

INTERNATIONAL COURT OF JUSTICE

(REQUEST FOR AN ADVISORY OPINION)

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

WRITTEN STATEMENT OF THE REPUBLIC OF MALDIVES

25 July 2023

TABLE OF CONTENTS

Introduction.....	1
1. The Court’s jurisdiction to answer the Request and its discretion as to whether to exercise that jurisdiction	2
2. The position of the Maldives.....	3
3. Israel’s unlawful uses of force against the OPT leading to <i>de facto</i> annexation.....	5
a. Overview of relevant legal principles	5
b. Application to the questions before the Court	6
4. Israel’s violation of the rule under international humanitarian law that any occupation must be temporary.....	9
a. Overview of relevant legal principles	9
b. Application to the questions before the Court	10
5. Israel’s ongoing occupation as a violation of the right of the Palestinian people to self-determination.....	12
a. Overview of relevant legal principles	12
b. Application to the questions before the Court	13
6. Israel’s violations of international humanitarian law and international human rights law in its administration of the OPT, including in respect of access to water	14
a. Overview of relevant legal principles	14
b. Application to the questions before the Court	15
<i>Israel’s violations of international law with respect to the water resources of the OPT and Palestinians’ right to water</i>	<i>16</i>
7. Legal consequences.....	22
a. Overview of relevant legal principles	22
b. Application to the questions before the Court	25
Conclusion	26

Introduction

1. On 30 December 2022, the United Nations General Assembly ('the UNGA') adopted resolution A/RES/77/247, requesting the International Court of Justice ('the ICJ' or 'the Court') to give an advisory opinion on the following questions ('the Request'):

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

- (a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?
 - (b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?”
2. By letter dated 19 January 2023, the Registrar gave notice of the Request to the Maldives pursuant to Article 66(1) of the Statute of the ICJ ('the ICJ Statute'). By Order dated 3 February 2023, the Court fixed 25 July 2023 as the time-limit within which written statements on the questions set out on the Request may be presented to the Court in accordance with Article 66(2) of the ICJ Statute. Pursuant to that Order, the Maldives submits this written statement, which addresses the following matters (noting in particular its focused submissions with respect to water resources in the Occupied Palestinian Territory ('the OPT')):
 - (a) The Court has jurisdiction to answer the Request and there is no reason, let alone a compelling reason, not to exercise that jurisdiction (**Section 1**);
 - (b) The Maldives has a long record of international engagement on the Palestine issue, and is deeply concerned that this issue remains unresolved (**Section 2**);

- (c) Israel has engaged in unlawful uses of force against, and has in violation of international law taken steps to annex, the OPT (**Section 3**);
- (d) Israel's occupation of the OPT violates international humanitarian law as the occupation has not been temporary, and indeed Israel does not contemplate any end to it (**Section 4**);
- (e) Israel's ongoing occupation of the OPT violates the right of the Palestinian people to self-determination (**Section 5**);
- (f) Israel has engaged in numerous violations of international humanitarian law and international human rights law in the course of its administration of the OPT (**Section 6**). In this context, the Maldives draws particular attention to Israel's violations of its international obligations, as occupying power, with respect to the water resources of the OPT. In the face of the global climate crisis, water insecurity (and, as a result, food insecurity) in the OPT is likely to become even more acute than it already is. The Maldives, which (due to its own climate vulnerability) has taken strong leadership on matters relating to climate change, wishes to use this opportunity to highlight this matter of urgent and grave concern; and
- (g) Israel's unlawful conduct has consequences for both Israel and other States (**Section 7**).

1. The Court's jurisdiction to answer the Request and its discretion as to whether to exercise that jurisdiction

- 3. When the Court is seised of a request for an advisory opinion, it must first consider: (i) whether it has jurisdiction to give the opinion requested ('the jurisdiction issue'); and (ii) if so, whether there is any compelling reason why the Court should, in the exercise of its discretion, decline to answer the request ('the discretion issue').¹
- 4. As to the jurisdiction issue, the ICJ's jurisdiction to give an advisory opinion is addressed in Article 65(1) of the ICJ Statute as follows:

¹ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Reports 2019, p. 95 at p. 111, para. 54, p. 113, para. 66.

“The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.”

5. The UNGA is authorised to make a request for an advisory opinion by virtue of Article 96(1) of the Charter of the United Nations (‘the UN Charter’) which provides that “[t]he General Assembly ... may request the International Court of Justice to give an advisory opinion on any legal question”.²
6. Furthermore, the questions set out in the Request are clearly “legal questions” within the meaning of Article 65(1) of the ICJ Statute: they pertain to the assessment of Israel’s policies and practices in the OPT in terms of their compliance with international law rules and principles, and the legal consequences that follow.
7. Accordingly, the Maldives considers that the ICJ has jurisdiction to give the opinion requested.
8. As to the discretion issue, the Maldives considers that there is no compelling reason why the Court should, in the exercise of its discretion, decline to answer the questions posed in the Request. The Court’s answer to a request for an advisory opinion “represents its participation in the activities of the [United Nations (‘the UN’)], and, in principle, should not be refused”.³ The Maldives considers that as regards the present Request it is entirely consistent with the Court’s role as the principal judicial organ of the UN to provide its opinion on a matter of such particular concern to the UNGA.

2. The position of the Maldives

9. The Maldives is deeply concerned that the Palestine issue remains unresolved despite decades of efforts by the UN and its Member States to find a peaceful, just and lasting solution. The rights of the Palestinian people have been systematically dismissed, violating international law and resolutions of UN organs. The Government and the people of the Maldives stand firmly and resolutely with the Palestinian people. The

² Charter of the United Nations, 24 October 1945, 1 UNTS XV (‘UN Charter’), Article 96(1).

³ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Reports 2019, p. 95 at p. 113, para. 65; *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, First Phase, Advisory Opinion, ICJ Reports 1950, p. 65 at p. 71; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, ICJ Reports 1999, p. 62 at pp. 78–79, para. 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at p. 156, para. 44.

Maldives has consistently called for lasting peace through a “two State” solution, and stands unwavering in its support for an independent State of Palestine alongside the State of Israel, established along the pre-1967 borders, with East Jerusalem as its capital. The Maldives recognises the State of Palestine, and established diplomatic relations with Palestine on 4 April 1982. The Maldives has also accredited a non-resident Ambassador to Palestine, and accepted a non-resident Ambassador of Palestine.

10. The Maldives has, on the international plane, voiced its position and otherwise substantively engaged on the Palestine issue for many years. Notably, it has consistently made statements before the United Nations Security Council (‘the UNSC’)⁴ and the UNGA⁵ on this issue. In particular, it has delivered statements in committees of the UNGA which focus on various aspects of the issue.⁶ Further, at the UN Human Rights Council (‘the HRC’), the Maldives has consistently advocated for the legitimate and inalienable rights of the Palestinian people.⁷ In line with this stance, the Maldives

⁴ See, e.g., the Maldives’ contributions to the UNSC open debate on The situation in the Middle East including the Palestinian question held in 2011 (UN Doc. S/PV.6636 (Resumption 1), 24 October 2011, p. 5) and regularly thereafter (see, e.g., most recently UN Doc. S/PV.9246 (Resumption 1), 18 January 2023, pp. 13–14).

⁵ See, e.g., the Maldives’ contributions to the UNGA general debate in 2008 (UN Doc. A/63/PV.16, 29 September 2008, p. 41) and annually thereafter.

⁶ See e.g. before the Second Committee in 2012 (Statement by Ambassador Ahmed Sareer, Charge’ d’affaires of the Permanent Mission of the Maldives to the United Nations on Agenda Item 61 — Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the Occupied Syrian Golan over their natural resources, 6 November 2012, <http://www.maldivesmission.com/statements/statement_on_palestine_and_occupied_territories_in_the_second_committee_amb_ahmed_sareer> accessed 11 July 2023), 2016 (Statement by the Maldives at the Second Committee under Agenda Item 60 — Permanent Sovereignty of the Palestinian People in the Occupied Palestinian Territory, 25 October 2016 <http://www.maldivesmission.com/index.php/statements/statement_by_the_maldives_at_the_second_committee_under_agenda_item_60_permanent_sovereignty_of_the_palestinian_people_in_the_occupied_palestinian_territory_25_october_2016> accessed 11 July 2023) and 2019 (UNGA, Agenda item 60: Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources, UN Doc. A/C.2/74/SR.21, 5 December 2019, p. 4).

⁷ The Maldives has made regular contributions during the relevant general debates on agenda item 7 (Human rights situation in Palestine and other occupied Arab territories) since 2011 (see, e.g., UN Doc. A/HRC/16/2, 14 November 2011, p. 216, para. 769(a)), up to the present day (see, e.g., Morning — Human Rights Council Concludes General Debate on the Human Rights Situation in Palestine and Other Occupied Arab Territories, and Begins General Debate on the Vienna Declaration and Programme of Action, 29 March 2023 <<https://www.ungeneva.org/en/news-media/meeting-summary/2023/03/morning-human-rights-council-concludes-general-debate-human>> accessed 11 July 2023).

maintains its position to retain Agenda Item 7 on the Human rights situation in Palestine and other occupied Arab territories.⁸

11. The Maldives firmly believes that Israel’s prolonged occupation, settlement and annexation of the Palestinian territory entail grave breaches of international law, especially international humanitarian law and international human rights law, giving rise to serious humanitarian consequences. Israel’s flagrant violations of international law are detrimental to the peaceful resolution of the conflict and the self-determination of the Palestinian people. The Maldives strongly considers that the rule of law should be applied equally to all States. It is critical that the perpetrators of blatant violations of international law, including international humanitarian law and international human rights law, are held accountable for their actions.
12. These positions stem from the Maldives’ unwavering commitment to international law, including the principles of the UN Charter — namely sovereign equality and the obligation of all States to refrain from the threat or use of force against the territorial integrity or political independence of any State.⁹
13. Accordingly, noting with deep concern the worsening conditions in the OPT, the Maldives presents this written statement in order to set out its views on issues raised in the Request.

3. Israel’s unlawful uses of force against the OPT leading to *de facto* annexation

a. Overview of relevant legal principles

14. Article 2(4) of the UN Charter states that “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations”. The Court has described this prohibition against the use of force as “a cornerstone of the United Nations Charter”.¹⁰ It is firmly settled in the jurisprudence of the Court that the prohibition on the use of force, as reflected in

⁸ On 3 April 2023, the Maldives voted in favour of the recent resolution of the Council affirming that the Council remains seized of the matter: Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice, UN Doc. A/HRC/RES/52/3, 13 April 2023.

⁹ See UN Charter, Articles 2(1), 2(4).

¹⁰ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, ICJ Reports 2005, p. 168 at p. 223, para. 148.

the UN Charter, is a rule of customary international law.¹¹ Indeed, the prohibition has been acknowledged as having the status of *jus cogens*, meaning that no derogation from it is permitted.¹²

15. As a corollary of the prohibition on the use of force, international law prohibits a State from acquiring territory by the threat or use of force, with the prohibition on such annexation stated by the Court to be a rule of customary international law.¹³ The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the UNGA in 1970, expressly stated:

“The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force”.¹⁴

16. In its Advisory Opinion in the *Construction of a Wall* proceedings, the Court recognised that an unlawful annexation can arise when a State’s conduct “create[s] a ‘fait accompli’ on the ground that could well become permanent”, in which case “it would be tantamount to *de facto* annexation”.¹⁵

b. Application to the questions before the Court

17. Israel’s occupation of the OPT has been established and maintained in violation of these fundamental rules of international law.

¹¹ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, ICJ Reports 1986, p. 14 at pp. 98–101, paras. 187–190); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at p. 171, para. 87.

¹² See, e.g., *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment, ICJ Reports 1986, p. 14 at pp. 100–101, para. 190 (referring to *inter alia* the work of the International Law Commission); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at p. 254, para. 3.1 (Separate Opinion of Judge Elaraby). See also Fourth Report of the Special Rapporteur (Dire Tladi) on Preemptory Norms of General International Law (*Jus Cogens*), UN Doc. A/CN.4/727, 31 January 2019), paras. 60, 64.

¹³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at p. 171, para. 87.

¹⁴ UNGA resolution 2625(XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UN Doc. A/RES/2625(XXV), 24 October 1970 (‘Declaration on Friendly Relations’), para. 1.

¹⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at p. 184, para. 121.

18. In June 1967, Israel unilaterally used force in order to incorporate 70,000 dunams of Palestinian land into the municipal area of Jerusalem.¹⁶ This was an act which violated Article 2(4) of the UN Charter and customary international law. In November 1967, the UNSC adopted resolution 242 which declared the “inadmissibility of the acquisition of territory by war” and called for “[w]ithdrawal of Israel armed forces from territories occupied in the recent conflict” and “[t]ermination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political 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”.¹⁷ The call to end the occupation has been subsequently and repeatedly made.¹⁸
19. Since 1967, Israel has engaged in precisely the sort of conduct designed to “create a ‘fait accompli’ on the ground” which the Court condemned as being “tantamount to *de facto* annexation”.¹⁹ This is despite the fact that, since the earliest days of the occupation, the organs of the UN have called on it to refrain from taking such measures. For example, following Israel’s initial use of force in 1967, the UNGA adopted a resolution expressing that it was “[d]eeply concerned at the situation prevailing in Jerusalem as a result of the measures taken by Israel to change the status of the City” and calling upon Israel “to rescind all measures already taken and to desist forthwith from taking action which would alter the status of Jerusalem”.²⁰ But Israel has ignored both these demands and its obligations under customary international law and the UN Charter.
20. Far from withdrawing from the OPT or rescinding the measures it has already taken (and which the UNGA has unequivocally condemned), since 1967 Israel has applied its domestic law to East Jerusalem, and it has also transferred ownership of land to the State to facilitate the expansion of its control and establishment of Israeli settlements in

¹⁶ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022, para. 14.

¹⁷ UNSC resolution 242 (1967), UN Doc. S/RES/242(1967), 22 November 1967, preamble, para. 1.

¹⁸ See more recently UNSC Resolution 2334, S/RES/2334(2016), 23 December 2016; UNGA Resolution 77/25, S/RES/77/25, 30 November 2022. See also the Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, UN Doc. A/77/356, 21 September 2022, para. 10(b) (“Israeli occupation constitutes an unjustified use of force and an act of aggression”).

¹⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at p. 184, para. 121.

²⁰ UNGA resolution 2253 (ES-V), UN Doc. A/RES/2253 (ES-V), 4 July 1967, preamble, para. 2.

the OPT.²¹ In 1980, Israel enacted a “basic law” declaring Jerusalem as its capital, solidifying the *de facto* (and purported *de jure*) annexation of East Jerusalem.²²

21. Israel’s conduct in this regard has been consistently denounced by organs of the UN as incompatible with international law. In 1968, the UNSC adopted a resolution which declared that “all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status”,²³ and subsequently reaffirmed the same.²⁴ The UNSC also passed resolutions in 1979 reaffirming that the policies and developed practices regarding the Israeli settlements in the OPT violate international law and “have no legal validity”.²⁵ Subsequently, the UNSC declared the “basic law” null and void and a violation of international law.²⁶
22. Since the handing down of its Advisory Opinion in 2004, the scenario which the Court anticipated of the creation of a “permanent” situation tantamount to a *de facto* annexation has become a reality. As the UN Independent International Commission of Inquiry on the OPT, including East Jerusalem and Israel (‘the IICI’) concluded in its 2022 report to the UNGA, Israel “has — for all intents and purposes — annexed parts of the West Bank”, and “[a]ctions by Israel constituting *de facto* annexation include expropriating land and natural resources, establishing settlements and outposts, maintaining a restrictive and discriminatory planning and building regime for Palestinians and extending Israeli law extraterritorially to Israeli settlers in the West Bank”.²⁷ The UNGA has subsequently recalled “the principle of the inadmissibility of

²¹ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022, para. 14.

²² Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022, para. 16.

²³ UNSC resolution 252 (1968), UN Doc. S/RES/252(1968), 21 May 1968, para. 2.

²⁴ UNSC resolution 267 (1969), UN Doc. S/RES/267(1969), 3 July 1969, para. 4 (“all legislative and administrative measures and actions taken by Israel which purport to alter the status of Jerusalem, including expropriation of land and properties thereon, are invalid and cannot change that status”); UNSC resolution 298 (1971), UN Doc. S/RES/298(1971), 25 September 1971, para. 3 (“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”).

²⁵ UNSC resolution 446 (1979), UN Doc. S/RES/446(1979), 22 March 1979, para. 1; UNSC resolution 452 (1979), UN Doc. S/RES/452(1979), 20 July 1979, preamble.

²⁶ UNSC resolution 478 (1980), UN Doc. S/RES/478(1980), 20 August 1980, para. 3. See also Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022, para. 16.

²⁷ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022, para. 76.

the acquisition of land by force and therefore the illegality of the annexation of any part of the Occupied Palestinian Territory, including East Jerusalem, which constitutes a breach of international law” and expressed its “grave concern at recent statements calling for the annexation by Israel of areas in the Occupied Palestinian Territory”.²⁸

4. Israel’s violation of the rule under international humanitarian law that any occupation must be temporary

a. Overview of relevant legal principles

23. Under international law, an occupation is taken to exist when territory is actually placed under the authority of a hostile army, and extends only to the territory where such authority has been established and can be exercised.²⁹
24. The powers and duties of an occupying power are closely regulated under customary rules of international humanitarian law, as reflected in provisions of (among others) the Regulations Concerning the Laws and Customs of War on Land annexed to the Hague Convention (IV) Respecting the Laws and Customs of War on Land (‘the Hague Regulations’) and the Geneva Convention relative to the Protection of Civilian Persons in Time of War (‘the Fourth Geneva Convention’).³⁰ The provisions of the Fourth Geneva Convention are applicable throughout occupied territory.³¹
25. A fundamental premise of the international legal regime applicable to occupation is that occupation of territory is temporary and, when conditions allow, control of the territory

²⁸ UNGA resolution 77/126, UN Doc. A/RES/77/126, 15 December 2022, para. 7.

²⁹ Regulations Concerning the Laws and Customs of War on Land annexed to the Hague Convention (IV) Respecting the Laws and Customs of War on Land (‘Hague Regulations’), 18 October 1907, 205 CTS 277, Article 42, cited in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at p. 167, para. 78.

³⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at p. 172, para. 89.

³¹ Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287 (‘Fourth Geneva Convention’), Article 2; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at pp. 174–175, para. 95.

is to be restored to the underlying sovereign.³² Inherent in this constraint is the principle that an occupying power is not permitted to annex the territory which it occupies.³³

26. One of the cardinal rules of this regime is that an occupying power is not permitted to transfer parts of its own civilian population into the territory which it occupies.³⁴ Further, the confiscation of private property by the occupying power is forbidden.³⁵

b. Application to the questions before the Court

27. The Court has indicated that, since 1967, Israel has been in occupation of “[t]he territories situated between the Green Line ... and the former eastern boundary of Palestine under the Mandate”, with the consequence that “Israel has continued to have the status of occupying power” in respect of these territories.³⁶
28. As set out above, in violation of the requirement that an occupation must be temporary, Israel has sought to create a permanent state of affairs that is tantamount to annexation (see **Section 3** above).
29. The non-temporary character of Israel’s occupation is manifest in Israel’s flagrant violation of its obligations not to transfer parts of its own civilian population into the territory which it occupies³⁷ and not to confiscate private property.³⁸

³² Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022, para. 9. The temporary nature of an occupation is reflected in the fact that, under Article 43 of the Hague Regulations, an occupying power must “take all the measures in his power to restore, and ensure, as far as possible, public order and safety, *while respecting, unless absolutely prevented, the laws in force in the country*” (emphasis added). It is also reflected in numerous provisions of the Fourth Geneva Convention, such as Article 54 (providing that the occupying power must not alter the status of public officials or judges in the occupied territory), Article 64 (providing that the penal laws of the occupied territory shall remain in force, subject to circumscribed exceptions).

³³ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, UN Doc. A/72/556, 23 October 2017, paras. 29–31.

³⁴ Fourth Geneva Convention, Article 49.

³⁵ Hague Regulations, Article 46.

³⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at p. 167, para. 78. In the same advisory opinion, the ICJ stated that only Section III of Hague Regulations of 1907 is applicable and, since the military operations leading to the occupation of the West Bank in 1967 ended a long time ago, only those articles of the Fourth Geneva Convention referred to in Article 6(3) remain applicable in that occupied territory: p. 185, paras. 124–125.

³⁷ Fourth Geneva Convention, Article 49.

³⁸ Hague Regulations, Article 46.

30. Specifically, pursuant to Israel's vast settlement program, hundreds of civilian settlements have been established in the OPT since the start of the occupation.³⁹ The settlement program has covered different geographical parts of the OPT.
- (a) Israel has, by means of a series of laws, enabled its government to transfer property rights of Palestinians in East Jerusalem to the State and has allowed Israeli settler organisations to initiate eviction proceedings. As a result, nearly one-third of East Jerusalem has been expropriated for the construction of Israeli settlements. As of 2022, just 13 per cent of the OPT is zoned for Palestinian construction.⁴⁰
 - (b) Some 5,000 Israeli settlers have been housed in the Gaza Strip on land expropriated from Palestinians.⁴¹
 - (c) As to the West Bank, the Oslo Accords of 1993 and 1995 established a division of the West Bank into three distinct areas (namely, A, B, and C), excluding East Jerusalem and the Gaza Strip. Area C, encompassing over 60 percent of the West Bank, was designated as an area where Israel maintains substantial control. The Oslo Accords granted the Palestinian Authority civil and security jurisdiction over Area A and civil control over Area B. The Accords envisaged that the Palestinian Authority would gradually assume control over the West Bank.⁴² However, this intention has been fundamentally defied by Israel's establishment of settlements.
31. Israel's settlement programs has already been condemned by organs of the UN. For example:
- (a) The UNSC has declared that "Israel's policy and practices of settling parts of its population and new immigrants ... constitute a flagrant violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War",⁴³ and

³⁹ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022, para. 25.

⁴⁰ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022, para. 14.

⁴¹ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022, para. 19.

⁴² Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022, para. 24.

⁴³ UNSC resolution 465 (1980), UN Doc. S/RES/465(1980), 1 March 1980, para. 5.

the UNSC’s President recently issued a statement on behalf of the UNSC strongly opposing “Israeli construction and expansion of settlements, confiscation of Palestinians’ land, and the ‘legalization’ of settlement outposts, demolition of Palestinians’ homes and displacement of Palestinian civilians”.⁴⁴

- (b) The Court, in its *Construction of a Wall* advisory opinion, concluded that Israeli settlements in the OPT had been established in breach of international law.⁴⁵
- (c) The IICI noted in its 2022 report to the HRC “the strength of prima facie credible evidence available that convincingly indicates that Israel has no intention of ending the occupation, has clear policies for ensuring complete control over the Occupied Palestinian Territory, and is acting to alter the demography through the maintenance of a repressive environment for Palestinians and a favourable environment for Israeli settlers”.⁴⁶

5. Israel’s ongoing occupation as a violation of the right of the Palestinian people to self-determination

a. Overview of relevant legal principles

32. The right of all peoples to self-determination is another fundamental principle of international law. This right is articulated in the UN Charter,⁴⁷ has been recognised on multiple occasions by the UNGA,⁴⁸ and is a right vested in any people under alien domination.⁴⁹ In its Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, the Court found that international law had

⁴⁴ Statement of the President of the United Nations Security Council, UN Doc. S/PRS/2023/1, 20 February 2023.

⁴⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at p. 51, para. 120.

⁴⁶ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/HRC/50/21, 9 May 2022, para. 70.

⁴⁷ Article 1(2) of the UN Charter indicates that one of the purposes of the United Nations is “[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”.

⁴⁸ Seminal resolutions include UNGA resolution 1514(XV), UN Doc. A/RES/1514(XV), 14 December 1960, para. 2; Declaration on Friendly Relations, para. 1. The Court has stated that resolution 1514(XV), while “formally a recommendation”, had “a declaratory character with regard to the right to self-determination as a customary norm”: *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Reports 2019, p. 95 at p. 132, para. 152.

⁴⁹ UNGA resolution 1514(XV), UN Doc. A/RES/1514(XV), 14 December 1960, para. 2; Declaration on Friendly Relations, para. 1.

developed so that the principle of self-determination was applicable to all peoples in non-self-governing territories.⁵⁰ The Court has emphasised that “the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned”.⁵¹ In the *East Timor* case, the Court stated that the right of peoples to self-determination is of an *erga omnes* character and is “one of the essential principles of contemporary international law”.⁵²

33. In the *Construction of a Wall* advisory proceedings, the Court stated there was a risk of further alterations to the demographic composition of the OPT in as much as the wall was contributing to the departure of Palestinian populations from certain areas. The Court stated the construction of the wall, along with measures taken previously by Israel (including in relation to the establishment of Israeli settlements within Palestinian territory), severely impeded the exercise by the Palestinian people of its right to self-determination and was therefore a breach of Israel’s obligation to respect that right.⁵³

b. Application to the questions before the Court

34. It is undeniable that the Palestinian people possess a right to self-determination and that Israel is bound under international law to respect that right.⁵⁴ Israel’s ongoing occupation of the OPT continues to entail gross violations of this right.
35. There is no prospect of the Palestinian people exercising their right to self-determination for as long as Israel maintains its *de facto* annexation of the OPT.⁵⁵ Indeed, as a recent report of the IICI emphasised:

⁵⁰ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 16 at p. 31, para. 52.

⁵¹ *Western Sahara*, Advisory Opinion, ICJ Reports 1975, p. 12 at p. 32, para. 55.

⁵² *East Timor (Portugal v. Australia)*, Judgment, ICJ Report 1995, p. 90 at p. 102, para. 29. On the *erga omnes* character of the right, see also *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Reports 2019, p. 95 at p. 139, para. 180.

⁵³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at p. 184, para. 122.

⁵⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at pp. 182–183, para. 118 (“the existence of a ‘Palestinian people’ is no longer in issue”), p. 197, para. 149 (“Israel is bound to comply with its obligation to respect the right of the Palestinian people to self-determination”). See UNGA resolution 77/208, UN Doc. A/RES/77/208, 15 December 2022, preamble and para. 1, recalling the conclusion of the Court in this regard and reaffirming “the right of the Palestinian people to self-determination”.

⁵⁵ See Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/HRC/50/21, 9 May 2022, para. 30 (“Israel

“[Israel’s policies with respect to the OPT] include evictions, deportations and the forcible transfer of Palestinians within the West Bank, the expropriation, looting, plundering and exploitation of land and vital natural resources, movement restrictions and the maintenance of a coercive environment with the aim of fragmenting Palestinian society, encouraging the departure of Palestinians from certain areas and ensuring that they are incapable of fulfilling their right to self-determination.”⁵⁶

6. Israel’s violations of international humanitarian law and international human rights law in its administration of the OPT, including in respect of access to water

a. *Overview of relevant legal principles*

36. In an occupation, the occupying power is required to manage the territory which it occupies in the best interests of the people under occupation and in good faith, observing to the fullest extent possible the human rights of the people under occupation.⁵⁷ In the *Construction of a Wall* advisory proceedings, the Court considered that the legal frameworks applicable to Israel’s occupation of the OPT included not only international humanitarian law (as set out above) but also international human rights law, including notably the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.⁵⁸ It emphasised that these instruments remain in force during armed conflicts, except in cases where a derogation is validly brought into effect.⁵⁹ The Court has separately confirmed that an occupying power’s duties include a “duty to secure respect for the applicable rules of international human rights law and international humanitarian law” within the occupied territory in question.⁶⁰

has not brought an end to the occupation, which would allow the Palestinian people to enjoy their right to self-determination”). See also UNGA resolution, UN Doc. A/RES/77/25, 30 November 2022, para. 12(a)–(b), calling for the withdrawal of Israel from the Palestinian territory occupied since 1967 (including East Jerusalem) and the realisation of the inalienable rights of the Palestinian people.

⁵⁶ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022, para. 77.

⁵⁷ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, UN Doc. A/72/556, 23 October 2017, paras. 34–38.

⁵⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at pp. 177–181, paras. 102–113.

⁵⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at p. 178, para. 106.

⁶⁰ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, ICJ Reports 2005, p. 168 at p. 231, para. 178.

b. Application to the questions before the Court

37. Israel has engaged in serious and widespread violations of both international humanitarian law and international human rights law over the duration of its occupation of the OPT — and it continues to do so today.⁶¹ Israel’s disregard for its duties under international law as occupying power demonstrates that it has not managed, and is not today managing, the OPT in the best interests of the Palestine people or in good faith.⁶² Examples of violations of international humanitarian law and international human rights law include the following:

- (a) Israel’s settlement program and related Israeli policies have had a serious negative impact on the human rights of Palestinians, including their personal security, freedom of movement, access to livelihood, education, health and justice, as well as their right to family life.⁶³
- (b) Israel maintains separate legal systems in the OPT, with Israeli domestic law being applicable to Israeli settlers and military law being applicable to Palestinians.⁶⁴ There are material differences between the two systems, such as in relation to criminal law (where, for example, certain exercises of the right to freedom of expression and freedoms of peaceful assembly and association are “severely restricted” in relation to Palestinians only).⁶⁵ The IICI, in its 2023 report to the HRC, described the Israeli military court system as “a central tool in the silencing and criminalization of Palestinian opposition and activism in the occupied West Bank”.⁶⁶

⁶¹ See Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/HRC/53/22, 9 May 2023, Section VI.

⁶² It is striking that the UN High Commissioner for Human Rights recently referred to Israel’s cooperation with the IICI as “almost non-existent”: Statement dated 19 June 2023, 53rd session of the Human Rights Council <<https://www.ohchr.org/en/statements/2023/06/urging-greater-cooperation-high-commissioner-turk-opens-human-rights-council>>, accessed 12 July 2023.

⁶³ Report of the UN High Commissioner for Human Rights on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, UN Doc. A/HRC/46/65, 15 February 2021, para. 48.

⁶⁴ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022, para. 46.

⁶⁵ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022, para. 47.

⁶⁶ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/HRC/53/22, 9 May 2023, para. 22.

- (c) There is a practice of excessive use of force and abuse by the Israeli security forces and settlers against Palestinian women and girls, including physical, psychological and verbal abuse and sexual harassment and violations of their right to life.⁶⁷ Sexual and gender-based violence has also been reported during night raids,⁶⁸ and against Palestinian women human rights defenders, with no support being provided by the police.⁶⁹

Israel's violations of international law with respect to the water resources of the OPT and Palestinians' right to water

38. In this written statement, the Maldives wishes to highlight in particular Israel's violations of its obligations in respect of the water resources of the OPT. As addressed further below, safe access to clean water for personal and domestic use is a fundamental human right. The climate crisis is jeopardising access to clean water in all regions of the globe. This is of acute concern in the OPT,⁷⁰ where freshwater resources are expected to diminish as climate change causes decreases in annual precipitation.⁷¹ Water insecurity can also lead to food insecurity, especially as a reduction in clean groundwater can significantly affect agricultural production.⁷² Due to its own extreme vulnerability to the effects of climate change as a low-lying developing island State,⁷³ the Maldives has taken strong leadership on matters relating to climate change, especially in relation to the world's most vulnerable territories.⁷⁴ It is for that reason

⁶⁷ Committee on the Elimination of Discrimination against Women, Concluding Observations on the sixth periodic report of Israel, UN Doc. CEDAW/C/ISR/CO/6, 17 November 2017, para. 30.

⁶⁸ Committee on the Elimination of Discrimination against Women, Concluding Observations on the sixth periodic report of Israel, UN Doc. CEDAW/C/ISR/CO/6, 17 November 2017, para. 30.

⁶⁹ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/HRC/53/22, 9 May 2023, paras. 55, 58.

⁷⁰ See Report of the UN High Commissioner for Human Rights on Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/HRC/48/43, 15 October 2021, para. 15.

⁷¹ UN Development Program, Climate Change Adaptation Strategy and Programme of Action for the Palestinian Authority, 2013 <<https://www.undp.org/papp/publications/palestinian-climate-change-adaptation-strategy>> accessed 12 July 2023, pp. XI, 2, 8.

⁷² UN Development Program, Climate Change Adaptation Strategy and Programme of Action for the Palestinian Authority, 2013 <<https://www.undp.org/papp/publications/palestinian-climate-change-adaptation-strategy>> accessed 12 July 2023, pp. 26, 42–45.

⁷³ See, e.g., the extreme risks faced by the Maldives as highlighted by its Vice President at COP 27 in November 2022: The President's Office, Republic of Maldives, "The Vice President calls for global solidarity in the face of climate change", 7 November 2022 <<https://presidency.gov.mv/Press/Article/27561>> accessed 3 July 2023.

⁷⁴ The Maldives' long-standing leadership on climate change includes its establishment of the Alliance of Small Islands States ('AOSIS') in 1990, following its hosting in 1989 of the first-ever Small States Conference on Sea Level Rise, where fourteen Small Island States signed the Malé Declaration on Global

that it wishes to draw the Court’s particular attention to this pressing issue facing the Palestinian people.

39. Under international humanitarian law, occupying powers have various duties relevant to the management of water resources in occupied territory, and there are also obligations upon all parties to a conflict which concern protected persons’ access to water. These duties include the following:
- (a) An occupying power must maintain public health and hygiene in the territory which it occupies.⁷⁵
 - (b) An occupying power must respect both public and private property, whether movable or immovable.⁷⁶ Water and sanitation infrastructure may be regarded as either public or private property, depending on the circumstances.⁷⁷ Destruction by the occupying Power of any real or personal property, whether owned by individuals, the State or public authorities, is prohibited, except where such destruction is rendered absolutely necessary by military operations.⁷⁸
 - (c) Groundwater resources are a form of immovable public property,⁷⁹ and thus fall within the occupying power’s duty to safeguard the capital of such property and to administer them in accordance with the rules of usufruct.⁸⁰

Warming and Sea Level Rise. The Maldives served as the Chair of the AOSIS from 2015 to 2018 during which period important multilateral negotiations were held, including concerning the Paris Agreement on reducing greenhouse gas emissions, the 2030 Agenda for Sustainable Development, the Addis Ababa Action Agenda on Financing for Sustainable Development and the Sendai Framework for Disaster Risk Reduction 2015–2030. The Maldives remains an active member of AOSIS, having declared with Nauru and St Lucia new Climate Action Plans on the thirtieth anniversary of AOSIS: AOSIS, “Press release: Nauru, Maldives, and St Lucia announce new Climate Action Plans”, 4 December 2021 <<https://www.aosis.org/release/nauru-maldives-and-st-lucia-announce-new-climate-action-plans/>> accessed 2 July 2023. The Maldives also founded the Climate Vulnerable Forum in 2009, which it chaired from 2009–2010 and in which it continues to participate. In 2019, the Maldives also presented a Climate Smart Resilient Islands initiative before the UN General Assembly: Office of the President of the Republic of Maldives, “Press release: President presents Maldivian ‘Climate Smart Resilient Islands Initiative’ at UN Climate Action Summit as replicable and sustainable development model for SIDS”, 23 September 2019 <<https://presidency.gov.mv/Press/Article/22213>> accessed 2 July 2023.

⁷⁵ Fourth Geneva Convention, Article 56.

⁷⁶ Hague Regulations, Articles 46–47, 52, 55; Fourth Geneva Convention, Articles 33, 53.

⁷⁷ Report of the UN High Commissioner for Human Rights on Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/HRC/48/43, 15 October 2021, para. 8.

⁷⁸ Fourth Geneva Convention, Article 53.

⁷⁹ Report of the UN High Commissioner for Human Rights on Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/HRC/48/43, 15 October 2021, para. 8.

⁸⁰ Hague Regulations, Article 55.

- (d) An occupying power is prohibited from engaging in acts of pillage⁸¹ — in other words, it may not engage in “the looting, plundering and exploitation of natural resources in the [occupied] territory”.⁸²
 - (e) An occupying power must agree to relief schemes on behalf of the population of the occupied territory if the whole or part of that population is inadequately supplied.⁸³
 - (f) An occupying power may not demand requisitions from municipalities or inhabitants except for the needs of the army of occupation, and even then any requisitions must be “in proportion to the resources of the country”.⁸⁴
 - (g) It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, including drinking water installations and supplies and irrigation works — whatever the motive for doing so.⁸⁵
40. In addition, an occupying power is bound by applicable duties under international human rights law in its administration of the territory which it occupies.⁸⁶ With respect to the right of water, the following is noted:
- (a) The rights to water and sanitation emanate from the rights set out in Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights.⁸⁷

⁸¹ Hague Regulations, Article 47; Fourth Geneva Convention, Article 33.

⁸² *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, ICJ Reports 2005, p. 168 at p. 252, para. 245.

⁸³ Fourth Geneva Convention, Article 59. It is noted that the reference to “foodstuffs, medical supplies and clothing” are illustrative only (reflected in the words “in particular”), and it is submitted that water could clearly fall within the character of relief supplies. See International Committee of the Red Cross, Commentary on Fourth Geneva Convention (1958), <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-59/commentary/1958?activeTab=undefined>> accessed 12 July 2023 (“The paragraph mentions in particular foodstuffs, medical supplies and clothing; consignments need not be restricted to these items but must have the character of relief supplies. Three categories of relief have been mentioned specifically because they are of vital importance and the Occupying Power would be justified in refusing to accept any consignments not urgently needed to feed the population”).

⁸⁴ Hague Regulations, Article 52.

⁸⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 UNTS 3, Article 54(2).

⁸⁶ See para. 36 above.

⁸⁷ See UN Committee on Economic, Social and Cultural Rights, General Comment No. 15: The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12.2002/11, 20 January 2003, para. 3 (“Article 11, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living ‘including adequate food, clothing and housing’. The use of the word ‘including’ indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one

Article 14(2)(h) of the Convention on the Elimination of All Forms of Discrimination against Women expressly refers to the obligation to ensure that women in rural areas have the right to an adequate water supply. The obligation to provide clean drinking water and clean water services is also expressly referred to in Article 24(2)(c) of the Convention on the Rights of the Child and Article 28(2)(a) of the Convention on the Rights of Persons with Disabilities, respectively. Both Israel and the State of Palestine are parties to these treaties.

- (b) The United Nations Committee on Economic, Social and Cultural Rights has stated that water and water facilities and services must be accessible to all “without discrimination on any of the prohibited grounds”.⁸⁸ In particular, States are not permitted to “limit[] access to, or destroy, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law”.⁸⁹
- (c) The UNGA has affirmed that “the human rights to safe drinking water and sanitation as components of the right to an adequate standard of living are essential for the full enjoyment of the right to life and all human rights”.⁹⁰ Moreover, it has stated that “the human right to safe drinking water entitles everyone, *without discrimination*, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use”.⁹¹

41. Israel has violated these rules of international humanitarian law and international human rights law in the course of its occupation of the OPT. Israel has taken control of all water resources in the West Bank and has been using much of the water for its own

of the most fundamental conditions for survival. ... The right to water is also inextricably related to the right to the highest attainable standard of health (art. 12, para. 1) and the rights to adequate housing and adequate food (art. 11, para. 1)”) (internal citations omitted).

⁸⁸ UN Committee on Economic, Social and Cultural Rights, General Comment No. 15: The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12.2002/11, 20 January 2003, paras. 12(c)(iii), 13.

⁸⁹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 15: The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12.2002/11, 20 January 2003, para. 21.

⁹⁰ UNGA resolution 70/169, UN Doc. A/RES/70/169, 22 February 2016, para. 1. See also President of General Assembly, Summary of Proceedings: United Nations Conference on the Midterm Comprehensive Review of the Implementation of the Objectives of the International Decade for Action “Water for Sustainable Development”, 22–24 March 2023, p. 13 <<https://sdgs.un.org/sites/default/files/2023-05/FINAL%20EDITED%20-%20PGA77%20Summary%20for%20Water%20Conference%202023.pdf>> accessed 12 July 2023, referring to the “broad recognition that water and sanitation were human rights”.

⁹¹ UNGA resolution 70/169, UN Doc. A/RES/70/169, 22 February 2016, para. 2 (emphasis added).

purposes.⁹² As of 2023, it is estimated that less than 40% of households have access to safely managed water, ranging from 4% in the Gaza Strip to 66.2% in the West Bank.⁹³ Specifically:

- (a) Shortly after it commenced its occupation in 1967, Israel placed all water resources in the OPT under its military control and prohibited Palestinians, unless they obtained a military permit, from constructing new water installations or maintaining existing installations. These orders remain in force to the present day with respect only to Palestinians. In contrast, Israeli settlers are governed by Israeli law concerning access to water.⁹⁴
- (b) Mekorot, the government company which in 1982 assumed ownership of all of the West Bank water supply systems, reportedly operates dozens of wells, trunk lines and reservoirs which abstract water within the Palestinian-controlled areas in the West Bank and transfer the water to Israeli settlements in the West Bank.⁹⁵
- (c) Water infrastructure is inadequate to meet the needs of the Palestinian population, including because of electricity cuts in Gaza and because of a lack of physical space to develop new infrastructure.⁹⁶

⁹² Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022, paras. 34–35.

⁹³ UNICEF, Vulnerable children and communities in the State of Palestine, 21 March 2023 <<https://www.unicef.org/sop/stories/vulnerable-children-and-communities-state-palestine-access>> accessed 12 July 2023.

⁹⁴ Report of the UN High Commissioner for Human Rights on Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/HRC/48/43, 15 October 2021, para. 18. See also Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022, para. 35.

⁹⁵ Report of the UN High Commissioner for Human Rights on Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/HRC/48/43, 15 October 2021, para. 18.

⁹⁶ Report of the UN High Commissioner for Human Rights on Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/HRC/48/43, 15 October 2021, para. 22.

- (d) Israel has also demolished dozens of water sanitation structures within the OPT,⁹⁷ as well as Palestinian pipelines, wells and reservoirs.⁹⁸ By way of example, in 2019 a cluster of Palestinian villages in the south Hebron hills had their newly laid water pipes destroyed by Israel's Civil Administration.⁹⁹
- (e) There is a seriously inequitable allocation of water resources between Palestinians and Israeli settlers within the OPT.¹⁰⁰ As of May 2022, it was estimated that, while Israeli settlers have access to 320 litres of water per capita per day, Palestinians in Areas A and B of the West Bank have access to 75–100 litres per capita per day, and Palestinians in Area C to 30–50 litres per capita per day.¹⁰¹ Palestinians are forced to purchase water from official or private providers at a cost around six times higher than the national price.¹⁰²
- (f) Certain sectors of the Palestinian population suffer disproportionately from a denial of their right to access to water. For example, women and girls are particularly affected, given their additional water-related needs for hygiene and privacy and the expectation that they will secure water for domestic consumption, cleaning and washing, and for the care of children and elderly and sick people.¹⁰³ Water-associated diseases account for approximately 26 per cent

⁹⁷ Report of the UN High Commissioner for Human Rights on Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/HRC/48/43, 15 October 2021, para. 24. See also e.g. “UN expert condemns Israel’s repeated demolition of Palestinian Bedouin property”, 12 July 2021 <<https://www.ohchr.org/en/press-releases/2021/07/un-expert-condemns-israels-repeated-demolition-palestinian-bedouin-property>> accessed 12 July 2023 (referring to a statement of the UN Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967).

⁹⁸ Report of the UN High Commissioner for Human Rights on Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/HRC/48/43, 15 October 2021, paras. 24, 52.

⁹⁹ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 on Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, with a focus on access to water and environmental degradation, UN Doc. A/HRC/40/73, 30 May 2019, para. 26.

¹⁰⁰ Report of the UN High Commissioner for Human Rights on Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/HRC/48/43, 15 October 2021, paras. 25–63.

¹⁰¹ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/HRC/50/21, 9 May 2022, para. 52.

¹⁰² Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022, para. 70.

¹⁰³ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022, para. 71.

of childhood diseases in Gaza and are a primary cause of child morbidity.¹⁰⁴ Rural herders are also unable to access sufficient water to maintain their livestock.¹⁰⁵

7. Legal consequences

a. Overview of relevant legal principles

42. It is firmly established in international law that an illegal occupation is a continuing violation of international law: (i) for which the occupying State bears international responsibility; and (ii) which the occupying State is under an obligation to bring to an end as swiftly as possible.¹⁰⁶
43. There are three previous matters which have come before the Court that are instructive in addressing the legal consequences of an unlawful occupation.
44. First, in its advisory opinion in *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, the Court stated as follows:
 - (a) The continued presence of South Africa in Namibia was illegal, and South Africa was under an obligation to withdraw its administration immediately.¹⁰⁷ The illegality in that situation primarily arose because South Africa's conduct violated a UNSC resolution. All Member States of the UN bear an obligation under Article 25 of the UN Charter "to accept and carry out the decisions of the

¹⁰⁴ Report of the UN High Commissioner for Human Rights on Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/HRC/48/43, 15 October 2021, para. 59.

¹⁰⁵ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022, para. 71.

¹⁰⁶ The obligation of a State responsible for an internationally wrongful act to put an end to that act is well established in customary international law and the Court has on a number of occasions confirmed the existence of that obligation: see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at p. 197, para. 150; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment, ICJ Reports 1986, p. 14 at p. 149, para. 292(12); *United States Diplomatic and Consular Staff in Tehran*, Judgment, ICJ Reports 1980, p. 3 at p. 44, para. 95(3)(a); *Haya de la Torre (Colombia/Peru)*, Judgment, ICJ Reports 1951, p. 71 at p. 82.

¹⁰⁷ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 16 at p. 54, para. 118.

Security Council in accordance with the present Charter”¹⁰⁸ and, under Article 2(2) of the Charter, to “fulfill in good faith the obligations assumed by them in accordance with the present Charter”.

- (b) By maintaining the illegal situation and occupying the territory without title, South Africa incurred international responsibility arising from a continuing violation of an international obligation.¹⁰⁹
- (c) Third States were under an obligation to accept and carry out resolutions of the UNSC which had declared South Africa’s continuing presence in Namibia unlawful, and were thus “under [an] obligation to recognize the illegality and invalidity of South Africa’s continued presence in Namibia” and “to refrain from lending any support or any form of assistance to South Africa with reference to its occupation of Namibia”.¹¹⁰

45. Second, in its advisory opinion in the *Construction of a Wall* proceedings, the Court stated as follows:

- (a) Israel was obliged to comply with the international obligations it had breached by the construction of the wall in the OPT, including the obligation to respect the right of the Palestinian people to self-determination and obligations under international humanitarian law and international human rights law, and to bring to an end its continuing violations of international law.¹¹¹

¹⁰⁸ Further, Article 2(2) of the UN Charter States that “[a]ll Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.”

¹⁰⁹ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 16 at p. 54, para. 118.

¹¹⁰ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 16 at pp. 53–54, paras. 115, 119. See also pp. 55–56, paras. 121–127 in relation to the legal consequences for third States. At p. 56, para. 125 the Court stated that “the non-recognition of South Africa’s administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international co-operation”, and thus that the invalidity of acts performed by South African “cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory”.

¹¹¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at p. 197, paras. 149–150.

- (b) Israel was required not only to remove the wall itself but also to dismantle the “associated regime”, including “legislative and regulatory acts adopted with a view to [the wall’s] construction”.¹¹²
 - (c) Israel was also under an obligation to make reparations for, for example, the requisition and destruction of homes, businesses and agricultural holdings that had occurred in the course of its violations of international law, with such reparations to consist of restitution or, where restitution was “materially impossible”, compensation.¹¹³
 - (d) Given that Israel’s violations implicated rights and obligations *erga omnes* (including the right to self-determination and obligations under international humanitarian law), all States were under an obligation not to recognise the illegal situation resulting from the construction of the wall or to render aid or assistance in maintaining the illegal situation.
 - (e) All States were also under an obligation to ensure the removal of any impediments to the exercise by the Palestinian people of its right to self-determination and to ensure compliance by Israel with international humanitarian law.¹¹⁴
46. Third, in its advisory opinion in the *Chagos Archipelago* proceedings, the Court stated that the United Kingdom’s continuing administration of the Chagos Archipelago inconsistently with the right of the people of Mauritius to self-determination constituted a wrongful act of a continuing character, entailing the international responsibility of that State. The United Kingdom was therefore under an obligation to bring its administration of the Chagos Archipelago to an end as rapidly as possible.¹¹⁵ Further, all Member States of the UN were under an obligation to cooperate with the UN to complete the decolonisation of Mauritius.¹¹⁶

¹¹² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at p. 198, para. 151.

¹¹³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at p. 198, paras. 152–153.

¹¹⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at pp. 199–200, paras. 154–160.

¹¹⁵ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Reports 2019, p. 95 at pp. 138–139, paras. 177–178.

¹¹⁶ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Reports 2019, p. 95 at p. 140, para. 182.

b. Application to the questions before the Court

47. The Maldives makes five observations.
48. First, according to the customary international legal rules on State responsibility reflected in the above-mentioned jurisprudence, Israel is obliged to cease, as soon as possible: (i) its unlawful occupation of the OPT; and (ii) its violations of other international obligations.
49. Second, the obligation of cessation applied to the circumstances of this case demands that Israel must also provide adequate assurances that it will not repeat such illegal actions in the future.
50. Third, Israel is required to provide comprehensive reparations to the Palestinian people, as well as to all natural or legal persons concerned, for the harm it has inflicted upon them through its violations of international law.¹¹⁷
51. Fourth, as a member of the UN, Israel bears an obligation to accept and carry out decisions of the UNSC¹¹⁸ and to fulfil in good faith the obligations it has assumed in accordance with the UN Charter.¹¹⁹ Israel has repeatedly refused to comply with the UNGA and UNSC resolutions made in regard to the OPT and its failure to adhere to UNSC resolutions constitutes a serious violation of international law for which Israel bears responsibility, just as South Africa did for its violations of UNSC resolutions in relation to its ongoing presence in Namibia.¹²⁰
52. Finally, Israel's continuing violations of international law also engender legal consequences for third States. In accordance with previous pronouncements by the Court, third States are under an obligation: (i) not to recognise the unlawful situation created by Israel's ongoing occupation of the OPT; (ii) not to render aid or assistance to illegal settlement activities; (iii) to cooperate with the United Nations to bring an end to Israel's unlawful occupation; (iv) to bring to an end any impediment to the exercise

¹¹⁷ *Case Concerning Factory at Chorzów (Germany v. Poland)*, Judgment, Claim for Indemnity (Merits), PCIJ, Series A, No. 17, at p. 47; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at p. 198, paras. 152–153.

¹¹⁸ UN Charter, Article 25.

¹¹⁹ UN Charter, Article 2(2).

¹²⁰ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 16 at p. 51, para. 108, p. 54, para. 118.

by the Palestinian people of its right to self-determination; and (v) to ensure Israel's compliance with its obligations under international law.¹²¹

Conclusion

53. The Report of the IICI to the HRC on 14 September 2022 unequivocally demonstrated that the continued Israeli occupation of Palestinian land is unlawful under international law.¹²² Through its policies and practices in the OPT, Israel has continuously and persistently breached international humanitarian law and international human rights law. That includes a violation of the right to water, an obligation that is owed by Israel to all Palestinians in the OPT. The critical importance of that obligation will only become more acute with the global crisis of climate change.
54. Violating fundamental principles of international law serves to perpetuate the cycle of conflict in the region, impeding meaningful progress towards a sustainable solution. It is essential that this is acknowledged by all parties. Accordingly, the Maldives believes that the Court's advisory opinion, affirming the unlawfulness of Israel's policies and practices in the OPT and the legal consequences that follow, could prove to be a significant step towards achieving lasting peace and security in the region.



A handwritten signature in blue ink, appearing to read 'Ibrahim Riffath'.

Ibrahim Riffath
Attorney General
Agent for the Republic of Maldives
Attorney General's Office
Velaanaage, 6th Floor,
Male', Republic of Maldives
25 July 2023

¹²¹ UNGA resolution 77/25, UN Doc. A/RES/77/25, 6 December 2022, para. 13; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Reports 2019, p. 95 at pp. 139–140, paras. 180, 182, 183(5); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 at pp. 199–200, paras. 154–160.

¹²² Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022, para. 75.