

INTERNATIONAL COURT OF JUSTICE

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

(Request for Advisory Opinion)

WRITTEN STATEMENT OF HUNGARY

July 2023

INTRODUCTION

1. On 30 December 2022, the United Nations General Assembly adopted Resolution 77/247, whereby, pursuant to Article 65 of the Statute of the Court, it requested the International Court of Justice to urgently render an advisory opinion on *'Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem'*. This Written Statement is filed pursuant to the Court's Order of 3 February 2023 concerning the request for an advisory opinion, and in accordance with Article 66 (2) of the Statute of the International Court of Justice.
2. The present statement, following a short introduction, addresses three main issues that Hungary considers important to highlight with respect to the case *'Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem'* before the Court. The first Chapter will discuss issues related to the jurisdiction of the Court, arguing that the Court should use its discretionary power to decline to give an opinion based on the fact that the questions relate to a bilateral dispute, and there is a lack of consent by the parties for the submission of the dispute to the Court. The second Chapter will give an introduction to the state of play of the conflict between the parties emphasizing the need to maintain the established legal framework and reiterating that the conflict could only be solved through on negotiations between the parties. The last Chapter will provide a list of existing mechanisms established by the international community to address questions that also form part of the present advisory procedure in which we conclude that new mechanisms such as an advisory opinion by the Court would only lead to unnecessary duplication and might hinder a negotiation-based solution.

GENERAL CONSIDERATIONS

I. Role of the Court in Maintaining the Rules-based International Order

a) General Remarks

3. The International Court of Justice is a unique judicial forum. During its 77 years long history, the Court has contributed significantly to the strengthening of the rules-based international order deciding contentious cases brought before it by states. The increasing number of States submitting their disputes to the Court's adjudication reflects their confidence both in the Court's mandate and in the quality of its work.

b) Jurisdiction and Admissibility in Advisory Cases

4. While most of the workload of the Court stems from deciding contentious cases, Article 96 of the Charter of the United Nations establishes the possibility for certain organs of the United Nations to initiate advisory proceedings. In accordance with Article 96, paragraph 1, of the Charter of the United Nations, “[t]he General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question”.
5. In case the request refers to the decision of a legal question, the Court can establish its jurisdiction and elaborate on the merits of the case. Although the Court's decisions on merits in several cases have contributed to the formation of international law, the filling of gaps, and provision of valuable interpretations of international law, we are of the view that even if a request is formally admissible, it should not lead to an automatic decision on admissibility, especially without giving careful consideration to the discretion provided to the Court by Article 65 of the Statute of the Court.
6. According to paragraph 1 of Article 65 of the Statute, “[t]he Court may give an advisory opinion on any legal question”. The Court has reflected on the interpretation of this Article on multiple occasions. The Court was unanimously convinced that Article 65 “means that the Court has a discretionary power to decline to give an advisory opinion

even if the conditions of jurisdiction are met” (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, para. 44).

7. The Court has to take into consideration several aspects when elaborating on the question of whether to use its discretionary power to refuse to give an opinion. As regards the limits of the discretionary power, the Court’s jurisprudence is consistent in this regard: *“only “compelling reasons” should lead the Court to refuse its opinion”* (Legal Consequences of the Construction of a Wall, para. 44).
8. Finding the balance among contradicting principles is core to maintaining the judicial integrity of the Court. According to Article 92 of the United Nations Charter and Article 1 of the Statute, the Court is the *“principal judicial organ of the United Nations”*, thus it has certain responsibilities with respect to requests dealing with legal issues that affect the United Nations or its Member States. However, the principle of consent, according to which a *“State is not obliged to allow its disputes to be submitted to judicial settlement without its consent”* (Western Sahara, Advisory Opinion, I.C.J. Reports 1975, para. 33) is equally important to respect.
9. In this context, it is important to recall, that according to the Court „there would be a compelling reason for it to decline to give an advisory opinion when such a reply *“would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent”* (Western Sahara, Advisory Opinion, I.C.J. Reports 1975, para. 33) (as quoted in the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019, para. 85).
10. Therefore, in every case serious consideration should be given to whether the issues underlying the questions addressed to the Court relate to a bilateral dispute, in which case the consent of the parties to the dispute is a necessary requisite for the Court to proceed with the case, as it has also been argued by Judge Tomka in his Declaration (Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019, para. 6).

c) Compelling Reasons why the Court should Reject to Give its Opinion

11. While the Court has previously interpreted “*compelling reasons*” in a restrictive manner, taking into account the particularities of the present case before the Court, we are of the view that the decision on judicial propriety should be based on a systemic view of means of peaceful settlement of disputes.
12. In this context, it is important to emphasize that Article 10 of the Manila Declaration on the Peaceful Settlement of Disputes (adopted by the General Assembly of the United Nations on 15 November 1982, A/RES/37/10) mentions direct negotiations as a “*flexible and effective means of peaceful settlement of disputes*”.
13. Regarding the present case, the Israeli and Palestinian sides have been engaged in negotiations on the issues that form part of the questions submitted to the Court for a long time, and they have also entered into several agreements that give a formal framework to such negotiations.
14. The Declaration of Principles on Interim Self-Government Arrangements (done at Washington, D.C., on 13 September 1993; regularly referred to as the Oslo I Accord) is an important element of the above-mentioned framework. Judge Péter Kovács in his Partly Dissenting Opinion attached to the decision of the Pre-Trial Chamber I of the International Criminal Court concerning the prosecution request pursuant to Article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, has been elaborating on the legal nature of the document, reaching the conclusion that the said Declaration had “*international legal nature*” (ICC-01/18-143-Anx1, para. 295).
15. Throughout the negotiation process, both the Israeli and the Palestinian sides have confirmed on multiple occasions that they consider the Oslo Accords (the Declaration of Principles on Interim Self-Government Arrangements, done at Washington, D.C., on 13 September 1993 and the Interim Agreement on the West Bank and Gaza Strip, done at Washington, D.C., on 28 September 1995) valid and that they are willing to continue negotiations.
16. Article XV of the Declaration regulates the resolution of disputes as follows:

“1. Disputes arising out of the application or interpretation of this Declaration of Principles, or any subsequent agreements pertaining to the interim period, shall be resolved by negotiations through the Joint Liaison Committee to be established pursuant to Article X above.

2. Disputes which cannot be settled by negotiations may be resolved by a mechanism of conciliation to be agreed upon by the parties.

3. The parties may agree to submit to arbitration disputes relating to the interim period, which cannot be settled through conciliation. To this end, upon the agreement of both parties, the parties will establish an Arbitration Committee.”

17. Taking into account that the neither the above list of dispute resolution means contain reference to the jurisdiction of the International Court of Justice, nor does the ongoing negotiation processes between Israel and Palestine acknowledge the role of the Court in any form, and considering also the repeated expression by the Israeli side that they are not willing to submit the dispute to the Court as a contentious case, it is reasonable to assume that there is a lack of consent by one of the parties concerned and to regard the initiation of the current process as a means for circumventing the principle of consent.

18. We are of the view that the legitimacy of the Court would be seriously compromised in a case where it failed to respect crucial legal principles, such as the principle of consent.

19. Therefore, we conclude that the provision of an advisory opinion in the present case would be contrary to the common interpretation of “*compelling reasons*” and therefore could have a negative impact on the perceived legitimacy of the Court and on the trust in means of peaceful dispute settlement, in general.

II. Importance of the Maintenance of the Established Legal Framework

20. While recognizing that the Israeli-Palestinian conflict has a wide-ranging impact on the lives of the Israeli and Palestinian people, we would like to recall that the situation has been addressed by the Security Council and the General Assembly of the United Nations on various occasions.

21. The Security Council has primary responsibility for the maintenance of international peace and security. The resolutions adopted by the Security Council provide guidance and establish legal parameters to address conflicts, including the Israeli-Palestinian situation.

22. In its resolutions 242 (1967) and 338 (1973), the Security Council has established a framework for negotiations which have been repeatedly reaffirmed by parties to the conflict. Both in internationally legally binding documents such as in Article 1 of the Declaration of Principles on Interim Self-Government Arrangements (done at Washington, D.C., on 13 September 1993) stating that “*the interim arrangements are an integral part of the whole peace process and that the negotiations on the permanent status will lead to the implementation of Security Council resolutions 242 (1967) and 338 (1973)*” and Preamble paragraphs 5 and 6 of the Interim Agreement on the West Bank and Gaza Strip (done at Washington, D.C., on 28 September 1995) and in subsequent political declarations, most recently in Sharm El Sheikh, on 19 March 2023 where “*parties reaffirmed their commitment to advancing security, stability and peace for Israelis and Palestinians alike [...] and addressing outstanding issues through direct dialogue.*”

23. The permanent status of the territory in question is to be resolved through good faith negotiations between the parties, which will address their competing claims and include, *inter alia*, resolution of “*permanent status issues*” such as security arrangements, settlements, refugees, and borders (i.e. in Article V para (3) of the Declaration of Principles on Interim Self-Government Arrangements, (done at Washington, D.C., on 13 September 1993).and in Article XXXI para (5) of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, (done at Washington, D.C., on 28 September 1995).

24. This has been reaffirmed by the Security Council in its resolution 2334 (2016) in which it called upon the parties to “*continue, in the interest of the promotion of peace and security, to exert collective efforts to launch credible negotiations*”. In this vein, the report of the Secretary General on the implementation of the above-mentioned resolution emphasized that there is “*no substitute for a legitimate political process that will resolve the core issues driving the conflict*”.

25. The importance of respecting the established legal framework has also been emphasized by members of the international community.
26. In its Resolution Peaceful settlement of the question of Palestine of 6 December 2022 (A/RES/77/25) the General Assembly of the United Nations it “[c]alls upon both parties to act responsibly and in compliance with international law and their previous agreements and obligations, in both their policies and actions, in order to, with the support of the Quartet and other interested parties, urgently reverse negative trends, including all measures taken on the ground that are contrary to international law, and create the conditions necessary for a credible political horizon and the advancement of peace efforts” (para. 5).
27. The European Union in Council Conclusions on the Middle East Peace Process adopted in 2014 recalled “that a lasting solution to the conflict must be achieved on the basis of the relevant UN Security Council Resolutions, the Madrid principles, including land for peace, the Roadmap, the agreements previously reached by the parties and of the Arab Peace Initiative, with the State of Israel and an independent, democratic, contiguous, sovereign and viable State of Palestine, living side by side in peace and security and mutual recognition”. These guiding thoughts have been repeated in subsequent Council Conclusions (i.e. in Council Conclusions on the Middle East Peace Process of 20 July 2015 and Council Conclusions on the Middle East Peace Process of 18 January 2016), and in a statement at the 12th Meeting of the EU-Israel Association Council on 3 October 2022. According to the Statement on behalf of the European Union on the latest developments (8 March 2023) the High Representative state that “[o]nly a negotiated agreement offers a chance of security and peace for all.”
28. Hungary has also reaffirmed its commitment on numerous occasions to finding a solution to the conflict based on negotiations between the parties, in line with the two-state solution policy.
29. The International Court of Justice itself has also confirmed that the “situation can be brought to an end only through implementation in good faith of all relevant Security

Council resolutions, in particular resolutions 242 (1967) and 338 (1973)” as stated in the Wall Opinion (para. 162).

30. Therefore, it is important to uphold the existing legal framework, which establishes dispute resolution means and viable ways of communication between the parties and reflects their commitment to settle the remaining issues (“*including settlements, security arrangements, borders [...] and other issues of common interest*”) by way of negotiation in line with Article V of the Declaration of Principles on Interim Self-Government Arrangements (done at Washington, D.C., on 13 September 1993).

III. International Mechanisms for Maintaining Peace and Security and Defending Human Rights

31. Over the years, Israel and Palestine have made repeated efforts to resolve their conflict on the basis of established legal frameworks. In addition, with the assistance of the international community, other international mechanisms have been established for maintaining peace and security and defending human rights. Although concerns have been raised regarding the impartiality of these mechanisms, they are nevertheless functional. The Palestinian initiative to pursue an advisory opinion in our understanding weakens the efficiency and legitimacy of the efforts undertaken by these international mechanisms.

32. It is important to acknowledge the international mechanisms that have been established to maintain peace, security, and protect human rights on a global scale. The United Nations Human Rights Council (hereinafter referred to as: UNHRC) serves as a platform for member states to engage in productive discussions, and coordinate efforts to address human rights concerns. The UNHRC's investigative and monitoring capabilities, including the appointment of Special Rapporteurs (established by Resolution 1993/2A of the Commission on Human Rights), aim to strengthen its capacity to monitor and investigate alleged human rights abuses and violations of international humanitarian law.

33. Although there have been concerns raised about the impartiality and potential one-sidedness of these mechanisms, we acknowledge that the UNHRC raises awareness and

promotes accountability for human rights violations around the world. It provides an avenue for affected parties and the international community to engage in constructive dialogue and work towards addressing violations.

34. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 is responsible for assessing, reporting, and providing recommendations regarding the human rights situation in the Occupied Palestinian Territories.

35. It is also crucial to mention the involvement of other international mechanisms in addressing the Israeli-Palestinian conflict. The United Nations Special Coordinator for the Middle East Peace Process (hereinafter referred to as: UNSCO) serves as an important mechanism in facilitating dialogue and negotiations, promoting peace, and coordinating international efforts towards a just, lasting, and comprehensive resolution. UNSCO plays a role in supporting the peace process, by providing political analysis, and helping to coordinate humanitarian and development assistance.

36. Adherence to the principles of international law, as guided by these international mechanisms, is fundamental in the pursuit of peace and stability in the region. Upholding the principles of the United Nations Charter and the respect for human rights, is of utmost importance.

37. However, achieving a just and lasting resolution requires direct negotiations and mutual agreement between the parties involved. It is essential to consider the potential consequences of seeking an advisory opinion without the consent of both parties, especially in the sensitive case of the Israeli-Palestinian conflict and the pursuit of a two-state solution. Hungary believes that diplomatic dialogue and negotiations are of utmost importance.

38. Furthermore, it is worth noting that an advisory opinion, although of legal significance, may have limitations in its effectiveness compared to decisions or resolutions issued by international bodies with enforcement mechanisms, such as the United Nations Security Council or the UNHRC. These bodies have the authority to implement binding

measures, adopt resolutions, and engage in diplomatic negotiations to achieve concrete outcomes. Their decisions and resolutions hold significant political weight.

39. In conclusion, we firmly believe that engaging in meaningful dialogue and negotiation within the framework of existing international mechanisms provides the most effective and sustainable approach to resolving the Israeli-Palestinian conflict. By utilizing established international mechanisms, including the UNHRC and the Security Council, we can foster an environment that promotes peace, stability, and the realization of a two-state solution. These mechanisms provide platforms for direct engagement, negotiation, and mediation, ensuring that the interests, concerns, and aspirations of both Israel and Palestine are adequately represented. We also wish to reiterate that it is vital to refrain from establishing parallel processes as the potential legal consequences could undermine the current negotiation framework.

CONCLUSIONS

a) Summary

40. In the present Statement, Hungary discusses three issues – including reflections on judicial propriety, emphasizing the importance of maintaining the established legal framework and discussing the problem of parallel processes - which might be of interest to the Court when deciding whether to provide an advisory opinion as requested by the General Assembly of the United Nations in its Resolution 77/247 of 30 December 2022.

b) Submission

41. Hungary accordingly submits that:

a) The General Assembly's request for an advisory opinion satisfies the conditions set out in Article 65 of the Statute of the Court and Article 96 of the United Nations Charter 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) However, the (1) bilateral nature of the dispute, the (2) lack of the consent of one of the parties to the submission of their dispute to the Court, the (3) existing legal framework for the resolution of pending issues and disputes between the parties, and the (4) fact that the establishment of parallel processes hinder a negotiation-based solution to the conflict constitute "*compelling reasons*" why the Court should not render the advisory opinion, which has been requested of it.

42. For the above reasons, Hungary respectfully requests that the Court decline to provide the opinion requested.

43. Hungary reserves the right to furnish information and/or to make any further submissions on the questions submitted to the Court for an advisory opinion in a possible second written statement.

The Hague, 25 July 2023



Ms. Krisztina Gosztanyi
Minister Counsellor
Chargé d'affaires of the Embassy of
Hungary in The Hague