

⁸⁵ *Ibid.*, p. 131, para. 144.

⁸⁶ *Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens)*, Report of the International Law Commission, 73rd Sess., 18 April-3 June & 4 July-5 August 2022, A/77/10, para. 44, Annex.

⁸⁷ In his separate opinion Judge Cançado Trindade listed the 17 States which had expressly addressed this issue: “Argentina, Belize, Brazil, Chile, Cuba, Cyprus, Djibouti, Kenya, Mauritius, Namibia, Nigeria, the Netherlands; Nicaragua; Serbia; Seychelles; South Africa; and Zambia. (See 2004 Wall Opinion, p. 196, para. 129 (Separate opinion of Judge Cançado Trindade)).

⁸⁸ 2004 Wall Opinion, p. 193, para. 119.

⁸⁹ As long ago as 1994, for example, the authors of *The Charter of the United Nations – A Commentary* observed that the right to self-determination had become “overwhelmingly characterized as forming part of the peremptory norms of international law” (K. Doehring, “Self-Determination as *Jus Cogens*”, [Various Authors], *The Charter of the United Nations — A Commentary* (eds. B. Simma et al.), Oxford University Press, 1994, pp. 70-71.) The Max Planck Encyclopaedia of Public International Law similarly observes that the principle of self-determination is one of the “rules mentioned frequently” as having the character of *jus cogens*.

Palestinian people “include the right to self-determination, as the General Assembly has...recognized on a number of occasions”⁹⁰ and which found that “Israel is bound to comply with its obligation to respect the right of the Palestinian people to self-determination”⁹¹ The Court went on to find that Israel’s construction of the wall in the OPT “severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel’s obligation to respect that right”.⁹² The Court further held that: “It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end.”⁹³

30. The Court’s conclusions regarding Israel’s violation of the Palestinian people’s right to self-determination in the 2004 Wall Opinion were based entirely on the narrow issues then before the Court regarding the construction of the wall and the associated regime. In the present advisory proceedings, the Court is called upon to consider Israel’s conduct from a much broader perspective, which includes the significant extension and consolidation of Israel’s annexation of East Jerusalem and the West Bank that has occurred in the intervening 19-year period. When assessed through that expanded lens, the existence and scale of Israel’s violation of the right to self-determination of the Palestinian people is both indisputable and overwhelming.

31. Israel’s violation of the right of the Palestinian people to self-determination is an inevitable consequence of its decades-long occupation and annexation of Palestinian territory. Indeed, as Judge Al-Khasawneh put it in his separate opinion in the Wall case: “[W]hat prevents this right of self-determination from being fulfilled is Israel’s prolonged military occupation with its policy of creating *faits accomplis* on the ground”.⁹⁴ As the Special Rapporteur explained in 2021, “the *de facto* and *de jure* annexation of occupied territory by Israel, primarily led by the relentless expansion of its settlements, has undercut any meaningful exercise of self-determination on what

⁹⁰ 2004 Wall Opinion, p. 183, para. 118.

⁹¹ *Ibid.*, p. 197, para. 149.

⁹² *Ibid.*, p. 184, para. 122.

⁹³ *Ibid.*, p. 200, para 159.

⁹⁴ 2004 Wall Opinion, p. 237, para. 9 (Separate opinion of Judge Al-Khasawneh).

remains of Palestinian land”.⁹⁵ The Independent International Commission of Inquiry was likewise clear in its conclusion that:

“[T]he occupation and de facto annexation policies of Israel have had a severe impact on Palestinian lives throughout the West Bank and constitute grave violations and abuses of human rights as well as violations of international humanitarian law. The commitment of Israel to supporting this enterprise has resulted in a series of policies that are intended to sustain and extend the enterprise, which have negatively affected all areas of Palestinian life. They include evictions, deportations and the forcible transfer of Palestinians within the West Bank, the expropriation, looting, plundering and exploitation of land and vital natural resources, movement restrictions and the maintenance of a coercive environment with the aim of fragmenting Palestinian society, encouraging the departure of Palestinians from certain areas and *ensuring that they are incapable of fulfilling their right to self-determination.*”⁹⁶

Part III. The Effect of Israel’s Violations on the Legal Status of the Occupation

32. As explained above, the annexation of territory is fundamentally incompatible with lawful occupation. So too is the denial of the right to self-determination of the people of the occupied territory. An occupation which involves annexation of the occupied territory is, in truth, not an “occupation” at all: it is a military conquest. A State cannot simultaneously be both the temporary non-sovereign occupant and the permanent purported “sovereign” of the same territory. Likewise, an occupation which is conducted in such a way as to deny the right to self-determination of the people of the occupied territory (including by annexing the territory of those people) is, inevitably and self-evidently, not an occupation which is being carried out in accordance with the laws of occupation.
33. Through its acts in the OPT since 1967, Israel has systematically violated both the jus cogens prohibition on annexation and the jus cogens right to self-determination of the Palestinian people. The violations of those peremptory norms of international law –

⁹⁵ Report of the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, 22 October 2021, Michael Lynk, A/76/433, para. 36(c), <https://www.ohchr.org/en/documents/country-reports/a76433-report-situation-human-rights-palestinian-territories-occupied>.

⁹⁶ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 77, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/591/34/PDF/N2259134.pdf?OpenElement>.

which the evidence shows are grave, longstanding and ongoing – are not ancillary or accidental or isolated aspects of an otherwise lawful temporary occupation. Rather, they are both an integral feature and a permanent consequence of Israel’s continuing presence in the OPT.

34. An occupation which involves, and is inextricably founded upon, such serious breaches of jus cogens norms is not – and could not ever be – a lawful occupation. Israel’s violation of these peremptory norms of international law therefore irredeemably vitiates the lawfulness of its prolonged occupation of the OPT. It follows that Israel’s prolonged occupation of the OPT is itself unlawful *in toto*, and therefore Israel’s obligation to cease its internationally wrongful acts entails an obligation to immediately and fully end that occupation. Nothing short of a complete end to the occupation would suffice for this purpose.
35. In its 2019 Advisory Opinion in the Chagos case, Court found that the United Kingdom’s ongoing colonial administration of an integral part of Mauritius’ national territory was “an unlawful act of a continuing character,”⁹⁷ and that, as a consequence, the United Kingdom was “under an obligation *to bring an end to its administration of the Chagos Archipelago as rapidly as possible.*”⁹⁸ Whether, as in *Chagos*, a colonial administration is unlawful, or whether, as here, an occupation administration is unlawful, the consequences must be the same. In both situations, a foreign power – whether colonial or occupying – is unlawfully present in and administering the territory of another State, against the wishes of its people and in violation of their right to self-determination. In both cases, the unlawful administration must be brought to an end as rapidly as possible in its entirety.
36. There are consequences for third States, as well. In the 2004 Wall Opinion the Court held that, in light of the Court’s conclusions regarding the illegality of Israel’s acts under consideration in that case, it followed that:

“All 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; all

⁹⁷ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 138, para. 177.

⁹⁸ *Ibid.*, p. 139, para. 178.

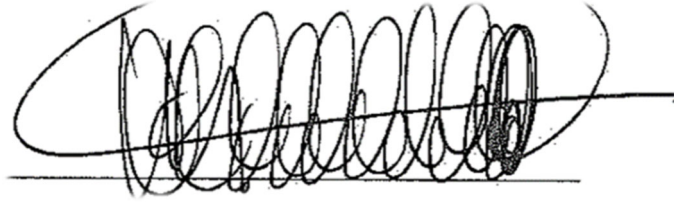
States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.”⁹⁹

37. Adopting the same approach, Guyana submits that it must follow that Israel is under an obligation to end its unlawful occupation of Palestinian territory as rapidly as possible and respect the right of the Palestinian people to self-determination; and that all States have an obligation (i) not to recognize as legal Israel’s occupation of the OPT; (ii) not to render any aid or assistance to Israel in maintaining that occupation; and (iii) to ensure that Israel complies fully with international humanitarian law and with the jus cogens prohibition on annexation and the jus cogens right to self-determination of the Palestinian people – such compliance must include (but is not limited to) immediately ending its occupation of the OPT. These solemn and binding duties are a necessary corollary of the unlawfulness of Israel’s occupation of the OPT.

CONCLUSION

38. For the reasons set out in this Written Statement, the Co-Operative Republic of Guyana submits that:
- (1) Israel has unlawfully annexed the West Bank and East Jerusalem.
 - (2) Israel has violated the right to self-determination of the Palestinian people.
 - (3) Israel’s occupation of the OPT is unlawful, and Israel is under an obligation to immediately and fully cease that occupation.
 - (4) All States are under an obligation (i) not to recognize as lawful Israel’s occupation of the OPT; not to render any aid or assistance to Israel in maintaining that occupation; and (iii) to ensure that Israel complies fully with its international legal obligations, including by immediately ending its occupation of the OPT.

⁹⁹ 2004 Wall Opinion, p. 202, para. 163D.

A handwritten signature in black ink, consisting of a series of overlapping loops and a long horizontal stroke extending to the right. The signature is positioned above a horizontal line.

Hugh Hilton Todd

Minister of Foreign Affairs and International Cooperation

25 July 2023