

KINGDOM OF SAUDI ARABIA

MINISTRY OF FOREIGN AFFAIRS

Minister's Office



المملكة العربية السعودية
وزارة الخارجية
مكتب الوزير

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 KINGDOM OF SAUDI ARABIA

25 JULY 2023



I. INTRODUCTION

1. This written statement is submitted by the Kingdom of Saudi Arabia pursuant to the Court's Order of 3 February 2023, issued upon the request for an advisory opinion made by the General Assembly of the United Nations in its Resolution 77/247 of 30 December 2022.¹

2. The terms of the request made by the General Assembly are as follows:

[C]onsidering 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:

Question (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?

Question (b): How do the policies and practices of Israel referred to in [question (a)] above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?²

3. The Kingdom of Saudi Arabia was a co-sponsor of the draft resolution requesting this advisory opinion and voted in favour of the request.

4. For the purposes of this written statement and in order to avoid repetition, the Kingdom of Saudi Arabia refers to the following comprehensive reports commissioned by U.N. organs which set forth relevant facts which form the basis of the request: (i) First Report of the Independent

¹ U.N. General Assembly Resolution 77/247 (2022) (U.N. Dossier No. 3). The references in this Written Statement to "U.N. Dossier No. ___" are to the documents transmitted to the Court by the U.N. Secretariat pursuant to Article 65(2) of the Court's Statute, posted on the Court's website in June 2023.

² U.N. General Assembly Resolution 77/247 (2022), para. 18 (U.N. Dossier No. 3).



International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (the "Independent Commission"), dated 9 May 2022³ ("First Report"); (ii) Second Report of the Independent Commission, dated 14 September 2022⁴ ("Second Report"); and (iii) Third Report of the Independent Commission, dated 9 May 2023⁵ ("Third Report") (together, with the First Report and the Second Report, the "Reports"). The Reports have been prepared by the Independent Commission pursuant to Human Rights Council Resolution S-30/1 (2021).⁶

5. The Reports are complemented by hundreds of additional exhaustive studies by U.N. human rights mandate holders and by several U.N. specialized agencies and bodies⁷ with

³ U.N. Human Rights Council, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, U.N. Doc. A/HRC/50/21, 9 May 2022 ("First Report"). On 22 July 2021, the President of the Human Rights Council announced the appointment of Navanethem Pillay (South Africa), Miloon Kothari (India) and Christopher Sidoti (Australia) as members of the Independent Commission. *Id.*, para. 2.

⁴ U.N. Human Rights Council, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, U.N. Doc. A/77/328, 14 September 2022 ("Second Report"). In the Second Report, the Independent Commission recommended the General Assembly to "[u]rgently request an advisory opinion from the International Court of Justice on the legal consequences of the continued refusal on the part of Israel to end its occupation of the Occupied Palestinian Territory, including East Jerusalem, amounting to de facto annexation, of policies employed to achieve this, and of the refusal on the part of Israel to respect the right of the Palestinian people to self-determination, and on the obligations of third States and the United Nations to ensure respect for international law." *Id.*, para. 92(a).

⁵ U.N. Human Rights Council, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, U.N. Doc. A/HRC/53/22, 9 May 2023 ("Third Report"). The Third Report was accompanied by another document entitled "Detailed findings on attacks and restrictions on and harassment of civil society actors, by all duty bearers." U.N. Human Rights Council, *Detailed findings on attacks and restrictions on and harassment of civil society actors, by all duty bearers. Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, U.N. Doc. A/HRC/53/CRP.1.

⁶ U.N. Human Rights Council Resolution S-30/1 (27 May 2021), U.N. Doc. A/HRC/RES/S-30/1. See U.N. General Assembly Resolution 77/247 (2022), Preamble ("Taking note also of the report of the independent international commission of inquiry established pursuant to Human Rights Council resolution S-30/1") (U.N. Dossier No. 3).

⁷ See, e.g., U.N. General Assembly Resolution 2443 (XXIII) (1968), para. 1 (establishing the "Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories") (U.N. Dossier No. 652); U.N. General Assembly Resolution 3376 (XXX) (1975), paras. 3-4 (establishing the Committee on the Exercise of the Inalienable Rights of the Palestinian People and requesting it to recommend to the General Assembly a programme of implementation to enable the Palestinian people to exercise the rights recognized in paragraphs 1 and 2 of U.N. General Assembly Resolution 3236 (XXIX) (1974), that is, their inalienable rights to self-determination without external interference, national independence and sovereignty; and their inalienable rights to return to their homes and property from which they have been displaced and uprooted) (U.N. Dossier No. 383); U.N. Commission



geographical mandate in the Occupied Palestinian Territory (defined as all territory east of the armistice line of 1949 up to the border with Jordan (the “Green Line”), including East Jerusalem, and also including the Gaza Strip).⁸

II. COMPETENCE AND ADMISSIBILITY

A. The General Assembly Has Competence to Request an Advisory Opinion on the Present Questions

6. Article 96(1) of the U.N. Charter confers on the General Assembly the competence to request an advisory opinion from the Court on any legal question. It is clear from this express authorization enshrined in the U.N. Charter that the General Assembly is, for the purposes of Article 65(1) of the Statute of the Court, “an organ duly authorized to seek [an advisory opinion] under the Charter.”⁹

7. The present request for an advisory opinion from the Court has been validly adopted by the General Assembly in its Resolution 77/247 of 30 December 2022.

on Human Rights, Resolution 1993/2A (19 February 1993), para. 4 (appointing a special rapporteur “with the following mandate: (a) To investigate Israel’s violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967; (b) To receive communications, to hear witnesses, and to use such modalities of procedure as he may deem necessary for his mandate; (c) To report, with his conclusions and recommendations, to the Commission on Human Rights at its future sessions, until the end of the Israeli occupation of those territories.”); U.N. Security Council Resolution 2334 (2016), para. 12 (requesting “the Secretary-General to report to the Council every three months on the implementation of the provisions of the present resolution.”) (U.N. Dossier No. 1372).

⁸ See U.N. General Assembly, *Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories*, U.N. Doc. A/16/360, 29 September 2021, para. 2 (U.N. Dossier No. 757). See also *cf. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (“Wall Advisory Opinion”)*, pp. 166-167, paras. 72, 73, 78.

⁹ *Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982*, p. 333, para. 21; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (“Nuclear Weapons Advisory Opinion”)*, p. 232, para. 11. See also Statute of the International Court of Justice, 24 October 1945, 59 Stat 1055 (“ICJ Statute”), Article 65(1).



8. Unlike other organs of the United Nations and specialized agencies, which are authorized to request an advisory opinion only on "legal questions arising within the scope of their activities," the General Assembly can request an advisory opinion on "any legal question".¹⁰

9. The present questions submitted by the General Assembly "have been framed in terms of law and raise problems of international law."¹¹ They relate to the legal consequences arising from the ongoing violations by Israel of various international law norms in the Occupied Palestinian Territory, how these affect the legal status of the occupation and what legal consequences arise from this status for all States and the United Nations.

10. In order to answer these questions, the Court will have to identify the relevant rules of international law and interpret and apply them to Israel's prolonged occupation, as well as to its policies and practices in the Occupied Palestinian Territory, to assess whether those actions constitute violations of the identified rules of international law. The Court will then have to determine the legal consequences arising from its conclusions. The present request by its express terms therefore raises questions of a clear legal character, which, to use the words of the Court, "are by their very nature susceptible of a reply based on law."¹²

11. The fact that the questions submitted to the Court may have political aspects does not undermine their legal nature. The Court has affirmed that: "Whatever its political aspects, the Court cannot refuse to admit the legal character of a question which invites it to discharge an essentially judicial task."¹³

12. Moreover, it is well-established by the Court's jurisprudence that the Security Council's primary responsibility for the maintenance of international peace and security does not mean that

¹⁰ Charter of the United Nations, 24 October 1945, 1 UNTS XVI ("U.N. Charter"), Article 96.

¹¹ *Western Sahara, Advisory Opinion, I.C.J. Reports 1975 ("Western Sahara Advisory Opinion")*, p. 18, para. 15.

¹² *Id.*

¹³ *Wall Advisory Opinion*, p. 155, para. 41; *Nuclear Weapons Advisory Opinion*, p. 234, para. 13.



it has exclusive responsibility.¹⁴ Thus, the Security Council dealing concurrently with the Palestinian question does not affect the General Assembly's competence to make such a request for an advisory opinion.¹⁵

13. Therefore, with respect to the present questions, the General Assembly is competent to make this request for an advisory opinion from the Court.

B. The Court Has Jurisdiction to Issue the Opinion and There Are No Compelling Reasons Not to Respond to this Request

14. The Court derives its advisory jurisdiction from Article 65(1) of its Statute, which provides that the Court may give an advisory opinion on any legal question at the request of a body authorized by the U.N. Charter. As demonstrated above, the General Assembly is competent under the U.N. Charter to request an advisory opinion and is submitting legal questions to the Court. Therefore, the Court can exercise its advisory jurisdiction in the present proceedings.

15. Article 65(1) of the Court's Statute also provides the Court with a measure of discretion as to whether or not to exercise its advisory jurisdiction,¹⁶ although the Court has never refused to entertain a request for an advisory opinion on the basis of its discretion. The Court has been "mindful of the fact that its answer to a request for an advisory opinion 'represents its participation in the activities of the Organization, and, in principle, should not be refused'."¹⁷ Pursuant to its established practice, it is only if there are "compelling reasons" that the Court would, in the exercise of its discretion under Article 65(1), refuse on judicial propriety grounds to give an advisory opinion.¹⁸

¹⁴ *Wall Advisory Opinion*, pp. 148-150, paras. 24-28.

¹⁵ *Id.*

¹⁶ *Id.*, p. 156, para. 44.

¹⁷ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 ("Chagos Advisory Opinion")*, p. 113, para. 65; *Wall Advisory Opinion*, p. 156, para. 44; *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950 ("Interpretation of Peace Treaties Advisory Opinion")*, p. 71.

¹⁸ *Chagos Advisory Opinion*, p. 113, para. 65; *Wall Advisory Opinion*, p. 156, para. 44.

KINGDOM OF SAUDI ARABIA

MINISTRY OF FOREIGN AFFAIRS

Minister's Office



المملكة العربية السعودية
وزارة الخارجية
عبدالله

16. There are no “compelling reasons” for the Court to refrain from exercising its jurisdiction in relation to the present request. To that point, and whether such a compelling reason exists on the basis that the request is exclusively a contentious matter between two or more States, one of which (Israel) has not consented to the request, it is clear that such an argument falls far short. This is because the subject matter of this request for an advisory opinion cannot be regarded as only a bilateral matter between Israel and Palestine.

17. First, the request is located in a much broader frame of reference, including the protection of the self-determination of peoples and the maintenance of international peace and security, similar to the request which led to the *Wall Advisory Opinion*. In that case, the Court rejected Israel’s argument that it should use its discretion to refrain from exercising jurisdiction on the grounds that the request concerned a contentious matter between Israel and Palestine, and that Israel had not consented to bring the dispute in front of the Court.¹⁹ The Court had already explained that even when the questions submitted relate particularly to interested States, and those States hold divergent views on the legal questions submitted, the subject matter is not necessarily exclusively bilateral.²⁰ Moreover, as the Court has explained:

[E]ven where the Request for an Opinion relates to a legal question actually pending between States . . . no State, whether a Member of the United Nations or not, can prevent the giving of an Advisory Opinion which the United Nations considers to be desirable in order to obtain enlightenment as to the course of action it should take.²¹

18. The present request puts questions before the Court which directly concern the United Nations. In light of the powers and responsibilities of the United Nations in questions relating to international peace and security, its role with respect to the Palestinian Mandate and the Partition

¹⁹ *Wall Advisory Opinion*, p. 157, paras. 46, 47.

²⁰ *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 (“Namibia Advisory Opinion”), p. 24, para. 34.*

²¹ *Interpretation of Peace Treaties Advisory Opinion*, p. 71.



Resolution,²² and its objective to promote the respect of the right to self-determination of peoples as set out in Article 1(2) of the U.N. Charter, the questions submitted in General Assembly Resolution 77/247 clearly concern the United Nations. In particular, as the Court has already highlighted in the *Wall Advisory Opinion*, the General Assembly “[h]as ‘a permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy’.”²³

19. Second, the request for an advisory opinion by its express terms invites the Court to determine the legal obligations of other States and the United Nations.

20. Finally, the self-evident purpose of the request is to aid the General Assembly, including its Special Political and Decolonization Committee (Fourth Committee), in its work on Palestine. The object of this request is therefore to “guide the United Nations in respect of its own action”²⁴ by drawing its conclusions from the Court’s determination of the legal consequences arising from various aspects of Israel’s occupation. The Court does not have to second-guess whether the General Assembly needs the opinion for the performance of its functions. As it noted in the *Chagos Advisory Opinion*, the Court cannot determine the “usefulness of its response to the requesting organ.”²⁵

21. A further point to address is that, in the exercise of its discretion, the Court may also take into consideration whether the factual evidence before it is sufficient to properly address the request.²⁶ The situation in the Occupied Palestinian Territory has been well documented and has been the subject of careful attention from the General Assembly, the Security Council and other U.N. organs and specialized agencies for many years. In addition, the Court has at its disposal

²² *Wall Advisory Opinion*, pp. 158-159, para. 49.

²³ *Id.* (citing to U.N. General Assembly Resolution 57/107 (2002) (U.N. Dossier No. 417)).

²⁴ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 19.

²⁵ *Chagos Advisory Opinion*, p. 115, para. 76. See also *Wall Advisory Opinion*, p. 163, para. 62.

²⁶ *Western Sahara Advisory Opinion*, pp. 28-29, para. 46.



numerous recent reports of these U.N. organs, including those referenced in paragraphs 4 and 5 above and in the dossier of documents compiled by the U.N. Secretariat pursuant to Article 65(2) of the Court's Statute, which give sufficient factual information and evidence "to enable [the Court] to pronounce on legal questions."²⁷

22. Therefore, the Court can exercise its advisory jurisdiction and should exercise it. Indeed, given the role of the Court as the principal judicial organ of the United Nations and the fact that the opinion requested relates to questions which are of acute concern to the United Nations, it has compelling reasons to exercise its jurisdiction and render the advisory opinion requested.

III. ISRAEL'S PROLONGED AND ILLEGAL OCCUPATION AND ITS DISDAIN FOR THE INTERNATIONAL COMMUNITY'S CALLS FOR COMPLIANCE

23. The Israeli occupation of the Occupied Palestinian Territory, including East Jerusalem, which began in June 1967, has now lasted more than five and a half decades. During that time, Israel has established and expanded numerous settlements in that territory in which, currently, approximately 700,000 Israeli settlers reside.²⁸ Other acts of *de facto*, and in the case of East Jerusalem and its environs, *de jure*, annexation have been implemented by Israel throughout the Occupied Palestinian Territory, including the construction of the separation wall, which the Court has found to be in violation of various international law obligations, including Israel's obligation to respect the right of the Palestinian people to self-determination.²⁹ Also during that span of time, United Nations organs, including the Security Council, the General Assembly, the Court, the

²⁷ *Namibia Advisory Opinion*, p. 27, para. 40.

²⁸ See Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on Israeli Settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, U.N. Doc. A/HRC/46/65, 15 February 2021, para. 13; U.N. General Assembly, *Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People*, U.N. Doc. A/77/35, 1 September 2022, para. 12 (U.N. Dossier No. 483); Note by the Secretary-General transmitting a report prepared by the Economic and Social Commission for Western Asia, *Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan*, U.N. Doc. A/77/90-E/2022/66, 8 June 2022, para. 36 ("ESCWA June 2022 Report") (U.N. Dossier No. 147).

²⁹ *Wall Advisory Opinion*, pp. 182-194, 199, paras. 118-137, 155.



Human Rights Council and others, have addressed both the prolonged and illegal nature of the occupation, Israel's persistent wrongful conduct against the Palestinian population of the territory, as well as the established rights under international law, including the right to self-determination, which the Palestinian people have in and over that territory.³⁰

24. The request for an advisory opinion made under General Assembly Resolution 77/247 is thus preceded by a history of close and careful attention by the United Nations and the international community at large. Through the resolutions and actions of U.N. organs, authoritative determinations have been reached on questions which relate to the request and which may assist the Court in reaching its conclusions.

25. In order to contextualize the request for the advisory opinion now before the Court, it is important to recall the breadth and scope of the determinations related to the request which are now regarded by the international community as undeniable. These include, among others, the following:

- a. **First**, the existence and right of the Palestinian people to self-determination has been clearly recognized by the international community and the United Nations,³¹ as well as by the Court in the *Wall Advisory Opinion*, where the Court concluded that the construction of the separation wall "along with measures taken previously, thus severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's

³⁰ See, e.g., *Wall Advisory Opinion*, pp. 182-194, paras. 118-137; U.N. General Assembly Resolution 3236 (XXIX) (1974), paras. 1-3 (U.N. Dossier No. 382); U.N. General Assembly Resolution 58/163 (2003), para. 1 (U.N. Dossier No. 362); U.N. General Assembly Resolution 77/247 (2022), para. 6 (U.N. Dossier No. 3); U.N. Human Rights Council Resolution 49/28 (1 April 2022), U.N. Doc. A/HRC/RES/49/28, paras. 1, 3, 5-6; U.N. Security Council Resolution 446 (1979), para. 1 (U.N. Dossier No. 1262); U.N. Security Council Resolution 2334 (2016), paras. 1-4 (U.N. Dossier No. 1372).

³¹ See, e.g., U.N. General Assembly Resolution 3236 (XXIX) (1974), para. 1 ("Reaffirms the inalienable rights of the Palestinian people in Palestine, including: (a) The right to self-determination without external interference; (b) The right to national independence and sovereignty") (U.N. Dossier No. 382); U.N. General Assembly Resolution 33/24 (1978), para. 3 ("Reaffirms the inalienable right of the . . . Palestinian people and of all peoples under alien and colonial domination to self-determination, national independence, territorial integrity, national unity and sovereignty without external interference") (U.N. Dossier No. 294); U.N. General Assembly Resolution 58/163 (2003), para. 1 ("Reaffirms the right of the Palestinian people to self-determination, including the right to their independent State of Palestine.") (U.N. Dossier No. 362).



- obligation to respect that right.³² The Kingdom of Saudi Arabia considers that the recognized and established right of the Palestinian people to self-determination—which is of a *jus cogens* character and generating obligations *erga omnes*—is at the core of the questions presented to the Court.³³
- b. Second, in light of the *jus cogens* and *erga omnes* character of the right of the Palestinian people to self-determination, all States, including Israel, are obligated not to impose any impediment to the exercise of the Palestinian people of that right, and to see to it that any impediment in the exercise of the Palestinian people of that right which may exist is brought to an end.³⁴ As noted in paragraph 23, *supra*, Israel has been found to be in flagrant violation of this obligation, including by the Court in the *Wall Advisory Opinion*.
 - c. Third, the territory comprising the Occupied Palestinian Territory, including East Jerusalem, constitutes territory occupied by Israel through the use of force; Israel is considered as the Occupying Power throughout that territory under international humanitarian law; and the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (“Fourth Geneva Convention”) is applicable in that territory.³⁵ The U.N. Security Council, the General Assembly, and the Court have all found Israel’s acts and conduct in the Occupied Palestinian

³² *Wall Advisory Opinion*, p. 184, para. 122.

³³ *East Timor (Portugal v. Australia), Judgment*, I.C.J. Reports 1995 (“*East Timor*”), p. 102, para. 29 (“In the Court’s view, Portugal’s assertion that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable. The principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court (see [*Namibia Advisory Opinion*], pp. 31-32, paras. 52-53; [*Western Sahara Advisory Opinion*], pp. 31-33, paras. 54-59); it is one of the essential principles of contemporary international law.”); *Wall Advisory Opinion*, pp. 199-200, paras. 155, 159; *Chagos Advisory Opinion*, p. 139, para. 180; International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts with commentaries (2001), in *Report of the International Law Commission on the Work of Its Fifty-Third Session* (2001), document A/56/10, reproduced in *ILC Yearbook 2001*, Vol. II(2) (“*Commentaries to ILC Articles on State Responsibility*”), Commentary to Article 26, para. 5 (“Those peremptory norms that are clearly accepted and recognized include . . . the right to self-determination.”).

³⁴ *Wall Advisory Opinion*, p. 200, para. 159.

³⁵ See, e.g., U.N. Security Council Resolution 242 (1967) (U.N. Dossier No. 1245); U.N. Security Council Resolution 446 (1979) (U.N. Dossier No. 1262); U.N. Security Council Resolution 2334 (2016) (U.N. Dossier No. 1372). See also *Wall Advisory Opinion*, pp. 167, 175-177, paras. 78, 96-101; Geneva Convention Relative to the Protection of Civilian Persons in Time of War (“Fourth Geneva Convention”), 12 August 1949, 75 UNTS 287.



Territory to be in gross violation of Israel's obligations under the Fourth Geneva Convention and other international humanitarian law norms.³⁶

- d. Fourth, international human rights norms by which Israel is bound are fully applicable throughout the Occupied Palestinian Territory, and as a consequence Israel's conduct in violation of those norms in the Occupied Palestinian Territory leads to its international responsibility. As discussed in more detail, *infra*, Israel has committed egregious violations of such international human rights rules, including in relation to the rights of women and children, as well as by imposing through its policies and practices a system tantamount to *apartheid* throughout the Occupied Palestinian Territory.³⁷
- e. Fifth, Israel's occupation of the Occupied Palestinian Territory for more than 56 years, its establishment of settlements in those territories and the transfer of its civilian population to reside in those settlements, the construction of the separation wall and infrastructure supporting those settlements, and other actions detrimental to the Palestinian population have been recognized not only as flagrant violations in and of themselves of Israel's obligations under international humanitarian law and international human rights law, but also as amounting to a violation of its obligation not to impede the exercise of the right of the

³⁶ See, e.g., U.N. Security Council Resolution 2334 (2016), Preamble ("Condemning 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") (U.N. Dossier No. 1372); *id.*, para. 7; U.N. General Assembly Resolution 77/126 (2022), Preamble ("Condemning settlement activities by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, as violations of international humanitarian law, relevant United Nations resolutions, the agreements reached between the parties and obligations under the Quartet road map and as actions in defiance of the calls by the international community to cease all settlement activities") (U.N. Dossier No. 36); *id.*, para. 14; *Wall Advisory Opinion*, pp. 193-194, para. 137.

³⁷ See, e.g., U.N. Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, Michael Lynk, U.N. Doc. A/HRC/49/87, 21 March 2022, paras. 35-56; United Nations General Assembly, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, Francesca Albanese, U.N. Doc. A/77/356, 21 September 2022, para. 74. See also *infra*, paras. 67-73.



Palestinian people to self-determination.³⁸ Israel's settlement policy has been repeatedly condemned, and Israel's establishment of settlements in any part of the Occupied Palestinian Territory has been declared of "no legal validity" and in "flagrant violation under international law" by the U.N. Security Council,³⁹ and in breach of international law by the Court in the 2004 *Wall Advisory Opinion*.⁴⁰

- f. Sixth, Israel's enactment of the "Basic Law: Jerusalem, Capital of Israel" in July 1980, which purported to alter the legal character and status of the Holy City of Jerusalem through a formal act of annexation, was condemned as null and void by the U.N. Security Council through, among others, Resolutions 476 (1980)⁴¹ and 478 (1980).⁴² Israel has made no attempt to rescind that legislation or otherwise refrain from undertaking policies and practices in Jerusalem that violate its obligations under international law, including the customary rule against the acquisition of territory by force. On the contrary, it has taken numerous further

³⁸ *Wall Advisory Opinion*, pp. 182-194, 199, paras. 118-137, 155. See also, e.g., Second Report, para. 77; U.N. Security Council Resolution 446 (1979), paras. 1, 3 (U.N. Dossier No. 1262); U.N. Security Council Resolution 452 (1979), Preamble, para. 3 (U.N. Dossier No. 1264); U.N. Security Council Resolution 465 (1980), para. 5 (U.N. Dossier No. 1267); U.N. Security Council Resolution 2334 (2016), paras. 1-4 (U.N. Dossier No. 1372); U.N. General Assembly Resolution 3236 (XXIX) (1974), para. 1 (U.N. Dossier No. 382).

³⁹ U.N. Security Council Resolution 2334 (2016), para. 1 (U.N. Dossier No. 1372). See also U.N. Security Council Resolution 446 (1979), para. 1 (U.N. Dossier No. 1262); U.N. Security Council Resolution 465 (1980), paras. 5-7 (U.N. Dossier No. 1267); U.N. Human Rights Council, *Report of the Independent International Fact-Finding Mission to Investigate the Implications of Israeli settlements on the civil, political, economic, social, and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, U.N. Doc. A/HRC/22/63, 7 February 2013, para. 38.

⁴⁰ *Wall Advisory Opinion*, pp. 183-184, para. 120.

⁴¹ U.N. Security Council Resolution 476 (1980), para. 3 ("Reconfirms that all legislative and administrative measures and actions taken by Israel, the occupying Power, which purport to alter the character and status of the Holy City of Jerusalem have no legal validity and constitute a flagrant violation of the [Fourth] Geneva Convention relative to the Protection of Civilian Persons in Time of War") (U.N. Dossier No. 1273). See also U.N. Security Council Resolution 252 (1968), para. 2 (U.N. Dossier No. 1247); U.N. Security Council Resolution 267 (1969), paras. 3, 4 (U.N. Dossier No. 1253); U.N. Security Council Resolution 298 (1971), para. 3 (U.N. Dossier No. 1257).

⁴² U.N. Security Council Resolution 478 (1980), para. 3 ("Determines 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, and in particular the recent 'basic law' on Jerusalem, are null and void and must be rescinded forthwith.") (U.N. Dossier No. 1274). See also U.N. General Assembly Resolution 36/120 (1981) (D), para. 6; (E), para. 3 (U.N. Dossier No. 389).



measures during the last more than four decades since the legislation was enacted to solidify its control and annexation of East Jerusalem, including the construction of Israeli settlements and the expulsion of members of the Palestinian population, as well as other acts in gross violation of international humanitarian law and international human rights law.⁴³

26. Since the very commencement of the occupation in June 1967, the U.N. Security Council and the U.N. General Assembly have adopted repeated resolutions with clear pronouncements and admonitions to Israel concerning its duty to comply with its international obligations in relation to the Occupied Palestinian Territory, including East Jerusalem, most particularly in relation to the establishment of Israeli settlements and the transfer of Israeli citizens to live in those settlements, seizures of land and properties, displacement of the Palestinian population, and other changes to the legal status or demographic composition of the Occupied Palestinian Territory. Thus, both U.N. organs have repeatedly clarified the scope of Israel's international obligations in connection with that territory and its Palestinian population, and declared that the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, which are in violation of such obligations are invalid and that Israel must rescind those measures. The following is a selection of the unambiguous language employed by those U.N. organs over the course of the last 56 years when addressing Israel's obligations and violations thereof:

- The Security Council “[e]mphasizing the inadmissibility of the acquisition of territory by war,” and “affirm[ing] that the fulfilment of Charter principles requires . . . (i) Withdrawal of Israel armed forces from territories occupied in the recent conflict; (ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political

⁴³ See, e.g., Second Report, para. 15. For example, the Independent Commission explains that: “An outer layer of settlements, beyond the municipal boundaries of Jerusalem, has also contributed to severing the geographical contiguity between East Jerusalem and the rest of the occupied West Bank. This includes the plan for the E1 area in eastern Jerusalem (outside the municipal boundary), intended to reinforce the settlements in the Ma’ale Adumim area and connect them with Jerusalem, which would divide the West Bank into two separate entities.” *Id.* See also *infra*, § IV.D.



independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force.”⁴⁴

- The Security Council “[c]onsiders 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.”⁴⁵
- The Security Council “[c]onfirms 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” and “calls upon Israel to rescind all previous measures and actions and to take no further steps in the occupied section of Jerusalem which may purport to change the status of the City or which would prejudice the rights of the inhabitants and the interests of the international community.”⁴⁶
- The Security Council “[c]alls once more upon Israel, as the occupying Power, to abide scrupulously by the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories.”⁴⁷
- The Security Council “[d]etermines that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel’s policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War,” “[s]trongly deplores the continuation and persistence of Israel in pursuing those policies and practices and calls upon the Government and

⁴⁴ U.N. Security Council Resolution 242 (1967), Preamble, para. 1 (U.N. Dossier No. 1245).

⁴⁵ U.N. Security Council Resolution 252 (1968), para. 2 (U.N. Dossier No. 1247). See also U.N. Security Council Resolution 267 (1969), para. 2 (U.N. Dossier No. 1253).

⁴⁶ U.N. Security Council Resolution 298 (1971), paras. 3-4 (U.N. Dossier No. 1257).

⁴⁷ U.N. Security Council Resolution 446 (1979), para. 3 (U.N. Dossier No. 1262).



people of Israel to rescind those measures, to dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem,” and “[c]alls upon all States not to provide Israel with any assistance to be used specifically in connection with settlements in the occupied territories.”⁴⁸

- The Security Council “[r]econirms that all legislative and administrative measures and actions taken by Israel, the occupying Power, which purport to alter the character and status of the Holy City of Jerusalem . . . are null and void and must be rescinded.”⁴⁹
- The Security Council “[d]etermines 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, and in particular the recent ‘basic law’ on Jerusalem, are null and void and must be rescinded forthwith,” and “[d]ecides 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 and calls upon: (a) All Member States to accept this decision; (b) Those States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City.”⁵⁰
- The Security Council “[r]eaffirms that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law.”⁵¹
- The Security Council “[r]eiterates its demand that Israel must immediately and completely cease all settlement activities in the occupied Palestinian territory,

⁴⁸ U.N. Security Council Resolution 465 (1980), paras. 5-7 (U.N. Dossier No. 1267).

⁴⁹ U.N. Security Council Resolution 476 (1980), paras. 3-4 (U.N. Dossier No. 1273). See also, e.g., U.N. General Assembly Resolution 71/25 (2016), para. 1 (U.N. Dossier No. 635).

⁵⁰ U.N. Security Council Resolution 478 (1980), paras. 3, 5 (U.N. Dossier No. 1274). See also, e.g., U.N. General Assembly Resolution 76/12 (2021), para. 1 (U.N. Dossier No. 638).

⁵¹ U.N. Security Council Resolution 2334 (2016), para. 1 (U.N. Dossier No. 1372). See also U.N. Security Council Resolution 446 (1979), paras. 1, 3 (U.N. Dossier No. 1262); U.N. Security Council Resolution 452 (1979), Preamble, para. 3; U.N. Security Council Resolution 465 (1980), para. 5 (U.N. Dossier No. 1267); U.N. Security Council, *Report of the U.N. Secretary General: Implementation of Security Council Resolution 2334 (2016)*, U.N. Doc. S/2022/945, 14 December 2022, para. 68 (U.N. Dossier No. 1399); U.N. General Assembly Resolution 75/22 (2020), Preamble, para. 13 (U.N. Dossier No. 514); Declaration adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention (2001), para. 12; Declaration adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention (2014), para. 8.



including East Jerusalem and that it fully respect all of its legal obligations in this regard.”⁵²

- The Security Council “[u]nderlines that it will not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations” and “[s]tresses that the cessation of all Israeli settlement activities is essential for salvaging the two-State solution.”⁵³
- The General Assembly “[c]alls upon Israel, the occupying Power . . . to cease all of its measures that are contrary to international law, including all unilateral actions in the Occupied Palestinian Territory, including East Jerusalem, that are aimed at altering the demographic composition, character and status of the Territory, and thus at prejudging the final outcome of peace negotiations, and 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 the achievement of a peaceful settlement and of just, lasting and comprehensive peace,” “[s]tresses the need, in particular, for an immediate halt to all settlement activities, land confiscation and home demolitions,” and “[s]tresses the need for respect for and preservation of the territorial unity, contiguity and integrity of all the Occupied Palestinian Territory, including East Jerusalem.”⁵⁴

27. Despite the repeated condemnations of Israel’s occupation and associated conduct by these U.N. organs spanning over five and a half decades, as well as their admonitions to Israel to bring its conduct into compliance with international law, and notwithstanding the Court’s 2004 *Wall Advisory Opinion*, over the past almost 20 years since that Advisory Opinion was issued, Israel has systematically ignored and defied the warnings that its conduct constitutes an egregious violation of its international law obligations. It has done so by continuing to build the separation wall, to establish and expand settlements in the Occupied Palestinian Territory and by taking

⁵² U.N. Security Council Resolution 2334 (2016), para. 2 (U.N. Dossier No. 1372).

⁵³ U.N. Security Council Resolution 2334 (2016), paras. 3-4 (U.N. Dossier No. 1372).

⁵⁴ U.N. General Assembly Resolution 75/22 (2020), paras. 6-8 (U.N. Dossier No. 514).



numerous other measures which are tantamount to *de facto* annexation of the Occupied Palestinian Territory, including East Jerusalem, a situation already anticipated by the Court.⁵⁵

28. As further developed below, numerous measures carried out by Israel in the Occupied Palestinian Territory are not only in grave violation of its international obligations on their face, but at the same time they serve to systematically and severely impede the Palestinian people's established right to self-determination.⁵⁶ This is, in fact, the inevitable consequence of a settlement policy which, much like a colonial practice, is carried out in the very territory in which the Palestinian population lives and enjoys the right to self-determination, resulting in their displacement and seizure of their land, properties and resources to make way for Israeli settlers.

29. Moreover, and alarmingly, the policies and practices pursued by Israel in the Occupied Palestinian Territory have resulted in the imposition of a system of segregation and racial discrimination tantamount to *apartheid* contrary to Israel's obligations under the Convention on the Elimination of All Forms of Racial Discrimination ("CERD").⁵⁷ As documented by several U.N. human rights mandate holders, the reality of this *apartheid* system can no longer be seriously doubted.⁵⁸ In broad terms, it is achieved by Israel seizing land and resources in the Occupied

⁵⁵ See *Wall Advisory Opinion*, p. 184, para. 121 ("[T]he 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.").

⁵⁶ See *infra*, paras. 42-49.

⁵⁷ International Convention on the Elimination of All Forms of Racial Discrimination, 4 January 1969, 660 UNTS 195 ("CERD"), Preamble, Article 1(1), Article 2(1), Article 3 and Article 5.

⁵⁸ See, e.g., U.N. Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, Michael Lynk, U.N. Doc. A/HRC/49/87, 21 March 2022, paras. 35-56 (concluding that Israeli practices and policies over the Occupied Palestinian Territory "satisf[y] the prevailing evidentiary standard for the existence of apartheid."); U.N. Economic and Social Commission for Western Asia, Resolution 316 (XXVIII) (18 September 2014), para. 5 ("Condemns the practices and policies of the Israeli occupation in the Occupied Palestinian Territory, which amount to apartheid, cause a continuous deterioration of their economic and social conditions and violate the collective and individual rights of the Palestinian people."); U.N. Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, Richard Falk, U.N. Doc. A/HRC/25/67, January 2014, paras. 51-78 (considering the policies and practices of Israel in the Occupied Palestinian Territory in light of the prohibition on segregation and apartheid). See also *infra*, paras. 67-73.



Palestinian Territory for the exclusive use and enjoyment of Israeli settlements and settlers while limiting, through the restrictive and discriminatory application of laws and regulations, as well as military control, the right of Palestinians to exercise fundamental freedoms and social and economic rights in those same areas and to live normal lives.⁵⁹

30. The prohibition against racial discrimination generally and the prohibition of *apartheid* in particular are also *jus cogens* norms generating *erga omnes* obligations.⁶⁰ Through its policies and practices in the Occupied Palestinian Territory, Israel is in grave violation of those obligations.⁶¹

31. The questions by the General Assembly in Resolution 77/247 request the Court not only to assess the legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, but also to opine on how those policies and practices affect the legal status of the occupation. As the Kingdom of Saudi Arabia will further elaborate in Section IV of this written statement, the policies and practices of Israel in the Occupied Palestinian Territory in violation of peremptory norms of international law, including the right to self-determination, fundamental principles of international humanitarian law and the prohibition against racial discrimination and segregation, have rendered Israel's prolonged occupation of the Occupied Palestinian Territory illegal under international law.

32. The illegality of Israel's prolonged occupation under such multiple grounds and the international responsibility it therefore incurs can only be remedied, and Israel brought into compliance with its international obligations, by its unconditional withdrawal from the Occupied Palestinian Territory, including East Jerusalem, the dismantling of the separation wall where it encroaches on the Occupied Palestinian Territory, the removal of Israeli settlers from the Occupied

⁵⁹ See *infra*, paras. 67-73 (referring to the Independent Commission's Reports recording these practices).

⁶⁰ See Commentaries to ILC Articles on State Responsibility, Commentary to Article 26, para. 5; Commentary to Article 40, para. 4; *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (Second Phase), Judgment, I.C.J. Reports 1970 ("Barcelona Traction")*, paras. 33-34. See also *Namibia Advisory Opinion*, p. 57, paras. 130-131 (describing the policy of apartheid as applied by South Africa).

⁶¹ See *infra*, paras. 67-73.



Palestinian Territory, including East Jerusalem, the repeal of all legal and administrative measures in furtherance of the illegal occupation, and Israel's full reparation for the injury caused to the State of Palestine and its inhabitants over the length of Israel's illegal occupation.

33. As the Court held in the *Wall Advisory Opinion*, as a consequence of the "character and the importance of the rights and obligations involved," all States have "an obligation not to recognize the illegal situation," nor "to render aid or assistance in maintaining [the illegal situation and] to see to it that any impediment, resulting [from the illegal situation], to the exercise by the Palestinian people of its right to self-determination is brought to an end."⁶²

34. Israel's illegal occupation and defiance of resolutions by U.N. organs with respect to the Occupied Palestinian Territory undermines the authority of the U.N. and should lead it and its Member States to redouble their efforts to require Israel, in the interests of the maintenance of international peace and security and compliance with international law, to unconditionally end its occupation and right the wrongs of its illegal conduct.

IV. ISRAEL'S POLICIES AND PRACTICES IN THE OCCUPIED PALESTINIAN TERRITORY IN BREACH OF PEREMPTORY NORMS OF GENERAL INTERNATIONAL LAW RENDER THE OCCUPATION ILLEGAL UNDER INTERNATIONAL LAW

35. The formulation of the questions by the General Assembly in Resolution 77/247, building on the *Wall Advisory Opinion*, quite correctly considers that the policies and practices of Israel in the Occupied Palestinian Territory constitute an "ongoing violation by Israel of the right of the Palestinian people to self-determination."⁶³ Nevertheless, answering the questions posed by the General Assembly similarly requires an assessment of whether the specific policies and practices of Israel mentioned or alluded to in the questions are in breach of this and other relevant rules and principles of international law, including those mentioned in paragraph 18 of Resolution 77/247,

⁶² *Wall Advisory Opinion*, p. 200, para. 159. See also *Namibia Advisory Opinion*, pp. 55-56, paras. 123-126.

⁶³ U.N. General Assembly Resolution 77/247 (2022), para. 18 (U.N. Dossier No. 3).



and a determination of the legal consequences arising from those ongoing violations.⁶⁴ The second question by the General Assembly also asks how the policies and practices of Israel in the Occupied Palestinian Territory affect the legal status of the occupation and for a determination of the legal consequences for all States and the United Nations arising from this status.

36. As the Kingdom of Saudi Arabia stated in its written submissions in the *Wall Advisory Opinion*, Israel's occupation of the Occupied Palestinian Territory has always been illegal under international law as it was the result of the use of force in violation of Article 2.4 of the U.N. Charter and customary international law prohibiting the acquisition of territory through the use of force.⁶⁵

37. In the *Wall Advisory Opinion*, the Court described the obligations violated by Israel with respect to the construction of the wall as obligations *erga omnes*, including "the obligation to respect the right of the Palestinian people to self-determination" and "obligations under international humanitarian law."⁶⁶ The Court also explained that, as a consequence of the "character and the importance of the rights and obligations involved," particular consequences ensue to all States, including the obligation of all States "not to recognize the illegal situation" nor "to render aid or assistance in maintaining" the illegal situation, and 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."⁶⁷

38. Over the past almost 20 years since the *Wall Advisory Opinion* was issued, Israel has ignored the Court's opinion, not only by continuing to build and maintain the wall, but also by continuing the policies and practices described in this Section which further violate the right of the Palestinian people to self-determination, are tantamount to *de facto* annexation, violate

⁶⁴ *Id.*

⁶⁵ *Wall Advisory Opinion*, Written Statement of the Kingdom of Saudi Arabia, dated 30 January 2004, para. 11.

⁶⁶ *Wall Advisory Opinion*, p. 199, para. 155.

⁶⁷ *Id.*, p. 200, para. 159. See also *Namibia Advisory Opinion*, pp. 55-56, paras. 123-126.



fundamental rules and principles of international humanitarian law and amount to racial discrimination and segregation. These policies and practices of Israel in violation of these *jus cogens* norms have rendered the occupation, viewed in its entirety, as egregiously illegal. As noted in paragraph 37, *supra*, under international law particular legal consequences are attached to violations of *jus cogens* norms, and such consequences should therefore apply in addressing Israel's occupation.⁶⁸

39. The reported violations of Israel's international law obligations since the *Wall Advisory Opinion* was issued have continued to be the subject of resolutions by several United Nations organs and specialized agencies, which Israel has also ignored. These include, among others, Security Council Resolution 2334 (2016), General Assembly Resolutions 66/17 (2011), 66/146 (2011), 75/22 (2020) and 77/247 (2022), and Human Rights Council Resolution S-30/1 (2021).⁶⁹

40. By Resolution S-30/1 dated 27 May 2021, the United Nations Human Rights Council also established the Independent Commission, whose mandate was "to investigate in the Occupied Palestinian Territory, including East Jerusalem, and in Israel all alleged violations of international humanitarian law and all alleged violations and abuses of international human rights law leading up to and since 13 April 2021 and all underlying root causes of recurrent tensions, instability and protraction of conflict, including systematic discrimination and repression based on national, ethnic, racial or religious identity."⁷⁰

⁶⁸ See *infra*, paras. 80-82 (citing to *Wall Advisory Opinion*, pp. 199-200, paras. 154-159; International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts (2001), in *Report of the International Law Commission on the Work of Its Fifty-Third Session* (2001), document A/56/10, Chapter V, reproduced in *ILC Yearbook 2001*, Vol. II(2) ("ILC Articles on State Responsibility"), Articles 40 and 41).

⁶⁹ U.N. Security Council Resolution 2334 (2016) (U.N. Dossier No. 1372); U.N. General Assembly Resolution 66/17 (2011) (U.N. Dossier No. 505); U.N. General Assembly Resolution 66/146 (2011) (U.N. Dossier No. 370); U.N. General Assembly Resolution 75/22 (2020) (U.N. Dossier No. 514); U.N. General Assembly Resolution 77/247 (2022) (U.N. Dossier No. 3); U.N. Human Rights Council Resolution S-30/1 (27 May 2021), U.N. Doc. A/HRC/RES/S-30/1.

⁷⁰ U.N. Human Rights Council Resolution S-30/1 (27 May 2021), U.N. Doc. A/HRC/RES/S-30/1, para. 1.



41. As noted in paragraph 4 above, the Independent Commission has so far issued three separate reports describing the results of its investigation: the First Report dated 9 May 2022, the Second Report dated 14 September 2022 and the Third Report dated 9 May 2023. As discussed below, the Reports detail a plethora of actions taken by Israel in the Occupied Palestinian Territory, including East Jerusalem, in respect of Palestinian land and against the Palestinian people that constitute severe and ongoing violations of its international law obligations. The findings of some of the hundreds of additional exhaustive studies by U.N. human rights mandate holders and by several U.N. specialized agencies and bodies with geographical mandate in the Occupied Palestinian Territory, which will also be referred to in this section, have reached similar conclusions.⁷¹

A. The Policies and Practices of Israel Referred to in the Questions Posed by the General Assembly Constitute a Systematic Denial of the Palestinian People's Right to Self-Determination

42. The principle of self-determination of peoples enshrined in Articles 1(2), 55 and 56 of the U.N. Charter has been reaffirmed by the General Assembly in key resolutions, including Resolutions 1514 (XV)⁷² and 2625 (XXV).⁷³ The customary international law right to self-determination includes the right of all peoples to “freely determine their political status and freely pursue their economic, social and cultural development” without external interference and to the “integrity of their national territory.”⁷⁴

⁷¹ *Supra*, n. 7.

⁷² U.N. General Assembly Resolution 1514 (XV) (1960), paras. 1-2, 4.

⁷³ U.N. General Assembly Resolution 2625 (XXV) (1970), Annex.

⁷⁴ U.N. General Assembly Resolution 1514 (XV) (1960), paras. 2, 4, 7. *See also* U.N. General Assembly Resolution 33/24 (1978), para. 3 (“*Reaffirm[ing]* the inalienable right of the . . . Palestinian people and of all peoples under alien and colonial domination to self-determination, national independence, territorial integrity, national unity and sovereignty without external interference”) (U.N. Dossier No. 294); U.N. General Assembly Resolution 36/120 (1981) (D), para. 2 (U.N. Dossier No. 389).

KINGDOM OF SAUDI ARABIA

MINISTRY OF FOREIGN AFFAIRS

Minister's Office



المملكة العربية السعودية
وزارة الخارجية
الرياض

43. The *jus cogens* and *erga omnes* character of the right of peoples to self-determination has been confirmed by the Court in its jurisprudence⁷⁵ and by the International Law Commission.⁷⁶ The Court has also confirmed that Israel is obligated to respect the Palestinian people's right to self-determination under international law, and that Israel has taken various actions which violate its obligation to do so.⁷⁷

44. In its written statement in the *Wall Advisory Opinion* proceedings, the Kingdom of Saudi Arabia warned that, should the separation wall stand, it would "make a mockery of the efforts of the international community" to ensure the exercise of the Palestinian people's right to self-determination on their own territory.⁷⁸

45. The recognized and established right of the Palestinian people to self-determination continues to be at the core of the questions presented to the Court. Israel's actions since the *Wall Advisory Opinion* in 2004 have continued to undermine the international community's efforts to ensure that the Palestinian people are able to exercise their right to self-determination in the Occupied Palestinian Territory, by creating a *fait accompli* which makes a negotiated solution leading to Palestinian self-determination in that territory unviable if not impossible in the absence of the reversal of such actions. There can be no doubt that an independent and viable Palestinian State is incompatible with the *de facto* reality Israel has created, and continues to pursue, on the ground in the Occupied Palestinian Territory.

⁷⁵ *East Timor*, p. 102, para. 29 ("In the Court's view, Portugal's assertion that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable. The principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court (see [*Namibia Advisory Opinion*], pp. 31-32, paras. 52-53; [*Western Sahara Advisory Opinion*], pp. 31-33, paras. 54-59); it is one of the essential principles of contemporary international law."); *Wall Advisory Opinion*, pp. 199-200, paras. 155, 159; *Chagos Advisory Opinion*, p. 139, para. 180.

⁷⁶ See Commentaries to ILC Articles on State Responsibility, Commentary to Article 26, para. 5; Commentary to Article 40, para. 5.

⁷⁷ *Wall Advisory Opinion*, pp. 184, 197, 199, paras. 122, 149, 155.

⁷⁸ *Wall Advisory Opinion*, Written Statement by the Kingdom of Saudi Arabia, dated 30 January 2004, para. 24.



46. The policies and practices of Israel referred to in the questions from the General Assembly, including prolonged and oppressive occupation of more than five decades, resulting in the acquisition of territory by force through annexing some parts of territory *de jure* and others *de facto* and by the seizing of land and resources for Israeli settlements, have served to systematically deprive the Palestinian people of their right to self-determination in clear violation of fundamental norms of international law, and constitute evidence of Israel's colonization purposes.

47. As one example of this unlawful conduct, the Second Report describes how Israel has "sever[ed] the geographical contiguity between East Jerusalem and the rest of the occupied West Bank" by building settlements beyond the boundaries of Jerusalem.⁷⁹ Like the separation wall, this conduct is aimed at putting an end to the possibility of a two-State solution by substantially modifying the boundaries and characteristics of the Occupied Palestinian Territory "to conform to the point of view of only one party to the negotiations, making a mutually acceptable result impossible to achieve."⁸⁰

48. Israel's Basic Law of 2018 entitled "Israel as the Nation-State of the Jewish People" constitutes a further violation of the Palestinian people's right to self-determination. Under this law the right to self-determination is "exclusive to the Jewish people" and the development of Israeli settlements is viewed as a "national value" which the State of Israel "will act to encourage and promote."⁸¹ It is self-evident that an exclusive right of the Jewish people to self-determination in any part of the Occupied Palestinian Territory constitutes a violation of the Palestinian people's right to self-determination in that territory.

⁷⁹ Second Report, para. 15.

⁸⁰ *Wall Advisory Opinion*, Written Statement by the Kingdom of Saudi Arabia, dated 30 January 2004, para. 25.

⁸¹ Basic Law: Israel – The Nation State of the Jewish People (2018, amended in 2022), available at: <https://m.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawNationState.pdf>, Articles 1(c) and 7. See also Human Rights Committee, *Concluding Observations on the Fifth Periodic Report of Israel*, U.N. Doc. CCPR/C/ISR/CO/5 (5 May 2022), paras. 10-11.



49. Israel has also flagrantly disregarded numerous resolutions by United Nations organs that reaffirm the Palestinian people's right to self-determination, including Security Council Resolution 242 (1967), General Assembly Resolutions 181 A and B (II) (1947), 3236 (XXIX) (1974), 75/22 (2020), and 77/208 (2022) and Human Rights Council Resolutions 40/22 (2019) and 49/28 (2022).⁸²

B. The Policies and Practices of Israel Constitute a *De Facto* Annexation of Territory by the Occupying Power in Violation of the *Jus Cogens* Norm Prohibiting the Acquisition of Territory Through the Use of Force

50. In its written statement in the *Wall Advisory Opinion* proceedings, the Kingdom of Saudi Arabia noted that after occupying Palestinian lands in 1967 by military force, Israel “[b]egan a program of encouraging and supporting and protecting Israeli settlements in the Occupied Palestinian Territory, including in and around Jerusalem,” and that “[e]ach step of this process has involved the confiscation and destruction of Palestinian land and resources.”⁸³

51. Since 2004, Israel has continued pursuing its pattern of confiscation and destruction of Palestinian land and resources in flagrant breach of Israel's obligations under international humanitarian law and repeated General Assembly and Security Council resolutions.⁸⁴ Relatively

⁸² U.N. Security Council Resolution 242 (1967) (U.N. Dossier No. 1245); U.N. General Assembly Resolution 181 (II) (1947); U.N. General Assembly Resolution 3236 (XXIX) (1974) (U.N. Dossier No. 382); U.N. General Assembly Resolution 75/22 (2020) (U.N. Dossier No. 514); U.N. General Assembly Resolution 77/208 (2022) (U.N. Dossier No. 381); U.N. Human Rights Council Resolution 40/22 (22 March 2019), U.N. Doc. A/HRC/RES/40/22; U.N. Human Rights Council Resolution 49/28 (1 April 2022), U.N. Doc. A/HRC/RES/49/28.

⁸³ *Wall Advisory Opinion*, Written Statement by the Kingdom of Saudi Arabia, dated 30 January 2004, para. 12.

⁸⁴ See, e.g., U.N. Security Council Resolution 2334 (2016), Preamble (“Condemning 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”) (U.N. Dossier No. 1372); U.N. General Assembly Resolution 77/187 (2022), Preamble (“Deploing the detrimental impact of the Israeli settlements on Palestinian and other Arab natural resources, especially as a result of the confiscation of land and the forced diversion of water resources, including the destruction of orchards and crops and the seizure of water wells by Israeli settlers, and of the dire socioeconomic consequences in this regard”) (U.N. Dossier No. 272). See also Second Report, paras. 76-77; U.N. General Assembly, *Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People*, U.N. Doc. A/77/35, 1 September 2022, paras. 12-13, 18 (describing the policies and practices of Israel in violation of international law and United Nations



recent and highly disturbing instances of the threat of home demolition and home eviction, following a practice that has been wide-spread for many years, have occurred in the neighborhoods of Sheikh Jarrah and Silwan in East Jerusalem.⁸⁵ The High Commissioner for Human Rights noted that the “eviction of Palestinian families from their homes in Sheikh Jarrah for the benefit of settlers, increas[ed] nationalistic and ethnic tensions, and restrictions and the use of force by Israel against Palestinians in East Jerusalem during Ramadan.”⁸⁶

52. The Reports also describe numerous steps taken by Israel by virtue of which it has *de facto* annexed or seized over 2 million dunams of Palestinian land in the Occupied Palestinian Territory since 1967.⁸⁷ Israel has built settlements on land—constituting 18% of the West Bank—that it claims are built on “closed military zones.”⁸⁸ Israel has also *inter alia* allowed Israeli settlers to cultivate over 14,000 dunams of land in closed military areas, some of which are based on private Palestinian land,⁸⁹ has declared over 750,000 dunams in the West Bank as State land under the 1967 Order Regarding Government Property (Judea and Samaria) No. 59,⁹⁰ and has designated Palestinian-owned parcels of land in the West Bank as nature reserves and parks.⁹¹ In addition, Israel has taken control of all water resources in the West Bank, using much of the water for its

resolutions and referring to the First Report of the Independent Commission set up by the Human Rights Council) (U.N. Dossier No. 483).

⁸⁵ See U.N. General Assembly, *Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories*, U.N. Doc. A/77/501, 3 October 2022, para. 36 (“The Special Committee was informed that at least 970 Palestinians, including more than 420 children, were currently facing the threat of home demolition and forced eviction in East Jerusalem, mostly in the neighborhoods of Sheikh Jarrah and Silwan.”) (U.N. Dossier No. 758).

⁸⁶ First Report, para. 41.

⁸⁷ Second Report, para. 39.

⁸⁸ Second Report, para. 31.

⁸⁹ *Id.*

⁹⁰ *Id.*, para. 33.

⁹¹ *Id.*, para. 34.



own purposes, prohibiting Palestinians from constructing new water installations or maintaining existing installations without a military permit.⁹²

53. Israel's actions with respect to the *de facto* annexation and seizure of Palestinian land violate its obligations as the Occupying Power under Articles 47, 49, 53 and 55 of the Fourth Geneva Convention, and customary international law as reflected in Articles 46, 47 and 55 of the Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907 ("Hague Regulations of 1907").⁹³

54. Moreover, numerous resolutions issued by U.N. organs have held that Israel's settlements are illegal and an obstacle to peace and to economic and social development of the Palestinian population.⁹⁴ Indeed, there can be no serious doubt that by continuing to allow and endorse the building of settlements by and for Israeli nationals, both as a matter of fact and in the 2018 Basic Law: "Israel as the Nation-State of the Jewish People,"⁹⁵ Israel deliberately and in bad faith intends to create a *fait accompli* that makes it more difficult to achieve full Israeli withdrawal from the

⁹² *Id.*, para. 35. See also U.N. General Assembly Resolution 77/187 (2022), paras. 7-8 (U.N. Dossier No. 272); U.N. Economic and Social Council Resolution 2022/22 (22 July 2022), U.N. Doc. E/RES/2022/22, para. 10 (U.N. Dossier No. 122).

⁹³ Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907, 3 *Martens Nouveau Recueil (ser. 3)* 461 ("Hague Regulations of 1907"), Articles 46 ("Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated."), 47 ("Pillage is formally forbidden"), and 55 ("The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.").

⁹⁴ See, e.g., U.N. General Assembly Resolution 2851 (XXVI) (1971) (U.N. Dossier No. 655); U.N. General Assembly Resolution 31/106 (A, C) (1976) (U.N. Dossier No. 660); U.N. General Assembly Resolution 35/122 (B, C) (1980) (U.N. Dossier No. 664); U.N. General Assembly Resolution 46/162 (1991) (U.N. Dossier No. 85); U.N. General Assembly Resolution 51/133 (1996) (U.N. Dossier No. 9); U.N. General Assembly Resolution 52/66 (1998) (U.N. Dossier No. 11); U.N. General Assembly Resolution 55/132 (1997) (U.N. Dossier No. 14); U.N. General Assembly Resolution 77/126 (2022) (U.N. Dossier No. 36); U.N. Security Council Resolution 2334 (2016), para. 1 (U.N. Dossier No. 1372).

⁹⁵ Basic Law: Israel – The Nation State of the Jewish People (2018, amended in 2022), available at: <https://m.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawNationState.pdf>. Article 7 ("The State views the development of Jewish settlement as a national value, and shall act to encourage and promote its establishment and consolidation.").



Occupied Palestinian Territory as required, amongst others, by Security Council Resolutions 242 (1967) and 2234 (2016).⁹⁶

55. Israel's actions are compounded further by recent statements made by senior Israeli officials who have confirmed the State's intention to make Israel's prolonged illegal occupation permanent and irreversible.⁹⁷ Those statements have the effect of indoctrinating and misleading Israeli civil society as to the true status of the Occupied Palestinian Territory, with public opinion polls further reflecting increasing support in favour of the expulsion of Palestinians from the Occupied Palestinian Territory.⁹⁸ The *de facto* annexation of the Occupied Palestinian Territory continues therefore to be Israel's *modus operandi* in clear violation of the *jus cogens* norm prohibiting the acquisition of territory through the use of force. Israel's policies and practices in the Occupied Palestinian Territory bear a striking resemblance to those employed by colonial powers, rather than those of an Occupying Power. Most concerning, the Israeli government's rhetoric about making Israel's prolonged and illegal occupation permanent and irreversible and an increasing support in favour of the expulsion of Palestinians from the Occupied Palestinian Territory—endorsed by some Israeli government officials—pose the risk and threat of the commission of further and heinous international crimes.⁹⁹

⁹⁶ U.N. Security Council Resolution 242 (1967), para. 1 (U.N. Dossier No. 1245); U.N. Security Council Resolution 2334 (2016), para. 2 (U.N. Dossier No. 1372). See also *Wall Advisory Opinion*, p. 184, para. 121; U.N. General Assembly Resolution 36/120 (1981) (D), paras. 3, 5 (U.N. Dossier No. 389); U.N. General Assembly Resolution 75/22 (2020), para. 12 (U.N. Dossier No. 514).

⁹⁷ Second Report, paras. 51-53.

⁹⁸ Israel's Religiously Divided Society, *Pew Research Center*, 8 March 2016, available at: <https://www.pewresearch.org/religion/wp-content/uploads/sites/7/2016/03/Israel-Survey-Full-Report.pdf>, p. 153 ("Nearly half of Israeli Jews say Arabs should be expelled"); *id.*, p. 154 ("[S]ome Israeli political figures have raised the possibility of an expulsion or voluntary 'transfer' of the Arab population.").

⁹⁹ See, e.g., Michael Bachner, Yamina's Kahana says he'd expel all Arabs, but admits they're here to stay, *The Times of Israel*, 14 June 2022, available at: <https://www.timesofisrael.com/yaminas-kahana-says-hed-transport-all-arabs-out-of-israel-on-trains-if-he-could/>.



56. Israel's *de facto* annexations are not only illegal in and of themselves, but they also effectively deprive the Palestinian people of the exercise of their right to self-determination over that territory.¹⁰⁰

C. Israel's Treatment of Palestinian Civilians Violates International Humanitarian Law

57. In its Second Report, the Independent Commission thoroughly describes Israel's "complex environment of coercion" against the Palestinian people and the resulting humanitarian effects.¹⁰¹

58. By way of example, the Second Report explains that Israel has caused the death of Palestinian civilians, including children,¹⁰² prohibited access to medical care to Palestinian citizens,¹⁰³ demolished and confiscated Palestinian homes and structures required for the livelihood of families, prohibited Palestinian construction in 70% of Area C of the West Bank,¹⁰⁴ pursued abusive water policies, land expropriation and waste dumping,¹⁰⁵ forcibly transferred citizens from their homes,¹⁰⁶ ordered the demolition of homes, schools and other structures,¹⁰⁷ and allowed the harassment of Palestinian women and girls by, among other forms of intimidation, subjecting them to searches at checkpoints conducted solely by male soldiers.¹⁰⁸

¹⁰⁰ *Supra*, paras. 42-49.

¹⁰¹ Second Report, para. 55. *See also* ESCWA June 2022 Report, para. 42 (U.N. Dossier No. 147).

¹⁰² Second Report, para. 58.

¹⁰³ *Id.*, para. 56.

¹⁰⁴ *Id.*, para. 42. Since the beginning of 2022, Israel has demolished 500 structures in the Occupied Palestinian Territory. *See id.*, para. 62.

¹⁰⁵ *Id.*, para. 72.

¹⁰⁶ *Id.*, paras. 60-63.

¹⁰⁷ *Id.*, paras. 58, 60-63. *See also* ESCWA June 2022 Report, para. 25 ("Demolitions and forced evictions as referred to below entail numerous human rights violations, exacerbate the coercive environment and raise concerns about the risk of forcible transfer. They also continue to raise concern about compliance with international humanitarian law provisions that are binding on the occupying Power, including the prohibition of the destruction of property and institutions dedicated to education.") (U.N. Dossier No. 147).

¹⁰⁸ Second Report, para. 59.



59. Israel has also imposed an inhumane blockade on Gaza since 2007, effectively occupying the territory by, as described by the Independent Commission, controlling its airspace, territorial waters, land crossings, civil infrastructure, including water and electricity, “and key governmental functions such as the management of the Palestinian population registry.”¹⁰⁹ As described by the Independent Commission in its First Report, Israel’s 15-year blockade over Gaza and its destruction of essential infrastructure has caused the population to face critical restrictions on its freedom of movement for both individuals and goods.¹¹⁰

60. Israel further buttresses its complex environment of coercion against Palestinian civilians by deploying an administrative detention regime that allows military commanders to detain an individual for six months, extendable by six additional months for reasons of alleged public security. Importantly, Israeli law does not define a maximum period of detention, meaning “administrative detainees may, in theory, remain in detention indefinitely.”¹¹¹ Since 1967, more than 800,000 Palestinians have been subjected to administrative detention without charge or trial.¹¹² Recent reports of U.N. human rights bodies indicate that as of March 2023 there were approximately 1,000 Palestinians in administrative detention, which is said to be the highest number in 15 years.¹¹³

¹⁰⁹ *Id.*, paras. 19-20.

¹¹⁰ First Report, para. 43.

¹¹¹ See U.N. General Assembly, *Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories*, U.N. Doc. A/64/339, 9 September 2009, para. 80 (U.N. Dossier No. 745).

¹¹² Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, *End-of-mission Statement*, 15 July 2022, available at: <https://www.un.org/unispal/document/end-of-mission-statement-by-the-un-special-committee-to-investigate-israeli-practices-2/>. See also Third Report, para. 23.

¹¹³ Statement by High Commissioner of Human Rights on Report on the OPT, 3 March 2023, available at: <https://www.un.org/unispal/document/ohchr-statement-opt-3mar2023/> (“Currently, 967 Palestinians are being held in what is termed administrative detention, in which people are arbitrarily detained for often lengthy periods without charge or trial. This is the highest number in 15 years.”) (emphasis added); Special Rapporteurs Demand Accountability for Death of Khader Adnan and Mass Arbitrary Detention of Palestinians, *Press Release*, 3 May 2023, available at: <https://www.un.org/unispal/document/special-rapporteurs-demand-accountability-for-death-of-khader-adnan-and-mass-arbitrary-detention-of-palestinians-press-release/> (“Israel currently holds approximately 4900



61. Israel's actions deprive the Palestinian people of their basic livelihood and dignity and are in manifest violation of Israel's obligations under Articles 27, 32 and 33 of the Fourth Geneva Convention and Article 46 of the Hague Regulations of 1907. The forcible displacement of the Palestinian people from the Occupied Palestinian Territory is a violation of Article 49(1) of the Fourth Geneva Convention and constitutes a grave breach under Article 147 of such Convention. Additionally, Israel's practice of encouraging, supporting and protecting Israeli settlements in the Occupied Palestinian Territory, including in and around Jerusalem, is a violation of Article 49(6) of the Fourth Geneva Convention.¹¹⁴ As explained by the International Committee of the Red Cross, Article 49(6) of such Convention "is intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories."¹¹⁵ The same colonization objective is evinced by Israel's settlement practices in the Occupied Palestinian Territory. Furthermore, Israel's administrative detention of Palestinian civilians is tantamount to a grave breach of the Fourth Geneva Convention, of "wilfully depriving a protected person of the rights of fair and regular trial" under Article 147 of the same Convention.¹¹⁶

Palestinians in its prisons, including 1016 administrative detainees who are held for an indefinite period without trial or charge, based on secret information. The number of administrative detainees in Israeli detention facilities is at its highest since 2008, despite repeated condemnation from international human rights bodies and recommendations for Israel to immediately end the practice. In recent years, many Palestinian prisoners have resorted to hunger strikes to protest the brutality of Israel's detention practices."). See also ESCWA June 2022 Report, paras. 17-24 (discussing the violations of international humanitarian law and international human rights law in relation to the ill-treatment and the practice of administrative detention of Palestinians by Israeli authorities) (U.N. Dossier No. 147).

¹¹⁴ *Wall Advisory Opinion*, pp. 183-184, para. 120 (noting that Article 49(6) of the Fourth Geneva Convention "prohibits not only deportations or forced transfers of population such as those carried out during the Second World War, but also any measures taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory.").

¹¹⁵ International Committee of the Red Cross, *Commentary of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, 1958, p. 283. See also U.N. General Assembly Resolution 77/126 (2022), Preamble (U.N. Dossier No. 36), U.N. General Assembly Resolution 77/247 (2022), para. 2 (U.N. Dossier No. 3); U.N. Security Council Resolution 465 (1980), para. 5 (U.N. Dossier No. 1267).

¹¹⁶ Special Rapporteurs Demand Accountability for Death of Khader Adnan and Mass Arbitrary Detention of Palestinians, *Press Release*, 3 May 2023, available at: <https://www.un.org/unispal/document/special-rapporteurs->



D. Israel's Actions Concerning the Holy City of Jerusalem Are Aimed at Altering the Special Status of the City Under International Law

62. As described in the Reports, Israel has taken significant steps with respect to Jerusalem that serve to alter the demographic composition, character and status of the Holy City. For instance, Israel has revoked residence permits of and evicted Palestinian residents from the City of Jerusalem¹¹⁷ and allowed the building of settlements around and encircling the boundaries of Jerusalem, thereby severing “the geographical contiguity between East Jerusalem and the rest of the occupied West Bank.”¹¹⁸ Israel has likewise introduced restrictive planning and zoning regimes in East Jerusalem that obstruct adequate housing infrastructure and contribute to “shrinking space for Palestinians.”¹¹⁹

63. Israeli security forces have also directed religion-based violence and intimidation against the Muslim population in Jerusalem by restricting access to and regularly storming the Al Aqsa mosque grounds and attacking Muslim worshipers.¹²⁰ This conduct represents an attack on both the Palestinian people and the global Muslim population.

64. By enacting the “Basic Law: Jerusalem” in July 1980, which declared Jerusalem as Israel’s capital, Israel effectively solidified the *de jure* annexation of the city.¹²¹ The U.N. Security Council

[demand-accountability-for-death-of-khader-adnan-and-mass-arbitrary-detention-of-palestinians-press-release/](#) (“The systematic practice of administrative detention, is tantamount to a war crime of wilfully depriving protected persons of the rights of fair and regular trial.”). See also U.N. General Assembly, *Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories*, U.N. Doc. A/77/501, 3 October 2022, paras. 8, 30 (U.N. Dossier No. 758).

¹¹⁷ U.N. General Assembly Resolution 77/247 (2022), p. 4 (U.N. Dossier No. 3).

¹¹⁸ Second Report, para. 15.

¹¹⁹ *Id.*

¹²⁰ Francesca Albanese, Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967, Statement (6 April 2023), available at: <https://www.ohchr.org/en/press-releases/2023/04/israel-un-expert-condemns-brutal-attacks-palestinians-al-aqsa-mosque> (“As Palestinian Muslims gathered for Ramadan prayers exercising their right to worship in Al-Aqsa Mosque, Israeli authorities used blatantly excessive and unjustified force against them.”).

¹²¹ Second Report, para. 16.



condemned the Basic Law of 1980 as null and void through Resolution 476 (1980)¹²² and Resolution 478 (1980).¹²³ Israel ignored those resolutions and, on the contrary, has undertaken sustained and increased efforts to forcibly control the city and its Palestinian environs, displace its Palestinian inhabitants and erase its Palestinian history.¹²⁴

65. By continuing to alter the demographic composition, character and status of the Holy City of Jerusalem, Israel's actions in respect of Jerusalem violate various U.N. Security Council Resolutions, including Resolutions 252 (1968), 476 (1980) and 478 (1980).¹²⁵ Moreover, Israel's continuous violations and hostilities towards the Holy Sites increase tension between all parties involved and cause an endless cycle of violence.

66. Israel's conduct, as the Occupying Power, with respect to Jerusalem is not only in flagrant violation of U.N. Security Council resolutions, its obligations under international humanitarian law and, insofar as it has *de jure* annexed East Jerusalem, of the prohibition against the acquisition of territory by force. Israel's conduct must also be seen as part of its efforts to establish a system of racial segregation in the Occupied Palestinian Territory given the establishment and growth of

¹²² U.N. Security Council Resolution 476 (1980), para. 3 ("Reconfirms that all legislative and administrative measures and actions taken by Israel, the occupying Power, which purport to alter the character and status of the Holy City of Jerusalem have no legal validity and constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War") (U.N. Dossier No. 1273).

¹²³ U.N. Security Council Resolution 478 (1980), para. 3 ("Determines 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, and in particular the recent 'basic law' on Jerusalem, are null and void and must be rescinded forthwith.") (U.N. Dossier No. 1274). See also U.N. General Assembly Resolution 36/120 (1981) (D), para. 6; (E), paras. 1, 3 (U.N. Dossier No. 389).

¹²⁴ See First Report, paras. 15-16, 41-45, 49-50; Second Report, paras. 15-20, 27, 31-35, 42, 51-58, 60-66, 72, 78. Notably, the Independent Commission describes Israel's "[d]emolition and confiscation of livelihood structures, such as shops, animal shelters, walls, and warehouses as well as of infrastructure, such as water pipes [...]" and explains that since the beginning of 2022, "Israel has demolished 500 structures in the Occupied Territory." Second Report, para. 62. The Independent Commission also detailed Israel's abusive "water policies, land expropriation and waste dumping." *Id.*, para. 72.

¹²⁵ U.N. Security Council Resolution 252 (1968) (U.N. Dossier No. 1247); U.N. Security Council Resolution 476 (1980) (U.N. Dossier No. 1273); U.N. Security Council Resolution 478 (1980) (U.N. Dossier No. 1274).



Israeli-only settlements in and around East Jerusalem, in contrast to the various restrictions imposed on the Palestinian citizens of the city, discussed in detail in the Reports.

E. Israel's Policies and Practices Vis-à-vis the Palestinian People Have Resulted in Systematic Violations of Human Rights and Amount to Racial Discrimination and Segregation

67. The adoption of discriminatory legislation and measures, the settlement policy of Israel in its capacity as the Occupying Power, and the system of administration and forcible control exercised by Israel in the Occupied Palestinian Territory have resulted in systematic violations of multiple human rights treaties to which Israel is a party.

68. Israel's practices that affect women and children are of particular concern. Since 1967, thousands of children have been displaced and forcibly transferred from their homes and women and girls have faced gender-based violence by Israelis, including "attacks, harassment and threats directed at women and girls by settlers."¹²⁶ There can be no doubt that Israel's dehumanizing acts against women and children violate, respectively, Israel's obligations under the Convention on the Elimination of Discrimination Against Women and the Convention on the Rights of the Child.¹²⁷

69. As noted in paragraphs 29 and 30, *supra*, the measures carried out by Israel in the Occupied Palestinian Territory also impose an obvious system of segregation and racial discrimination

¹²⁶ Second Report, para. 78.

¹²⁷ See, e.g., U.N. Economic and Social Council Resolution 2022/23 (22 July 2022), U.N. Doc. E/RES/2022/23, paras. 2, 4 ("Situation of and assistance to Palestinian women") (U.N. Dossier No. 185); Second Report, paras. 56-59 (raising concerns about Israel prohibiting access to medical care to Palestinian citizens, which especially affects pregnant women, as well as condemned the harassment by Israeli male soldiers of Palestinian women and girls by conducting searches by male soldiers at checkpoints).



tantamount to *apartheid*, contrary to Israel's obligations under the CERD¹²⁸ and to the *jus cogens* norm prohibiting such heinous practices.¹²⁹

70. The reality of this *apartheid* system imposed by Israel in the Occupied Palestinian Territory has been amply documented by several U.N. human rights mandate holders and in the Reports of the Independent Commission. The core features of the racial segregation and discrimination tantamount to *apartheid* in the Occupied Palestinian Territory encompass legislation, policies and practices of Israel with the purpose of establishing and maintaining domination over Palestinians and systematically oppressing them by severely limiting or depriving them of the exercise of their fundamental rights including right to life and liberty, right to property, access to justice, freedom of movement and residence, right to freedom of peaceful assembly and association.¹³⁰ The central means by which Israel enforces its *apartheid*-like policies and practices is through the illegal

¹²⁸ CERD, Preamble ("Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist . . . Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation"); *id.*, Article 1(1) (defining "racial discrimination" as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."); *id.*, Article 2(1) ("States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms"); *id.*, Article 3 ("States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction."); *id.*, Article 5 ("In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights . . ."). *Supra*, para. 30.

¹²⁹ See Commentaries to ILC Articles on State Responsibility, Commentary to Article 26, para. 5; Commentary to Article 40, para. 4; *Barcelona Traction*, paras. 33-34.

¹³⁰ See, e.g., U.N. Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, Michael Lynk, U.N. Doc. A/HRC/49/87, 21 March 2022, paras. 35-56 (concluding that Israeli practices and policies over the Occupied Palestinian Territory "satisf[y] the prevailing evidentiary standard for the existence of apartheid"); U.N. Economic and Social Commission for Western Asia, *Israeli Practices towards the Palestinian People and the Question of Apartheid*, U.N. Doc. E/ESCWA/ECRI/2017/1, 15 March 2017, pp. 37-47; U.N. Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, Richard Falk, U.N. Doc. A/HRC/25/67, January 2014, paras. 51-78 (considering the policies and practices of Israel in the Occupied Palestinian Territory in light of the prohibition on segregation and apartheid).



seizure of land, properties and resources in the Occupied Palestinian Territory for the exclusive benefit of Israeli settlements and Israeli settlers, while at the same time displacing the Palestinian population, and limiting, through the restrictive and discriminatory application of laws and regulations, as well as military control and legislation, the right of Palestinians to exercise fundamental freedoms in those same areas.¹³¹

71. Israel's adoption of the 2018 Basic Law: "Israel as the Nation-State of the Jewish People" which, as mentioned above, recognizes the right to self-determination solely to Jewish people and "views the development of Jewish settlement as a national value, ... encourag[ing] and promot[ing] its establishment and consolidation,"¹³² adds yet a further dimension to this system of segregation and racial discrimination given Israel's obvious intention to permanently retain and annex large areas of the Occupied Palestinian Territory, if not its entirety, and apply the discriminatory provisions of the law to that territory.¹³³

72. In the context of the regime of domination and oppression of the Palestinian people in the Occupied Palestinian Territory, the Israeli authorities implement policies and practices that severely deprive Palestinians of their fundamental rights pursuant to Article 5 of the CERD and which constitute "inhuman acts" under Article 2 of the International Convention on the Suppression and Punishment of the Crime of Apartheid:¹³⁴

¹³¹ U.N. Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, Michael Lynk, U.N. Doc. A/HRC/49/87, 21 March 2022, paras. 35-45. Cf. *Namibia Advisory Opinion*, p. 57, paras. 130-131 (describing the policy of apartheid as applied by South Africa).

¹³² Basic Law: Israel - The Nation State of the Jewish People (2018, amended in 2022), available at: <https://m.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawNationState.pdf>, Article 7.

¹³³ U.N. Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, Michael Lynk, U.N. Doc. A/HRC/49/87, 21 March 2022, paras. 48-49.

¹³⁴ International Convention on the Suppression and Punishment of the Crime of Apartheid, 18 July 1976, 1015 UNTS 243 ("Apartheid Convention"), Article 2. While Palestine is a party to the Apartheid Convention, Israel is not. See U.N. Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, Richard Falk, U.N. Doc. A/HRC/25/67, January 2014, para. 54 and n. 60 (noting that the Apartheid Convention "continues to inform the prohibition of apartheid in international law" despite the fact that Israel is not a party to it).



- a. The right to life of Palestinian people has not been protected by Israel, which has caused the deaths of Palestinian civilians by prohibiting access to medical care and pursuing abusive water policies, among other abuses.¹³⁵ In addition, settler violence and attacks also violate the right of Palestinians to life, liberty and security of the person.¹³⁶ There has been a significant increase in the incidence, frequency and severity of settler violence in recent years and in the involvement of the Israeli security forces in such violence, as well as other acts of impunity directed against Palestinian civilians by the Israeli military.¹³⁷
- b. Israel's legislative measures and court decisions have authorized settlements to be built on private Palestinian land in the Occupied Palestinian Territory in violation of the right to residence of the Palestinians affected.¹³⁸
- c. Under the military law applied in the Occupied Palestinian Territory, assemblies of Palestinians may be regarded as a security threat so that Palestinians' "freedoms of peaceful assembly and association are severely restricted."¹³⁹
- d. The development of a dual legal system provides Israeli settlers with rights such as health insurance, social services, education and right of entry into and out of Israel whereas the Palestinian population enjoys none of those rights.¹⁴⁰
- e. Palestinians are also subject to the military legal system presided over by Israeli military judges which offers very few of the procedural and substantive protections of a purposive

¹³⁵ Second Report, paras. 35, 56, 62.

¹³⁶ *Id.*, paras. 64, 66; U.N. Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, Richard Falk, U.N. Doc. A/HRC/25/67, January 2014, para. 55.

¹³⁷ First Report, para. 50; Third Report, para. 21.

¹³⁸ Second Report, para. 27.

¹³⁹ *Id.*, para. 47.

¹⁴⁰ *Id.*, paras. 25, 46, 47.



criminal legal system, while Israeli settlers are under the full protection of Israeli criminal law.¹⁴¹

- f. Racial discrimination is also systemic in relation to the freedom of movement, where movement permit requirements, military incursions, and checkpoints remain a part of daily life for Palestinians while Israeli settlers do not face any of such impediments.¹⁴² There is also clear road segregation for the exclusive use of the Israeli population.¹⁴³ In Gaza in particular, given the 15-year blockade, and the “destruction of essential infrastructure, the population continues to face critical restrictions on the freedom of movement of both individuals and goods.”¹⁴⁴
- g. As the First Report of the Independent Commission notes, there are systematic violations resulting from discriminatory planning and zoning laws and policies, confiscation of land and natural resources, routine demolition of homes and forced eviction.¹⁴⁵

73. Thus, Israel’s discriminatory practices against the Palestinian people in general violate Israel’s obligations under the CERD prohibiting racial discrimination, which is a *jus cogens* norm.¹⁴⁶ That these practices amount to a systematic government-inspired and supported system of racial discrimination tantamount to *apartheid* throughout the Occupied Palestinian Territory cannot be hidden or seriously denied, and the Court should therefore recognize and condemn those

¹⁴¹ First Report, para. 45. *See also* U.N. Human Rights Council, *Report of the Independent International Fact-Finding Mission to Investigate the Implications of Israeli settlements on the civil, political, economic, social, and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, U.N. Doc. A/HRC/22/63, 7 February 2013, paras. 39-40, 46-47.

¹⁴² First Report, para. 42. *See also* ESCWA June 2022 Report, paras. 52-55 (U.N. Dossier No. 147); U.N. Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, Michael Lynk, U.N. Doc. A/HRC/49/87, 21 March 2022, para. 50.

¹⁴³ First Report, para. 29.

¹⁴⁴ *Id.*, paras. 43, 49.

¹⁴⁵ *Id.*, para. 51.

¹⁴⁶ *See* Commentaries to ILC Articles on State Responsibility, Commentary to Article 26, para. 5; Commentary to Article 40, para. 4. *See also* *Barcelona Traction*, paras. 33-34.



practices as such. Moreover, the reality of the *apartheid*-like system Israel has implemented in the Occupied Palestinian Territory demonstrates in the clearest manner possible the need for the U.N., and the international community at large, to unambiguously declare the occupation illegal in its entirety and require that it be put to an end.

V. LEGAL CONSEQUENCES OF ISRAEL'S ONGOING VIOLATIONS OF INTERNATIONAL LAW

74. This Section will deal with the legal consequences arising from the violations by Israel of the relevant rules and principles of international law referred to in Section IV and with the legal consequences for all States and the United Nations arising from the illegality of Israel's occupation.

A. Legal Consequences of Israel's Illegal Occupation under International Law

75. The Court concluded in the *Wall Advisory Opinion* that the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to various of Israel's international obligations. It also set out the legal consequences with respect to Israel's violations of its international humanitarian law and international human rights law obligations. These include Israel's obligation to (i) comply with its international law obligations; (ii) cease its internationally wrongful acts, and (iii) pay reparations.¹⁴⁷

76. Israel continues to be in breach of its international law obligations as a consequence of its prolonged occupation of the Occupied Palestinian Territory, including East Jerusalem, and other related conduct, as specified above. Israel thus incurs international responsibility arising from a continuing violation of its international obligations for as long as such violations continue.¹⁴⁸ Thus,

¹⁴⁷ *Wall Advisory Opinion*, pp. 197-198, paras. 148-153.

¹⁴⁸ ILC Articles on State Responsibility, Article 14(2) ("Extension in time of the breach of an international obligation . . . (2) The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation."); Commentaries to ILC Articles on State Responsibility, Commentary to Article 14, para. 3 ("In accordance with paragraph 2, a continuing wrongful act, on the other hand, occupies the entire period during which the act continues and remains not in conformity with the international obligation, provided that the State is bound by



viewed from the perspective of international law, the passage of ever-increasing periods of time during which Israel stubbornly refuses to comply with its international obligations does nothing to aid Israel in evading those obligations, but on the contrary will only serve to amplify the damage it causes to the Palestinian people and ultimately increase the extent of the reparations it will be legally required to assume responsibility for paying to the Palestinian people.

77. As stated by the Court in the *Namibia Advisory Opinion*, determinations by the U.N. Security Council and General Assembly that a State has and continues to commit severe and egregious wrongful acts, including those determinations noted in the long list of resolutions mentioned at paragraph 25, *supra*, "cannot remain without consequence."¹⁴⁹ In light of these multiple, continuing and grave violations of international law committed by Israel in illegally maintaining its prolonged occupation over the Occupied Palestinian Territory, including East Jerusalem, over more than five decades, that occupation is, in its entirety, wrongful under international law and, with respect, must be declared illegal by the Court.

78. Such internationally wrongful acts entail several legal consequences. Israel, which is responsible for having created and maintained a situation that has been declared as a flagrant violation of international law, has the obligation to put an end to it. Specifically, Israel must:

- a. Comply with its obligations under international law, including respecting the right to self-determination of the Palestinian people, as well as its obligations under international humanitarian law and international human rights law;
- b. Immediately cease all internationally wrongful acts arising from its illegal occupation of the Occupied Palestinian Territory, including East Jerusalem;

the international obligation during that period. Examples of continuing wrongful acts include the maintenance in effect of legislative provisions incompatible with treaty obligations of the enacting State, unlawful detention of a foreign official or unlawful occupation of embassy premises, maintenance by force of colonial domination, unlawful occupation of part of the territory of another State or stationing armed forces in another State without its consent." (emphasis added).

¹⁴⁹ *Namibia Advisory Opinion*, p. 54, para. 117.



- c. Offer appropriate guarantees of non-repetition; and
- d. Make full reparation for the damage caused, which must “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,”¹⁵⁰ in the form of restitution and compensation. This entails, *inter alia*, that in order to bring itself into compliance with its international obligations, Israel must unconditionally withdraw from the Occupied Palestinian Territory, dismantle the separation wall where it encroaches on the Occupied Palestinian Territory, including East Jerusalem, and remove its civilian population from that territory, and rescind all legal and administrative measures in furtherance of its illegal occupation of such territory. Compensation must also be paid to all legal and natural persons injured by Israel’s internationally wrongful acts insofar as restitution would be insufficient to ensure full reparation for the injury caused over the length of Israel’s illegal occupation.¹⁵¹

B. Legal Consequences of Israel’s Illegal Occupation on All Other States

79. In the *Wall Advisory Opinion*, the Court held that, as a consequence of the “character and the importance of the rights and obligations involved,” all States have an obligation to bring that breach to an end, including by not recognizing the illegal situation created by Israel, nor rendering aid or assistance in maintaining it.¹⁵² It also held that all States are required to see that any impediment to the Palestinian people’s exercise of their right to self-determination is brought to an end.¹⁵³ The Court also stated that every State party to the Fourth Geneva Convention was required to ensure Israel’s compliance with its obligations under international humanitarian law.¹⁵⁴

¹⁵⁰ *Factory at Chorzów, Judgment, Merits, 13 September 1928, P.C.I.J. 1928, Series A, No. 17, p. 47. See also Commentaries to ILC Articles on State Responsibility, Commentary to Article 31, para. 2; U.N. General Assembly Resolution 77/247 (2022), para. 11 (U.N. Dossier No. 3).*

¹⁵¹ *Commentaries to ILC Articles on State Responsibility, Commentary to Article 36, para. 3.*

¹⁵² *Wall Advisory Opinion*, p. 200, para. 159.

¹⁵³ *Id.*

¹⁵⁴ *Id.*



80. As set out above, Israel's internationally wrongful acts by virtue of its illegal and continuous occupation of the Occupied Palestinian Territory, including East Jerusalem, entail the breach of its obligations arising from peremptory norms of general international law (*jus cogens*). Under the law of State responsibility, these grave breaches give rise to additional consequences for all States. In this particular case, all States are required to:

- a. cooperate to bring the illegal occupation to an end;
- b. not recognize it as lawful; and
- c. not render aid or assistance in maintaining the illegal occupation.¹⁵⁵

81. As to the obligation of cooperation, the Court has stated that States Parties to the Fourth Geneva Convention must ensure that Israel complies with its obligations under that treaty.¹⁵⁶ Indeed, under Article 1, all States have the duty "to respect and to ensure respect" of the Convention.¹⁵⁷ All States must also cooperate with the relevant United Nations bodies and other agencies, including among others the United Nations Secretary General, the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967 and the International Committee of the Red Cross, in the discharge of their responsibilities in the Occupied Palestinian Territory, including East Jerusalem.

82. The obligation of non-recognition entails that all States are under an obligation not to recognize any purported Israeli sovereignty over the Occupied Palestinian Territory, including

¹⁵⁵ ILC Articles on State Responsibility, Article 41. Cf. *Namibia Advisory Opinion*, pp. 54-56, paras. 117-126. See also United Nations General Assembly, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, Francesca Albanese, U.N. Doc. A/77/356, 21 September 2022, para. 76.

¹⁵⁶ Cf. *Wall Advisory Opinion*, p. 200, para. 159. See also U.N. Security Council Resolution 681 (1990), para. 5 (U.N. Dossier No. 1293).

¹⁵⁷ Fourth Geneva Convention, Article 1.



East Jerusalem, nor to recognize the validity of any legislative or administrative measures adopted by Israel in furtherance of its illegal occupation.¹⁵⁸

83. All States are also required not to render aid or assistance in maintaining the illegal occupation. This is in accordance with several United Nations General Assembly and Security Council Resolutions listed above that have consistently called for all States not to provide Israel with any assistance to be used specifically in connection with settlements in the occupied territories.¹⁵⁹ This obligation entails that all States must refrain from acts that provide support or assistance in furtherance of Israel's illegal prolonged occupation.¹⁶⁰ In this regard, the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967 has explained that measures to be taken by third States in order to comply with their obligations arising from the illegality of the occupation could involve:

- “[T]o take all reasonable steps to prevent or discourage national institutions, organizations and corporations within their jurisdiction from engaging in activities that would invest in, or sustain, the occupation.”
- “[To] prevent or discourage cooperation with entities that invest in, or sustain, the occupation.”

¹⁵⁸ Moreover, under Article 3 of the CERD, all States Parties have a collective obligation to “condemn racial segregation and apartheid,” which entails the obligation of non-recognition of the illegal situation created by Israel’s policies and practices of racial segregation tantamount to *apartheid* in the Occupied Palestinian Territory. CERD, Article 3.

¹⁵⁹ See, e.g., U.N. Security Council Resolution 465 (1980), para. 7 (U.N. Dossier No. 1267); U.N. General Assembly Resolution 75/22 (2020), para. 13 (U.N. Dossier No. 514); U.N. General Assembly Resolution 77/126 (2022), para. 17 (U.N. Dossier No. 36). See also U.N. Security Council Resolution 471 (1980), para. 5 (U.N. Dossier No. 1272); U.N. General Assembly Resolution 77/25 (2022), para. 13 (U.N. Dossier No. 516); U.N. Human Rights Council Resolution 49/28 (1 April 2022), U.N. Doc. A/HRC/RES/49/28, para. 7; U.N. Human Rights Council Resolution 49/29 (1 April 2022), U.N. Doc. A/HRC/RES/49/29, para. 9. *Supra*, para. 26.

¹⁶⁰ The obligation of all States Parties to CERD not to render aid or assistance in maintaining Israel’s policies and practices of racial segregation tantamount to *apartheid* in the Occupied Palestinian Territory also stems from Article 3 of the CERD and the obligation to “condemn racial segregation and apartheid”. CERD, Article 3.



- “[T]o review . . . various forms of cooperation with the occupying power as long as it continues to administer the occupation unlawfully.”¹⁶¹

84. Additionally, faced with the prolonged illegal occupation by Israel of over five and a half decades, Israel’s manifest non-compliance with and defiance of repeated resolutions and determinations by the Security Council, the General Assembly and the Court, and the by-now obvious intention of Israel never to relinquish its occupation and control over the Occupied Palestinian Territory, the time has clearly come for additional steps to be taken to bring Israel into compliance. The most measured and clearly applicable further step is for all States to assume an obligation to affirmatively recognize the illegality and invalidity of Israel’s prolonged occupation of the Occupied Palestinian Territory, including East Jerusalem. Similar to the formulation set out by the Court in the *Namibia Advisory Opinion*, this obligation would prescribe that all States must:

- “[D]istinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967”.¹⁶²

¹⁶¹ U.N. Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, Michael Lynk, U.N. Doc. A/72/556, 23 October 2017, para. 66. See also U.N. Human Rights Council Resolution 49/29 (1 April 2022), U.N. Doc. A/HRC/RES/49/29, para. 11 (“Calls upon all States . . . (b) To implement the Guiding Principles on Business and Human Rights in relation to the Occupied Palestinian Territory, including East Jerusalem, and to take appropriate measures to help to ensure that businesses domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, refrain from committing, contributing to, enabling or benefiting from the human rights abuses of Palestinians, in accordance with the expected standard of conduct in the Guiding Principles and relevant international laws and standards, by taking appropriate steps in view of the immitigable nature of the adverse impact of their activities on human rights; (c) To provide guidance to individuals and businesses on the financial, reputational and legal risks, including the possibility of liability for corporate involvement in gross human rights abuses and the abuses of the rights of individuals, of becoming involved in settlement-related activities, including through financial transactions, investments, purchases, the importation of settlement products, procurements, loans, the provision of services, and other economic and financial activities in or benefiting Israeli settlements, to inform businesses of these risks in the formulation of their national action plans for the implementation of the Guiding Principles on Business and Human Rights, and to ensure that their policies, legislation, regulations and enforcement measures effectively address the heightened risks of operating a business in the Occupied Palestinian Territory, including East Jerusalem.”).

¹⁶² U.N. Security Council Resolution 2334 (2016), para. 5 (U.N. Dossier No. 1372). See also U.N. General Assembly Resolution 77/25 (2022), para. 13 (U.N. Dossier No. 516); U.N. General Assembly Resolution 77/126 (2022), para. 16 (U.N. Dossier No. 36); U.N. General Assembly Resolution 77/187 (2022), para. 12 (U.N. Dossier No. 272).



- Abstain from entering into treaty relations with Israel in all cases in which it purports to act on behalf of or concerning the Occupied Palestinian Territory, including East Jerusalem;¹⁶³
- Abstain from sending diplomatic or special missions, as well as consular agents, to the Occupied Palestinian Territory, including East Jerusalem, and “[t]hose States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City”¹⁶⁴ and make it clear to the Israeli authorities that the maintenance of diplomatic or consular relations with Israel does not imply any recognition of its authority with regard to the Occupied Palestinian Territory;¹⁶⁵ and
- Abstain from entering into economic and other forms of relationship or dealings with Israel on behalf of or concerning the Occupied Palestinian Territory, including East Jerusalem, which may entrench its authority over the occupied territories.¹⁶⁶ In particular, all States should discourage their nationals or companies of their nationality not under direct governmental control from investing in Israeli businesses or enterprises in or concerning the Occupied Palestinian Territory, including East Jerusalem, while also recognizing that the products originating from such occupied territory cannot be deemed a product originated in Israel.¹⁶⁷

C. Legal Consequences of Israel’s Illegal Occupation on the United Nations

85. The Articles on the Responsibility of International Organizations require that international organizations also cooperate to bring to an end through lawful means any serious breach pursuant to Article 42 of such Articles, and neither recognize as lawful a situation created by a serious breach, nor render aid or assistance in maintaining that situation.¹⁶⁸

¹⁶³ Cf. *Namibia Advisory Opinion*, p. 55, para. 122.

¹⁶⁴ U.N. Security Council Resolution 478 (1980), para. 5(b) (U.N. Dossier No. 1274).

¹⁶⁵ Cf. *Namibia Advisory Opinion*, p. 55, para. 123.

¹⁶⁶ Cf. *id.*, pp. 55-56, para. 124.

¹⁶⁷ Cf. Case C-363/18, *Organisation juive européenne, Vignoble Psagot Ltd v Ministre de l’Économie et des Finances*, Court of Justice of the European Union, Judgment of the Court (Grand Chamber), 12 November 2019 (holding that products originating in the territories occupied by Israel must bear the indication of their territory of origin, accompanied, where those products come from an Israeli settlement within that territory, by the indication of that origin).

¹⁶⁸ International Law Commission, Articles on the Responsibility of International Organizations, with commentaries (2011), in *Report of the International Law Commission on the Work of Its Sixty-Third Session* (2011), document



86. As stated above, both the United Nations General Assembly and the United Nations Security Council have repeatedly declared that the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, are in violation of international law, are invalid and that Israel must rescind those measures.¹⁶⁹ However, Israel has been systematically defiant in its attitude towards those resolutions.

87. These United Nations organs should continue denying the validity of any legislative or administrative measures adopted by Israel in furtherance of its unlawful occupation.

88. The United Nations, and especially the General Assembly and the Security Council, should also consider what further action is required to bring to an end the illegal occupation. In performing this function, these U.N. organs should also require the unconditional and immediate end to the occupation. All other United Nations bodies and specialized agencies must support, within their specific fields of competence, the compliance by the General Assembly and the Security Council of their duties.¹⁷⁰

A/66/10, Chapter V, reproduced in *ILC Yearbook 2011*, Vol. II (2), Article 42 & commentary, p. 83, paras. 5-7 (referring, *inter alia*, to the Court's findings in the *Wall Advisory Opinion*).

¹⁶⁹ U.N. Security Council Resolution 2334 (2016), para. 1 (“[T]he establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law.”) (U.N. Dossier No. 1372); *id.*, para. 2 (“Israel [must] immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem and that it fully respect all of its legal obligations in this regard.”); U.N. Security Council Resolution 476 (1980), paras. 3-4 (“[A]ll legislative and administrative measures and actions taken by Israel, the occupying Power, which purport to alter the character and status of the Holy City of Jerusalem . . . are null and void and must be rescinded.”) (U.N. Dossier No. 1273); U.N. General Assembly Resolution 77/126 (2022), para. 1 (“Reaffirms that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, . . . are illegal and an obstacle to peace and economic and social development”) (U.N. Dossier No. 36). See also U.N. Security Council Resolution 298 (1971) (U.N. Dossier No. 1257), U.N. Security Council Resolution 267 (1969) (U.N. Dossier No. 1253); U.N. General Assembly Resolution 2851 (XXVI) (1971), para. 4 (U.N. Dossier No. 655); U.N. General Assembly Resolution 31/106 (A, C) (1976), para. 3 (U.N. Dossier No. 660).

¹⁷⁰ Cf. U.N. General Assembly Resolution 58/163 (2003), para. 2 (“Urges all States and the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their right to self-determination”) (U.N. Dossier No. 362).

KINGDOM OF SAUDI ARABIA

MINISTRY OF FOREIGN AFFAIRS

Minister's Office



المملكة العربية السعودية
وزارة الخارجية
بسم الله

VI. CONCLUSION

89. The Kingdom of Saudi Arabia respectfully submits that:

- a. The General Assembly's request for an advisory opinion satisfies the conditions of Article 96 of the U.N. Charter and Article 65 of the Court's Statute both as regards the competence of the requesting organ and as regards the substance of the request, and the Court accordingly has jurisdiction in this case.
- b. There are no compelling reasons why the Court should not render the advisory opinion which has been requested of it.
- c. The foregoing information shall assist the Court in rendering an advisory opinion on the questions posed by the General Assembly.

Respectfully submitted on behalf of the Kingdom of Saudi Arabia

Faisal bin Farhan Al Saud

Minister of Foreign Affairs of the Kingdom of Saudi Arabia