

INTERNATIONAL COURT OF JUSTICE

REQUEST FOR ADVISORY OPINION

**Legal Consequences arising from the Policies and Practices
of Israel in the Occupied Palestinian Territory, including
East Jerusalem**

Written Statement of the Federative Republic of Brazil

July 2023



TABLE OF CONTENTS

INTRODUCTION	1
(I) CONSIDERATIONS ON JURISDICTION AND JUDICIAL PROPRIETY	2
(II) THE RIGHT OF PEOPLES TO SELF-DETERMINATION	3
(III) OCCUPATION, SETTLEMENT AND ANNEXATION	5
(IV) THE PROHIBITION OF DISCRIMINATION	7
(V) THE LEGAL STATUS OF THE OCCUPATION	8
(VI) LEGAL CONSEQUENCES	9
Obligations arising for the responsible State	10
a) Cessation and non-repetition	10
b) Reparations	10
Obligations arising for all States	11
c) Obligation of non-recognition.....	11
d) Obligation not to render aid or assistance.....	12
e) Obligation to cooperate.....	12
CONCLUSION	13



INTRODUCTION

1. Pursuant to the International Court of Justice's Order of 3 February 2023, the Federative Republic of Brazil has the honor to submit this Written Statement to furnish information on the questions addressed to the Court in General Assembly resolution 77/247, adopted on 30 December 2022. This submission aims to assist the Court in the advisory proceedings entitled "Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem".

2. On 30 December 2022, under its agenda item 47, the United Nations General Assembly adopted Resolution 77/247, by a recorded vote of 87 to 26, with 53 abstentions, entitled "Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem".

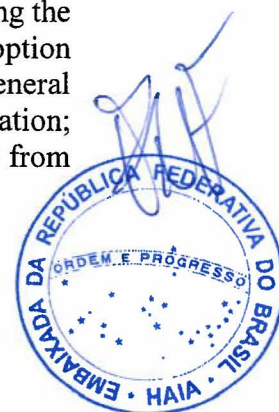
3. In this resolution, the General Assembly decided, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice to render an advisory opinion pursuant to Article 65 of the Statute of the Court, on the following questions:

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

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

4. The General Assembly resolution 77/247 requested the Court to render its opinion "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".

5. Question (a) submitted to the Court may be divided at least in three sections, related to the legal consequences arising from: (i) the violation of the right of the Palestinian people to self-determination; (ii) the prolonged occupation, settlement and annexation of the Palestinian territory, including measures aimed at altering the demographic composition, character and status of Jerusalem; and (iii) the adoption of discriminatory legislation and measures. Question (b) presented by the General Assembly may be divided into two, related to (i) the legal status of the occupation; and (ii) the legal consequences arising for all States and the United Nations from this status.



6. This Written Statement is structured in six parts. After procedural considerations in part I, it analyses relevant rules and principles of international law pertaining to question (a) submitted by the General Assembly, namely the right of peoples to self-determination in part II; the rules applicable to the occupation, in part III; and the prohibition of discrimination in part IV. Part V is related to the first section of question (b) of the UNGA resolution, on the legal status of the occupation. Finally, part VI addresses simultaneously the legal consequences arising for all States and for the United Nations from the violation of international law applicable to the situation referred to in question (a) and from the legal status referred to in question (b).

7. Brazil decided to submit this Written Statement based on its permanent commitment to the promotion of international law and its unwavering support for the International Court of Justice as the principal judicial organ of the United Nations. Brazil does not perceive this advisory proceeding as a bilateral dispute, nor does it approach the present statement as being adversarial to any State.

8. Brazil reiterates its commitment to the two-state solution, with Palestine and Israel living side by side in peace, security and within mutually agreed and internationally recognized borders. Brazil remains committed to the idea of the achievement of a comprehensive, just and lasting peace in the Middle East with no delay on the basis of international law and relevant United Nations resolutions.

(I) CONSIDERATIONS ON JURISDICTION AND JUDICIAL PROPRIETY

9. According to Article 65(1) of its Statute, "the Court may give an advisory opinion on any legal question at the request of whatever body authorized by or in accordance with the Charter of the United Nations to make such a request". The General Assembly is competent to request an advisory opinion by virtue of Article 96, paragraph 1, of the Charter, which provides that "The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question".

10. The questions submitted by the General Assembly to the Court in the present case have been framed in terms of law and are susceptible of replies based on law. As acknowledged by the Court in the Wall proceedings, the fact that a legal question also has political aspects does not preclude the Court from exercising its advisory jurisdiction¹.

11. For these reasons, Brazil considers that all criteria for the Court to have advisory jurisdiction according to Article 65(1) of the Statute were met.

¹ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, para 41.



12. When the subject-matter of a General Assembly's request cannot be regarded solely as a bilateral dispute, there is no compelling reason not to give an advisory opinion. In the present case, the object of the request is to obtain an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions. The questions raised by the General Assembly are located in a much broader frame of reference than a bilateral dispute. They relate to the legal consequences of peremptory norms of general international law, such as the right of self-determination, the prohibition of annexation by force and the prohibition of discrimination. These norms reflect and protect fundamental values of the international community, and give rise to obligations "*erga omnes*", owed to the international community as a whole.

13. Therefore, there is no compelling reason for the Court to use its discretionary power not to give its opinion to the General Assembly. Given its responsibilities as one of the principal organs of the United Nations, Brazil's position is that the Court should exercise its advisory jurisdiction in order to assist the General Assembly in its functions.

(II) THE RIGHT OF PEOPLES TO SELF-DETERMINATION

14. One of the most relevant principles of international law applicable in the present case is the right to self-determination. It is the basis for one of the main purposes of the Organization, which is to develop friendly relations among nations, as enshrined in article 1 of the Charter.

15. When addressing the first question submitted by the General Assembly, it is important to consider that since the 1950's the General Assembly has affirmed that "the right of peoples and nations to self-determination is a prerequisite to the full enjoyment of all fundamental human rights"². It has also stressed the importance of securing "international respect for the right of peoples to self-determination"³

16. General Assembly resolution 1514 (XV), of 14 December 1960, containing the landmark Declaration on the Granting of Independence to Colonial Countries and Peoples, solemnly declared that "all peoples have the right to self-determination", and that "by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". The 1960 Declaration was adopted without dissenting votes, which provides evidence that it already reflected customary international law by the time it was approved, as Brazil argued in its Written Statement in the Chagos proceedings⁴.

² United Nations General Assembly resolution 637 (VII) of 1952, Part A.

³ *Ibid.* Part C.

⁴ Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019. Written Statement of the Federative Republic of Brazil, para 18.



17. Resolution 1514 (XV) also stressed that “the subjugation of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights” and is contrary to the Charter of the United Nations”. Thenceforward, General Assembly adopted successive Resolutions in support of the 1960 Declaration and on its implementation, including the program of action of 1970 for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by resolution 2621(XXV).

18. General Assembly resolution 2625 (XXV), of 24 October 1970, containing the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, reiterated that “all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter”. The Court recognizes that this resolution reflects customary international law, as consent to its text “expresses an *opinio juris*”. This consent may be understood as an acceptance of the validity of the set of rules presented in the resolution, irrespective of whether they are enshrined in international treaties⁵.

19. Furthermore, common article 1 to the 1966 International Covenant on Civil and Political Rights and to the 1966 International Covenant on Economic, Social and Cultural Rights, to both of which Israel and Palestine are states parties, reiterates that “all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”.

20. Brazil also considers that the right to self-determination includes as a basic constituent the permanent sovereignty over natural wealth and resources, as set out in relevant General Assembly resolutions, including resolution 1803 (XVII) of 1962, entitled “Permanent sovereignty over natural resources”. The General Assembly has reiterated “the inalienable rights of the Palestinian people and of the population of the occupied Syrian Golan over their natural resources, including land, water and energy resources” in many resolutions, including resolution 77/187, of 2022, entitled “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”.

21. The normative nature of the right to self-determination is undisputed, and its special character is noteworthy. In 2022, the International Law Commission (ILC) adopted its Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*). Brazil considers that the principle of self-determination meets the criteria established by the ILC in conclusion 4: it is a norm of general international law that is accepted and recognized by the international community of States as a whole as a norm from which no

⁵ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, para. 188).



derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

22. Although acceptance and recognition by all States are not required for identifying a peremptory norm of general international law, a very large and representative majority of States is required. In its Written Statement in the Chagos case, Brazil acknowledged the peremptory nature of the right of peoples to self-determination, and so did several delegations in the course of the proceedings.

23. In the present advisory proceedings, Brazil would see great value in the Court's explicit recognition of the peremptory nature of the right of self-determination.

24. As acknowledged by the Court in the Wall opinion and reaffirmed by the UN General Assembly and the Human Rights Council⁶, the existence of a Palestinian people with right to self-determination is no "longer in issue". The Court asserted that the construction of the wall severely impedes the exercise by the Palestinian people of its right to self-determination⁷.

(III) OCCUPATION, SETTLEMENT AND ANNEXATION

25. Turning to the second part of question (a) put to the Court, related to the prolonged occupation, settlement and annexation of the Palestinian territory, including measures aimed at altering the demographic composition, character and status of Jerusalem, it is important to identify applicable regimes of international law.

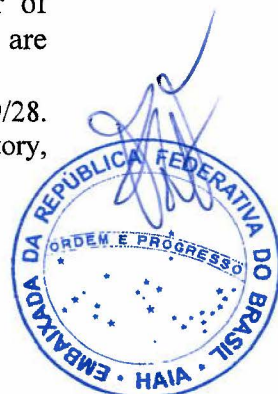
26. After the occupation of the Palestinian territory in 1967, the Security Council unanimously adopted resolution 242 (1967). While emphasizing the principle that acquisition of territory by military conquest is inadmissible, the Council urged for the "Withdrawal of Israel armed forces from territories occupied in the [then] recent conflict".

27. From 1967 onwards, Israel took a number of measures aimed at altering the demographic composition, character and status of the Palestinian territory, including the City of Jerusalem. These measures include the construction and expansion of settlements, the construction of the wall, building of permanent infrastructure, the transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians.

28. The Security Council has repeatedly condemned these practices and policies. In resolution 298 (1971), for instance, it confirmed "in the clearest possible terms, that all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and legislation aimed at the incorporation of the occupied section, are

⁶ See e.g. General Assembly resolution 77/208 and Human Rights Council resolution 49/28.

⁷ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, para 122.



totally invalid and cannot change that status". These measures created a situation similar to *de facto* annexation, and were the harbinger of the 1980 "basic law" on Jerusalem.

29. The occupying Power formalized the *de jure* annexation of Jerusalem in 1980. In resolution 478 (1980), while "reaffirming again that the acquisition of territory by force is inadmissible", the Security Council censured "in the strongest terms the enactment by Israel of the 'basic law' on Jerusalem" and affirmed that it "constitutes a violation of international law" and does not affect the legal status of the occupied territories, including Jerusalem. The General Assembly also stressed in resolution 36/120, of December 1981, that the "basic law" on Jerusalem and measures purported to alter the status of the Holy City were "null and void".

30. The necessity to end the prolonged occupation of Palestinian territories as a whole has been reaffirmed in numerous resolutions of the Security Council, the General Assembly and the Human Rights Council. In resolution 2334 (2016), the Security Council condemned "all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967", including the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians.

31. In the Wall proceedings, the Court has recognized that all the Palestinian territories occupied since 1967, including East Jerusalem, have the legal status of "occupied territories and Israel has continued to have the status of occupying Power". Therefore, the Court concluded that Israel is bound by applicable international humanitarian law in the occupied territories, including the customary law reflected in the Hague Regulations annexed to the Fourth Hague Convention of 1907, and the Fourth Geneva Convention of 1949⁸.

32. Brazil also considers that it is of the utmost importance to respect the principles of legality, distinction, precaution and proportionality in the Palestinian occupied territories, as called upon the successive General Assembly resolutions, including resolution 77/247.

33. In this context, measures aimed at altering the demographic composition of occupied territories constitute a breach of international obligations arising under not only Security Council resolutions but also under relevant instruments of international humanitarian law. In particular, the settlements in occupied territories are not in conformity with article 49(6) of the Fourth Geneva Convention: "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies". Therefore, in the Wall case, the Court concluded that "the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law"⁹.

34. In resolution 2334 (2016), the Security Council reaffirmed "that the establishment by Israel of settlements in the Palestinian territory occupied since

⁸ *Ibid.* paras. 78, 89 and 101.

⁹ *Ibid.* para 120.



1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law”. The Council reiterated its demand “that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard”.

35. The Secretary-General has repeatedly stated in its quarterly reports on the implementation of resolution 2334 that no such steps were taken towards this direction, as settlement activities continues. In its 25th Report, delivered to the Security Council on 22 March 2023, the UNSG observed that he remains “deeply troubled by continued Israeli settlement expansion, including the recent authorization of nine illegal outposts and the advancement of over 7,000 settlement housing units and the potential settlement advancement in the E1 area that is crucial to the contiguity of a future Palestinian State. Settlements further entrench the occupation, fuel tensions, and systematically erode the viability of a Palestinian State as part of a two-State solution. Israeli settlements have no legal validity and constitute a flagrant violation of international law and United Nations resolutions”.

36. Furthermore, the protection offered by human rights conventions does not cease in case of armed conflict, as stated by the Court in the Wall proceedings¹⁰. In 2004, the Court acknowledged that human rights treaties, especially 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 are applicable within the Occupied Palestinian Territory¹¹.

37. In resolution 77/247, the General Assembly expressed “grave concern about the continuing systematic violation of the human rights of the Palestinian people”, including that arising from the excessive use of force and military operations causing death and injury to Palestinian civilians. The resolution also mentioned the use of collective punishment, the confiscation of land, and the destruction of property and infrastructure. The General Assembly considered these measures unlawful and demanded the cessation of all such actions.

38. In view of the foregoing, Brazil considers that the prolonged occupation, settlements and annexation of the Palestinian territory, including measures aimed at altering the demographic composition, character and status of these territories, including Jerusalem, violate relevant rules of international law.

(IV) THE PROHIBITION OF DISCRIMINATION

39. Everyone is equal before the law without discrimination. The right to exercise human rights and fundamental freedoms on an equal footing is enshrined in the Universal Declaration of Human Rights, having acquired the status of customary

¹⁰ *Ibid.* para 106.

¹¹ *Ibid.* paras 111-113.



international law. Additionally, in accordance with Article 26 of the International Covenant on Civil and Political Rights “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

40. Since the beginning of the occupation, it has been documented that Israel has extended its legislation to the West Bank, which has resulted in two sets of applicable law. It has also been documented that Israeli domestic law has been extended to occupied territories to apply only to Israeli settlers, while Palestinians are subject to military rules. It has been documented that differences of treatment before the law include restrictions to wave Palestinian flags during demonstrations, assemblies and even funerals, preventing the Palestinian people from expressing their collective identity in their own land.

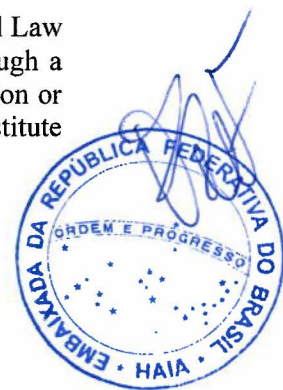
(V) THE LEGAL STATUS OF THE OCCUPATION

41. Turning to the first part of question (b) requested by the General Assembly, Brazil considers that the measures referred to in question (a) may be considered a breach of an international obligation through a series of actions or omissions.¹²

42. Each specific practice such as the confiscation of land and the destruction of property may be considered a single violation of applicable international humanitarian or human rights law. These breaches of international obligations occur at the moment when the act is performed, even if its effects continue. However, the series of acts and omissions, including, *inter alia*, the prolonged occupation, the continuing construction of settlements and measures aimed at altering the demographic composition of the occupied territories, the expropriation of land and natural resources, and the discriminatory measures derived from the enforcement of domestic legislation could be considered acquisition of territory by the use of force.

43. The inadmissibility of the acquisition of territory by force is a well-established principle of international law. Pursuant to Article 2, paragraph 4, of the United Nations Charter: "all 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." Likewise, resolution 2625 (XXV) adopted by the General Assembly in 1970, emphasizes that "No territorial acquisition resulting from the threat or use of force shall be recognized as legal". The Court recognizes that the illegality of territorial

¹² Articles on Responsibility of States for Internationally Wrongful Acts, International Law Commission, article 15: “The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act”.



acquisition resulting from the threat or use of force incorporated in the Charter reflects customary international law¹³.

44. Annexation of territory does not depend on a formal declaration from one state over a territory under its control. In the Wall proceedings, the Court considered that “the construction of the wall and its associated régime create a ‘fait accompli’ on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation”¹⁴. Almost twenty years since the Court opinion, the situation in the terrain, unfortunately, confirms this presage. As the Security Council has assessed, the situation on the ground is “eroding the two-State solution and entrenching a one-State reality”¹⁵.

45. Brazil recognizes Israel’s legitimate security concerns and its inherent right to self-defense. As stressed in its Written Statement in the Wall proceedings, Brazil acknowledges that Israel has the right to protect its people from terrorist attacks. However, all measures Israel take for its own defense must be in accordance with international law. In this context, Brazil points out that no consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for annexation by force.

46. Occupation is inherently temporary. This is the basic distinction between occupation and annexation. More than 55 years have passed since the 1967 conflict, and thenceforth the occupying Power has adopted policies and practices such as the construction and expansion of settlements with permanent infrastructure, the construction of the wall, the demolition of Palestinian homes, the transfer of populations, the application of discriminatory legislation, which benefits the settlers, and legal assimilation. The cumulative effect of these measures would render the occupation unlawful as a whole, inasmuch as it would be tantamount to the acquisition of territory by force.

(VI) LEGAL CONSEQUENCES

47. The main focus of the request submitted to the Court by the General Assembly is the legal consequences arising from alleged violations of international law. Although it is important to identify relevant rules and principles applicable to the case, and whether these rules were breached, Brazil believes the Court should dedicate a substantive part of its opinion to the legal consequences arising from the practices referred to in question (a) and the legal status referred to in question (b).

48. When addressing the legal consequences arising from the violations of the right to self-determination, the prohibition of acquisition of territory by force and the prohibition of discrimination, it is important to consider that violations of peremptory norms give rise to obligations not only to the responsible State but also

¹³ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, para. 87.

¹⁴ *Ibid.* para 121.

¹⁵ Security Council resolution 2334/2016.



to all States and to the United Nations, as the Court affirmed in the Wall proceedings¹⁶.

Obligations arising for the responsible State

a) Cessation and non-repetition

49. According to customary international law reflected in article 30 of the ILC Articles on responsibility of States for internationally wrongful acts (ARSIWA), “The State responsible for the internationally wrongful act is under an obligation: (a) to cease that act, if it is continuing; (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require”.

50. In the present case, the occupying Power is under the obligation to cease its occupation as a whole. This includes ceasing the construction of settlements and the transfer of populations, and measures that would correspond to *de iure* annexation of territory, including East Jerusalem. The cessation of the act also includes the complete, expeditious and unconditional withdrawal from the occupied Palestinian territories as a whole. Brazil reiterates that these legal consequences could only be modified by direct agreement between the parties.

51. Furthermore, given the circumstances of the case, the responsible State should offer appropriate assurances and guarantees of non-repetition. These assurances could take the form, *inter alia*, of official declarations, international commitments, and legislative and administrative measures.

b) Reparations

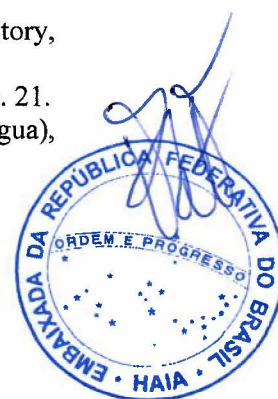
52. As established in the long-standing jurisprudence of the Court, “It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form”¹⁷. In the words of judge Cançado Trindade “Any breach is to be promptly followed by the corresponding reparation, so as to secure the integrity of the international legal order itself (...) If the breach has not been complemented by the corresponding reparation, there is then a continuing situation in violation of international law”¹⁸. According to article 34 of the ARSIWA, “full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination”.

53. In the present case, full reparation is only possible through a combination of restitution, compensation and satisfaction. These obligations and their implementation could only be modified by direct agreement between the parties.

¹⁶ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, para 148.

¹⁷ Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 21.

¹⁸ Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Separate Opinion of Judge Cançado Trindade, para 14.



54. According to the Court's *jurisprudence constante*, "reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed"¹⁹. Therefore, *restitutio in integrum* is the first and foremost form of reparation, inasmuch as it re-establishes the situation which existed before the wrongful act was committed.

55. Restitution alone is not sufficient to promote full reparation. In particular, where the property to be restored has been permanently lost or destroyed, restitution is materially impossible.

56. It is also important to take into consideration the rights of the Palestinian people over their natural resources, including land, water and energy resources when financially assessing compensation. This legal consequence could only be modified by direct agreement between the parties.

57. A declaration of the wrongfulness of the act by a competent international court may also serve as satisfaction of a non-material injury, as previously affirmed by the Court²⁰. Therefore, the recognition of the Palestinian rights, including their inalienable right to self-determination, in the present advisory proceedings may be considered itself a non-monetary reparation.

Obligations arising for all States

58. Serious breaches of peremptory norms of general international law give rise to additional consequences for all States. Whether the consequences of full reparation of damages may be subject to direct agreement between the parties, the legal consequences that arise for the international community as a whole in order to preserve obligations *erga omnes* are not immediately precluded by consent. As the ILC has stated in its commentaries to the ARSIWA, "since the breach by definition concerns the international community as a whole, waiver or recognition induced from the injured State by the responsible State cannot preclude the international community interest in ensuring a just and appropriate settlement".

c) Obligation of non-recognition

59. By virtue of the general principle *ex injuria jus non oritur*, a *de facto* situation created by these breaches cannot give rise to any legal right or entitlement. Therefore, all States are under an obligation to abstain not only from formal recognition of these situations, but also from acts that could imply such recognition.

60. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the

¹⁹ Factory at Chorzów, Merits, Judgment No 13, 1928, P. C. 1. J., Series A, No. 17, p. 47.

²⁰ Corfu Channel, Merits, Judgment, I.C.J. Reports 1949, p. 35-36.



United Nations affirms that “No territorial acquisition resulting from the threat or use of force shall be recognized as legal”.

61. In the Namibia case, the Court stated that “member States are under obligation to abstain from entering into treaty relations with South Africa in all cases in which the Government of South Africa purports to act on behalf of or concerning Namibia. With respect to existing bilateral treaties, member States must abstain from invoking or applying those treaties or provisions of treaties concluded by South Africa on behalf of or concerning Namibia which involve active intergovernmental cooperation (...) Member States, in compliance with the duty of non-recognition (...) are under obligation to abstain from sending diplomatic or special missions to South Africa including in their jurisdiction the Territory of Namibia, to abstain from sending consular agents to Namibia, and to withdraw any such agents already there. They should also make it clear to the South African authorities that the maintenance of diplomatic or consular relations with South Africa does not imply any recognition of its authority with regard to Namibia”²¹.

62. The Court reiterated the obligation of non-recognition in the Wall proceedings. “Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem”²².

63. In resolution 2334 (2016), the Security Council reaffirmed that the establishment of settlements in the occupied Palestinian territory “has no legal validity”, underlined that it would not recognize any changes to the 5 June 1967 lines, and called upon “all States (...) to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967”.

d) Obligation not to render aid or assistance

64. No State shall render aid or assistance in maintaining a situation created by a serious breach of a peremptory norm. These consequences are directly related to the obligation of non-recognition. In the Wall proceeding, while recognizing the importance of the rights and obligations involved in the construction of the wall, the Court asserted that all States are “under an obligation not to render aid or assistance in maintaining the situation created by such construction”²³.

e) Obligation to cooperate

²¹ Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, paras. 122-123.

²² Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, para 159.

²³ *Ibid.*



65. According to article 41 of the ARSIWA, States shall cooperate to bring to an end through lawful means any serious breach of a *jus cogens* norm. In the Wall proceedings, the Court has asserted that it is for all States “to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end”²⁴. Likewise, in the Chagos advisory opinion the Court reaffirmed that “all Member States must co-operate with the United Nations to complete the decolonization of Mauritius”²⁵.

66. Question (b) submitted to the Court also refers to legal consequences arising for the United Nations. In this context, the Court has affirmed that “the United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated régime”²⁶. Therefore, States must cooperate within the multilateral framework of the Organization to bring to an end serious breaches of international law.

67. In resolution 2334 (2016), the Security Council called on all the parties to “exert collective efforts to launch credible negotiations” and urged in this regard “intensification and acceleration of international and regional diplomatic efforts and support aimed at achieving, without delay a comprehensive, just and lasting peace in the Middle East”. In line with the duty of States to settle their disputes by peaceful means laid down in Article 2(3) of the Charter, the parties have the legal obligation to pursue negotiations in good faith, with a view to promoting a lasting peace in the region.

CONCLUSION

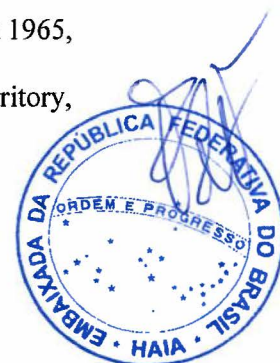
For the reasons presented above, Brazil submits that:

- (a) the Court has and should exercise its advisory jurisdiction;
- (b) the Palestinian people has the inalienable right to self-determination;
- (c) the occupying Power shall comply with international humanitarian law and international human rights law in all territories under its control;
- (d) any discriminatory legislation and measures adopted by the occupying Power must be analyzed in light of its obligations under international law regarding the prohibition of discrimination;

²⁴ *Ibid.*

²⁵ Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019, para 182.

²⁶ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, para 160.



- (e) the persistent practices in the occupied Palestinian territories would be tantamount to annexation;
- (f) the occupying Power is under an obligation to cease its occupation as a whole;
- (g) Palestine is entitled to full reparation for damages;
- (h) all States shall not to recognize the occupation of Palestinian territories as lawful;
- (i) all States shall not to render aid or assistance in the maintenance of the occupation of Palestinian territories;
- (j) all States shall cooperate to bring to an end through lawful means the occupation of Palestinian territories.

The present statement is without prejudice to the possibility to submit further comments regarding the statements presented by other States and organizations, in accordance with the timetable set by the Court. The Federative Republic of Brazil also reserves its right to participate in the hearings, as set by the Court in due course.



Paulo Roberto França
Ambassador

