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INTERNATIONAL COURT OF JUSTICE

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

REQUEST FOR AN ADVISORY OPINION

**WRITTEN STATEMENT OF THE GOVERNMENT
OF THE FRENCH REPUBLIC**

25 July 2023

[Translation by the Registry]

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1. By its resolution 77/247 of 30 December 2022, the General Assembly of the United Nations requested the International Court of Justice (hereinafter “the ICJ” or “the Court”) to render an advisory opinion 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?”

2. Pursuant to Article 66, paragraph 1, of the Statute, all States entitled to appear before the Court were given notice of the request for an advisory opinion by letters dated 19 January 2023. In its Order dated 3 February 2023, the Court decided that “the United Nations and its Member States . . . are considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion and may do so within the time-limits fixed in [that] Order”. It fixed 25 July 2023 as the time-limit within which written statements on the questions may be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute.

3. This written statement is submitted by France pursuant to that Order and comes in two parts: first, on the Court’s jurisdiction and its discretionary power to respond to a request for an opinion; and second, on an analysis of the questions put to the Court in the present advisory proceedings.

I. JURISDICTION AND DISCRETIONARY POWER OF THE COURT

4. On the basis of Article 65, paragraph 1, of its Statute, “[t]he 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”. The Court should first determine whether it “has jurisdiction to give the opinion requested and, if so, whether there is any reason why the Court should, in the exercise of its discretion, decline to answer the request”¹.

5. As regards jurisdiction first of all, Article 65, paragraph 1, of the Statute limits the number of entities that may request an advisory opinion of the Court. There is no doubt in this case of the competence of the United Nations General Assembly to make such a request. Article 96, paragraph 1, of the United Nations Charter provides that “[t]he General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question”.

6. This calls for two remarks. Article 10 of the Charter confers general competence on the General Assembly with regard to “any questions or matters within the scope of the present Charter”. The policies and practices of Israel in the occupied Palestinian territories, the subject-matter of the present request for an advisory opinion, are submitted to the General Assembly for review on a

¹ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 111, para. 54.

regular basis, in particular in so far as they raise various questions of international law. Therefore, the questions put to the Court in these advisory proceedings can be linked to the mandate conferred on the General Assembly by the Charter.

7. Secondly, as the Court stated in its 2004 Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the fact that the Security Council remains “seised” of these same questions² does not preclude the General Assembly from exercising its competence in the matter³.

8. Next, as regards the formulation of the questions put in the present proceedings, under the terms of Article 65, paragraph 1, of its Statute, the Court may give an advisory opinion on “any legal question”. France observes that, in light of the Court’s jurisprudence, the questions put by the General Assembly to the Court undeniably have a “legal” character, notwithstanding their political implications⁴.

9. The questions put to the Court in these proceedings may, in some respects, appear imprecise, biased or ambiguous. Such wording could make it more difficult for the Court to exercise its judicial function.

10. That is the case, for example, with the phrase “prolonged occupation and annexation”, the meaning of which, under the relevant international law, is not the easiest to grasp. France notes that the Court has the power to “broaden, interpret and even reformulate the questions put”⁵, in particular when it is faced with “lack of clarity in [their] drafting”⁶.

11. As regards the Court’s discretion as to whether to reply to the question put by the Assembly, France recalls the jurisprudence whereby “[t]he fact that the Court has jurisdiction does not mean, however, that it is obliged to exercise it”⁷.

12. It thus has “the duty to satisfy itself, each time it is seised of a request for an opinion, as to the propriety of the exercise of its judicial function”, by satisfying itself that there are no “compelling reasons” that would prevent it from exercising that function⁸.

² For example, resolution S/RES/2334 (2016) (23 Dec. 2016).

³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 148-150, paras. 24-28.

⁴ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 234.

⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 153-154, para. 38; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 112, para. 61.

⁶ *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982*, pp. 349-350, paras. 47-48; *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, p. 423, para. 50; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 153, para. 38.

⁷ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 113, para. 63.

⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 157, para. 45.

13. In December 2022, France abstained in the vote on resolution 77/247, which was adopted by a majority of 87 votes to 26, with 53 abstentions. When the resolution was adopted, France joined with the vast majority of the Member States of the European Union in recalling the need for discussions and consultations on whether it was appropriate to request an advisory opinion of the Court.

14. In January 2023, following measures taken by Israel against the Palestinian Authority and population after the adoption of resolution 77/247 seising the ICJ for an opinion, France and a large number of Member States of the United Nations, including 23 European Union Member States, jointly reiterated, irrespective of their vote, their unfailing support for the ICJ and international law as pillars of the international order. In this context, France wishes to recall its commitment to a just and lasting settlement of the Israeli-Palestinian conflict based on international law, the relevant resolutions of the United Nations Security Council and the internationally agreed parameters. France reiterates its consistent support for a negotiated two-State solution, with both States living side by side in peace and security within secure and recognized borders, based on the 4 June 1967 lines, and both having Jerusalem as their capital.

15. Finally, it may be asked whether the questions put to the Court in fact concern a bilateral dispute which should, if so, come within the Court's contentious rather than its advisory jurisdiction. In this regard, the Court has on numerous occasions recalled the fundamental principle whereby "[i]t is well established in international law that no State can, without its consent, be compelled to submit its disputes with other States . . . to any . . . kind of pacific settlement"⁹. Accordingly, in advisory proceedings,

“[i]n certain circumstances . . . the lack of consent of an interested State may render the giving of an advisory opinion incompatible with the Court's judicial character. An instance of this would be when the circumstances disclose that to give 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”¹⁰.

16. It would appear from the Court's jurisprudence, of which France has taken note, that divergences of views between two particular States regarding the questions raised by a request for an opinion are not in themselves sufficient to prevent the Court from exercising its advisory jurisdiction. In 2004, the Court found that the question of the construction of a wall on Palestinian territory justified the exercise of its advisory jurisdiction¹¹; it “[did] not consider that to give an opinion would have the effect of circumventing the principle of consent to judicial settlement”¹². In its Opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius*, the Court summarized its jurisprudence in the following terms: when the matters raised are “of particular concern to the United Nations”, and are inseparable from a broader frame of reference than the bilateral dispute alone¹³, the existence of the latter cannot be seen as a “compelling reason” for it to decline to give an opinion.

⁹ *Status of Eastern Carelia, Advisory Opinion, 1923, P.C.I.J., Series B, No. 5*, p. 27.

¹⁰ *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 25, para. 33; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 158, para. 47.

¹¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 159, para. 50.

¹² *Ibid.*

¹³ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 118, para. 88.

17. It is in light of these various elements that the Court must determine its jurisdiction and establish the terms on which it will be able to reply to the questions put by the General Assembly in these advisory proceedings.

II. THE QUESTIONS PUT TO THE COURT BY THE GENERAL ASSEMBLY

A. The applicable law

18. By its resolution 77/247, the General Assembly requested an advisory opinion from the Court on two questions, “considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004”¹⁴. In doing so, the Assembly sought to specify the legal framework applicable to consideration of the questions put to the Court. However, it is for the latter to “determine the rules and principles of international law which are relevant in assessing the legality of the measures taken by Israel”¹⁵.

19. The Court has already made such a determination when it was asked to clarify the legal consequences of the construction of a wall by Israel in the Occupied Palestinian Territory. It thus stated that the following were applicable in considering the legality of Israel’s conduct:

- the “principles as to the use of force incorporated in the Charter”, which “reflect customary international law”, and as a corollary, “the illegality of territorial acquisition resulting from the threat or use of force”¹⁶;
- the principle of the right of peoples to self-determination, as enshrined in the United Nations Charter, and reaffirmed in resolution 2625 (XXV) entitled “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States” and in the two human rights Covenants of 16 December 1966 — a right applying to “all peoples”¹⁷ and “a right *erga omnes*”¹⁸;
- the rules and principles of international humanitarian law, as derived from the provisions of the 1907 Hague Regulations, which are part of customary law¹⁹, and from the Fourth Geneva Convention of 12 August 1949, “applicable in any occupied territory”²⁰;
- the two International Covenants of 16 December 1966, on Economic, Social and Cultural Rights, and Civil and Political Rights, and the United Nations Convention on the Rights of the Child of

¹⁴ A/RES/77/247, para. 18.

¹⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 171, para. 86.

¹⁶ *Ibid.*, para. 87.

¹⁷ *Ibid.*, pp. 171-172, para. 88.

¹⁸ *Ibid.* The Court cites the Judgment of 30 June 1995 in the case concerning *East Timor (Portugal v. Australia)*, *Judgment, I.C.J. Reports 1995*, p. 102, para. 29. In its Advisory Opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, the Court reiterated the “normative character under customary international law” of the right to self-determination, and observed that “as a fundamental human right, [it] has a broad scope of application” (*I.C.J. Reports 2019*, p. 133, para. 155, and p. 131, para. 144, respectively).

¹⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 172, para. 89.

²⁰ *Ibid.*, p. 177, para. 101.

20 November 1989²¹, treaties whose protection “does not cease in case of armed conflict”²². In this respect, the Court has held that “the International Covenant on Civil and Political Rights is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory”²³.

20. In France’s view, there is no objective reason to call into question the findings reached by the Court in 2004 when it comes to determining the law applicable in considering the questions put to the Court by the Assembly in resolution 77/247.

21. For a complete picture of the relevant legal framework, it should be pointed out that Palestine, for its part, has become party to several multilateral treaties for which the United Nations Secretariat is depositary: these include in particular, besides the two 1966 Covenants and the United Nations Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of Persons with Disabilities and the Rome Statute of the International Criminal Court²⁴. In addition, Palestine has become party to the Hague Convention of October 1907 on the Laws and Customs of War on Land, the four Geneva Conventions and their Protocols I to III, and the UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict.

22. Also relevant in terms of the status of the Palestinian territories and the rights of its people are the specific resolutions of the Security Council, and those of the General Assembly in so far as they reflect customary international law, as well as the legal instruments concluded between the Government of Israel and the Palestine Liberation Organization (hereinafter “the PLO”), in particular the Declaration of Principles on Interim Self-Government Arrangements of 13 September 1993²⁵ and the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip of 28 September 1995²⁶.

23. Taking all these elements into account, France will set out below its observations on the principal issues raised by the request for an opinion:

- the right of the Palestinian people to self-determination (B);
- the situation of “prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967” (C);

²¹ *Ibid.*, pp. 180-181, paras. 111-113.

²² *Ibid.*, p. 178, para. 106. See also the Judgment of 19 Dec. 2005 in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, in which the Court, basing itself on the Advisory Opinion of 9 July 2004, confirmed that “both branches of international law, namely international human rights law and international humanitarian law, would have to be taken into consideration” (*I.C.J. Reports 2005*, p. 243, para. 216).

²³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 180, para. 111.

²⁴ With the exception of the Rome Statute, Israel is party to all the treaties mentioned.

²⁵ A/48/486-S/2650.

²⁶ A/51/889-S/1997/357.

- the adoption by Israel of “discriminatory legislation and measures” and “measures aimed at altering the demographic composition” of the territory in question (D);
- the measures aimed at altering the . . . character and status of . . . Jerusalem (E); and
- the legal consequences arising from the violations established in these respects (F).

B. The right of the Palestinian people to self-determination

24. In its Advisory Opinion of 9 July 2004, the Court observed that “the existence of a ‘Palestinian people’ is no longer in issue”²⁷, and that this had moreover been recognized by Israel, both in the exchange of letters of 9 September 1993 between Yasser Arafat and Yitzhak Rabin, and in the Interim Agreement of 28 September 1995 on the West Bank and the Gaza Strip²⁸. The Security Council has likewise referred to the need for a just and lasting solution to the conflict which takes into account “the legitimate political rights of the Palestinian people”²⁹.

25. Those rights relate, though not exclusively, to the right of the Palestinian people to self-determination³⁰. That right itself has a number of facets, as expressed in Article 1, paragraph 1, common to both the 1966 Covenants:

“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.”

26. Whatever practical forms it takes, according to the particular situation of a people, the right to self-determination is given effect when various conditions are met, enabling that people to decide its own destiny.

27. As the Court observed in 1975, the exercise of this right involves “pay[ing] regard to the freely expressed will of peoples”³¹. In its Opinion on the *Chagos Archipelago*, the Court further stated that self-determination “must be the expression of the free and genuine will of the people concerned”³², even if “customary international law does not impose a specific mechanism for its

²⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 182-183, para. 118.

²⁸ See in particular the preamble, eighth recital, of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip of 28 Sept. 1995 (A/51/889-S/1997/357). Art. III of the Declaration of Principles on Interim Self-Government Arrangements of 13 Sept. 1993 also stated that the elections to the Council of the Palestinian Authority “w[ould] constitute a significant interim preparatory step toward the realization of the legitimate rights of the Palestinian people and their just requirements” (A/48/486-S/2650, Art. III (3)).

²⁹ S/RES/672 (1990) (12 Oct. 1990), preamble, second recital. See resolution S/RES/605 (1987) (22 Dec. 1987), in which the Security Council bears in mind, with regard to the territories occupied by Israel, “the inalienable rights of all peoples recognized by the Charter of the United Nations and proclaimed by the Universal Declaration of Human Rights” (preamble, second recital).

³⁰ The General Assembly thus requests the Committee on the Exercise of the Inalienable Rights of the Palestinian People “to continue to exert all efforts to promote the realization of the inalienable rights of the Palestinian people, including their right to self-determination” (A/RES/77/22, para. 2).

³¹ *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 33, para. 59.

³² *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 134, para. 157.

implementation in all instances”³³. It is therefore respect for the real and genuine will of the people in question that allows self-determination to be exercised as a right, in the many different forms that it may take in a given situation.

28. With regard to the Palestinian people, this right first has a broadly accepted political dimension, characterized as “the right to their independent State of Palestine”³⁴ or “the right to self-determination and to sovereignty over their territory”³⁵ and “to achieve independence in their State, Palestine”³⁶. This idea is wholly in keeping with “a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders”³⁷.

29. It should be made clear that, in this context, any action going against the need for “respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem”³⁸ constitutes a violation of the Palestinian people’s right to an independent State of Palestine in the exercise of their right to self-determination.

30. From this point of view, the ongoing occupation, but also the building of settlements and the consequent parcelling-out of land, are hindering the construction of a viable State of Palestine, the prospect of which is becoming more remote as the integrity of the Palestinian territory continues to be increasingly undermined.

31. The right of the Palestinian people to self-determination also has an economic dimension, which the General Assembly has highlighted by recognizing the principle of permanent sovereignty over natural wealth and resources, the customary character of which was subsequently confirmed by the Court³⁹. In resolution 1803 (XVII), the Assembly stated that “[t]he right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned”⁴⁰.

32. In order to respect that right, Israel must refrain from any action that would entail the exploitation, damage, cause of loss or depletion and endangerment of the natural wealth and resources in the Occupied Palestinian Territory⁴¹.

33. More fundamentally, the persistence of the violations attributable to Israel is jeopardizing the possibility of the Palestinian people actually exercising their right of self-determination. In this

³³ *Ibid.*, para. 158.

³⁴ A/RES/77/208, para. 1. See also e.g. A/RES/77/22, para. 8.

³⁵ A/RES/58/292, *Status of the Occupied Palestinian Territory, including East Jerusalem* (6 May 2004), para. 1.

³⁶ *Ibid.*, preamble, sixth recital.

³⁷ S/RES/1397 (2002) (12 Mar. 2002), preamble, second recital. See also e.g. resolution A/RES/77/25, in which the General Assembly reaffirms its support “for the two-State solution of Israel and Palestine, living side by side in peace and security within recognized borders, based on the pre-1967 borders” (para. 1).

³⁸ A/RES/77/208, preamble, ninth recital.

³⁹ See the Judgment of 19 Dec. 2005 in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Judgment*, I.C.J. Reports 2005, p. 251, para. 244.

⁴⁰ A/RES/1803 (XVII) (18 Dec. 1962), para. 1.

⁴¹ A/RES/77/187 (14 Dec. 2022), para. 2.

respect, the Court's finding of 2004⁴² still holds good, but the passage of time is not without effect: it burdens the prospects of making the Palestinian people's right to self-determination a reality.

34. According to the law of international responsibility, the violation of that right constitutes an internationally wrongful act of a continuing character. Under the terms of the Articles on the Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission in 2001, the responsible State has the continued duty to perform the obligation breached, if the latter is still in force (which is obviously the case here); it is also under an obligation to cease the internationally wrongful act⁴³.

35. That duty is all the greater since the realization of the right to self-determination "is a fundamental condition for the effective guarantee and observance of human rights and for the preservation and promotion of such rights"⁴⁴.

36. In the case of the occupied Palestinian territories, this obligation appears particularly relevant⁴⁵. Nearly 20 years after the Court delivered its Advisory Opinion on the legal consequences of the construction of a wall in the West Bank, the continuing situation of occupation, the proliferation of measures accompanying it and the increased number of settlements constitute all too many obstacles to actually realizing the Palestinian people's right to self-determination.

C. The question of the "prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967" by Israel

37. The questions put to the Court by the United Nations General Assembly can be separated into a logical order. First, the legal consequences arising from the "ongoing violation" of the right to self-determination, by virtue of what the General Assembly terms "prolonged occupation, settlement and annexation", are referred to in paragraph 18 (a) of resolution 77/247. The resulting implications for the "legal status" of the occupation are then referred to in paragraph 18 (b).

38. It is therefore necessary to consider first the legal consequences arising from the prolonged character of the Israeli occupation (1), and then to ask whether that prolonged occupation, in connection with the issue of settlement, entails in itself an "ongoing violation" of the right of the Palestinian people to self-determination (2).

⁴² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 184, para. 122.

⁴³ See A/RES/56/83 (12 Dec. 2001), Arts. 29 and 30.

⁴⁴ A/RES/72/159 (19 Dec. 2017), para. 1.

⁴⁵ In its most recent resolution on "the right of the Palestinian people to self-determination", the Assembly "[u]rges all States and the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their right to self-determination" (A/RES/77/208, para. 2; see also A/RES/77/22, para. 8).

1. The question of the prolonged character of the occupation of the occupied Palestinian territories

39. Since the end of the Six-Day War in 1967, Israel has occupied the territories of the Gaza Strip⁴⁶ and West Bank within the meaning of Article 42 of the 1907 Hague Regulations concerning the Laws and Customs of War, thus entailing application of the international norms provided for in the event of military occupation.

40. In its 2004 Opinion, the Court found that the construction of the wall was taking place entirely on the Palestinian territory termed as “occupied”, that is, within the boundary fixed by the armistice demarcation line of 3 April 1949 (called the “Green Line”, beyond which the territorial sovereignty of Israel was not established⁴⁷).

41. Occupation is an objective factual situation characterized by the effective control exercised by a State over a particular territory. The rules of the law of occupation apply, regardless of the lawfulness of the operation that has enabled the State to exercise its control over the occupied territory.

42. The Palestinian territory is therefore under military occupation within the meaning of the laws of war and humanitarian law. Numerous Security Council resolutions use the terms “occupied territories” or “occupied Palestinian territories”, starting with resolution 242 of 22 November 1967, which calls for “[w]ithdrawal of Israel armed forces from territories occupied in the recent conflict”⁴⁸.

43. The situation of military occupation imposes a number of positive obligations, the chief one being to protect the population subject to that occupation. The occupying Power is also required to comply with the obligations deriving from the Laws of War as laid down in the Fourth Hague Convention (and its annexed Regulations) and with humanitarian law as prescribed by the Fourth Geneva Convention, laws which have broadly acquired customary status. In this regard, France wishes to recall the explicit obligations referred to in the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War⁴⁹. Article 6 provides that:

“The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2.

⁴⁶ Israel put an end for the most part to its military régime in the Gaza Strip and enforced the withdrawal of its settlers as from 2005, but that does not change the status of the territory, which is still regarded as occupied in terms of international law, as recalled in Security Council resolution 1860 (2009) (8 Jan. 2009), dealing specifically with the situation in Gaza. That resolution also recalls previous relevant Security Council resolutions: 242 (1967), 338 (1973), 1397 (2002), 1515 (2003) and 1850 (2008), stressing “that the Gaza Strip constitutes an integral part of the territory occupied in 1967 and will be a part of the Palestinian state”. See also resolutions A/63/855-S/2015/286, annex; A/HCR/12/48 and A/HCR/29/52.

⁴⁷ In its 2004 Opinion, the Court had occasion to recall the history of this demarcation (paras. 71 and 72). Since then, Security Council resolution 2334 (2016) (23 Dec. 2016) has underlined the obligation not to recognize any changes to the 4 June 1967 lines other than those agreed by the parties to the conflict through negotiations.

⁴⁸ In its 2004 Opinion, the Court recalled in para. 74 that “[o]n 22 November 1967, the Security Council unanimously adopted resolution 242 (1967), which emphasized the inadmissibility of acquisition of territory by war and called for the ‘[w]ithdrawal of Israel armed forces from territories occupied in the recent conflict’, and ‘[t]ermination of all claims or states of belligerency’”.

⁴⁹ United Nations, *Treaty Series*, Vol. 75, No. 973.

In the territory of Parties to the conflict, the application of the present Convention shall cease on the general close of military operations.

In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143.

Protected persons whose release, repatriation or re-establishment may take place after such dates shall meanwhile continue to benefit by the present Convention.”⁵⁰

44. With regard to this Article, the Court, in paragraph 125 of its 2004 Opinion, made clear that:

“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, paragraph 3, remain applicable in that occupied territory.” (emphasis added)

45. In the case of prolonged occupation, the terms of Article 47 of the Fourth Geneva Convention are equally explicit:

“Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.”

46. For the Court, in paragraph 95 of its 2004 Opinion:

“This interpretation reflects the intention of the drafters of the Fourth Geneva Convention to protect civilians who find themselves, in whatever way, in the hands of the occupying Power . . . the drafters of the Fourth Geneva Convention sought to guarantee the protection of civilians in time of war, regardless of the status of the occupied territories, as is shown by Article 47 of the Convention.”

47. The United Nations Security Council has had occasion to remind Israel of its obligations in this regard by calling upon it, as the occupying Power, to fulfil its legal obligations and

⁵⁰ As recalled in resolution A/RES/77/247, both the statement of 15 July 1999 and the declarations adopted on 5 Dec. 2001 and 17 Dec. 2014 by the High Contracting Parties to the Fourth Geneva Convention reaffirmed the applicability of the Convention to the Occupied Palestinian Territory, including East Jerusalem (A/69/711-S/2015/1, annex).

responsibilities under the Fourth Geneva Convention, which has been applicable to all the territories occupied by Israel since 1967⁵¹. The United Nations General Assembly has done likewise⁵².

48. The status of a territory as under military occupation, without it being possible — by definition — to indicate for how long, was envisaged as essentially temporary in nature. In this context, in view of the request for an opinion submitted to the Court, it may be asked whether occupation can, as such, become wrongful because of its prolonged character.

49. As the “Pictet commentary” observes, “the occupation of territory in wartime is essentially a temporary, *de facto* situation”⁵³. In the case of an occupation of Palestinian territory which has lasted since 1967, it seems difficult for this prolonged character to be capable of being justified by the “necessities of war” within the meaning of Article 23 (*g*) of the 1907 Hague Regulations⁵⁴: if the restrictions permitted by a régime of occupation were justifiable in the period following the military operations, they no longer are today. These points have been made on numerous occasions by the Security Council and the General Assembly in respect of Israel’s obligation to withdraw from the “occupied” territories.⁵⁵

50. The prolonged character of the occupation is highlighted, in this instance, by the transfer of part of the population of the occupying State into the occupied territories, within settlements. These permanent sites seem quite obviously incompatible with the necessarily temporary character of occupation.

51. In France’s view, the precise extent of the legal consequences of this observation needs to be considered. The prolonged character of an occupation, while conflicting with the fact that it should be temporary in nature, does not have the consequence of rendering it wrongful *per se*: such a finding of wrongfulness *per se* could lead to it being argued that the legal régime of occupation does not apply. That would produce the manifestly absurd and unreasonable result of depriving the civilian populations of the protection afforded by that régime, protection that is all the more necessary, the longer the occupation lasts.

2. The policy of settlement of the occupied Palestinian territories

52. The settlement of occupied territories is contrary to the Geneva Conventions. In this regard, Article 49 of the Fourth Geneva Convention provides that “[t]he Occupying Power shall not deport

⁵¹ Resolutions 271 (1969) (15 Sept. 1969), 446 (1979) (22 Mar. 1979), 465 (1980) (1 Mar. 1980), 484 (1980) (19 Dec. 1980), 672 (1990) (12 Oct. 1990), 904 (1994) (18 Mar. 1994) and 1435 (2002) (24 Sept. 2002); see also resolutions 605 (1987) (22 Dec. 1987), 681 (1990) (20 Dec. 1990), 726 (1992) (6 Jan. 1992) or 1322 (2000) (7 Oct. 2000).

⁵² See in particular resolution 3240 B (XXIV) (29 Nov. 1974) or 43/58 B (6 Dec. 1988). It may be added that the Supreme Court of Israel has itself acknowledged the applicability of the Fourth Geneva Convention (judgment of 3 Sept. 2002: HCJ 7015/02 and 7019/02, *Ajuri v. IDF Commander*, 2002 — IsLR).

⁵³ *Commentary — IV Geneva Convention relative to the Protection of Civilian Persons in Time of War*, ICRC, 1958, p. 275.

⁵⁴ Justifications dismissed by the Court in its Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, I.C.J. Reports 2004 (I), p. 185, para. 124.

⁵⁵ E.g., for the General Assembly, resolutions 2799 (XXVI) (13 Dec. 1971), 37/123 A (20 Dec. 1982) or 44/40 A (4 Dec. 1989), ES-10/13 (21 Oct. 2003), ES-10/15 (20 July 2004), ES-10/18 (16 Jan. 2009), 67/19 (29 Nov. 2012) and 75/98 (10 Dec. 2020); and for the Security Council, resolutions 252 (1968) (21 May 1968), 476 (1980) (30 June 1980), 478 (1980) (20 Aug. 1980) or 681 (1990) (20 Dec. 1990).

or transfer parts of its own civilian population into the territory it occupies”. The Security Council has denounced this situation on several occasions, including recently⁵⁶.

53. It should be recalled that, in its 2004 Opinion, the Court concluded that “the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law”⁵⁷.

54. This finding of wrongfulness is all the more justified today, as Israel has continued and stepped up its policy of building settlements in Palestinian territory since 2004, in breach of its obligations under international law. France reiterates its condemnation of the policy of settlement implemented by Israel.

55. Currently, the Israeli settlements cover almost 10 per cent of the land in the West Bank, and their regional councils have authority over some 63 per cent of Area C (40 per cent of the West Bank), where the majority of the settlers live. In this respect, the policy of settlement appears to be a clear and persistent breach of the obligations deriving from the régime of occupation provided for by international law.

56. As the Permanent Representative of France to the United Nations pointed out on 23 December 2016, when resolution 2334 (2016) was adopted:

“Over the past few decades, Israeli settlement building has undoubtedly accelerated, which only fuels tensions on the ground and exasperates the international community. Settlement-building, which is illegal under international law, is part of a deliberate policy aimed at presenting the population, including the international community, with a *fait accompli* in the West Bank and East Jerusalem. It proceeds in various manifestations, including the expansion of settlements beyond the Green Line, including in East Jerusalem; the *de facto* annexation of Zone C; forced transfers of population; the demolition of Palestinian homes and structures; restrictions of access and movement; and the building of the wall beyond the 1967 border. This policy is not only illegal under international law, but also threatens the prospects for the creation of a viable and independent Palestinian State, which is the best guarantee for Israeli security and a lasting solution to the conflict. That is the message that France sought to send today by voting in favour of the resolution.”⁵⁸

57. As the Court indicated in relation to the construction of the wall, such a situation could lead to a “*fait accompli*” and a process of *de facto* annexation:

“121. Whilst the Court notes the assurance given by Israel that the construction of the wall does not amount to annexation and that the wall is of a temporary nature . . .

⁵⁶ In its presidential statement adopted unanimously on 20 Feb. 2023 (S/PRST/2023/1), the Security Council reiterated “that continuing Israeli settlement activities are dangerously imperilling the viability of the two-State solution” and reaffirmed “its unwavering commitment to the vision of the two-State solution where two democratic States, Israel and Palestine, live side by side in peace within secure and recognized borders, consistent with international law and relevant UN resolutions”, as it had done previously, for example in its resolution 1850 (2008) (16 Dec. 2008), welcoming the Annapolis process and the 2002 Arab Peace Initiative and “reiterating its vision of a region where two democratic States, Israel and Palestine, live side by side in peace within secure and recognized borders”.

⁵⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 184, para. 120.

⁵⁸ S/PV.7853 (23 Dec. 2016), p. 8.

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

58. The status of occupying Power confers strictly no legal entitlement justifying annexation. In this regard, the fact that the occupation has lasted a particularly long time cannot, in any event, be taken to legitimize notions of annexation. The passage of time is not enough, in terms of acquiring territory by force, to make lawful a situation which is seriously unlawful.

59. On the contrary, one of the cardinal principles of international law is that this kind of annexation is prohibited. As made clear in resolution 2625 (XXV), for example, “[n]o territorial acquisition resulting from the threat or use of force shall be recognized as legal”.

D. The question of the “discriminatory” legislation and measures, and the measures “aimed at altering the demographic composition” of the territory at issue

1. The question of the “discriminatory legislation and measures”

60. The question put by the General Assembly refers to “related discriminatory legislation and measures”. In France’s view, this question concerns the legislation and measures applied to the occupied Palestinian territories, though contrary to the international rules laid down for occupied territories. Legislation and measures of a discriminatory nature would contravene not only the provisions of the Hague and Geneva Conventions cited above, but also the principal international texts on human rights by which Israel is bound and which are applicable to the Occupied Palestinian Territory⁵⁹.

61. France would point out that international humanitarian law does not necessarily preclude a differentiated status from being applied to the population of the occupied territories. However, that status cannot justify the adoption of legislation and measures which may be discriminatory in nature.

62. As the Court made clear in its 2004 Opinion, “the protection offered by human rights conventions does not cease in case of armed conflict”⁶⁰. The law of occupation must therefore be implemented taking account of the applicable international human rights law. In particular, the occupying Power is required to exercise its rights and duties taking account of the obligation not to discriminate, arising for example from Article 2 of the International Covenant on Civil and Political Rights (ICCPR).

63. This combined reading of international human rights law and international humanitarian law is underpinned by Article 4 of the ICCPR, concerning derogations in circumstances involving a “public emergency which threatens the life of the nation”. This derogation clause allows a State party

⁵⁹ See above, paras. 18-22.

⁶⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 178, para. 106.

to take exceptional measures, provided they “do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin”.

64. The fact that the Israeli Government may have sought to benefit from a derogation in respect of the right to liberty and security of persons seems unlikely to alter Israel’s obligations, since these measures appear incompatible with the other obligations under the Covenant from which derogation is not permitted, as set forth in Article 4, paragraph 2, of the ICCPR⁶¹.

65. Establishing a special status, in the context of a situation of occupation, therefore cannot justify the adoption of discriminatory legislation or measures. But the present situation in the occupied Palestinian territories is creating major difficulties in respect of this obligation not to discriminate. These measures relate to numerous aspects of everyday life in the occupied territories (citizenship, access to property and housing, education, healthcare, freedom of movement, taxation, transport, security, etc.). In particular, a system of military justice applies to the Palestinians in the West Bank, but not to the Jewish settlers.

2. The measures aimed at altering the demographic composition of the territory at issue

66. Article 49, second paragraph, of the Fourth Geneva Convention provides that:

“Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or *imperative military reasons so demand*. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. *Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.*” (emphasis added)

67. Likewise, Article 53 of that Convention limits the destruction of real or personal property to cases where such destruction is “rendered absolutely necessary by military operations”.

68. International law clearly prohibits the implementation, by the occupying Power, of measures likely to alter the demographic composition of the territory at issue. The Court clarified this point in detail in 2004, when it found that “by contributing to the demographic changes”⁶², the construction of the wall by Israel in the Occupied Palestinian Territory contravened Article 49 of the Fourth Geneva Convention.

69. On this question, France would also refer to its observations above regarding the policy of settlement-building pursued by Israel. That policy, which is illegal under international law, is playing a part in altering the demographic composition of the occupied Palestinian territories.

⁶¹ It should also be noted that Art. 12 of the ICCPR protects the liberty of movement of persons, which seems entirely illusory in this instance, a freedom recalled by the General Assembly (in resolution 56/111 of 14 Dec. 2001) and which is theoretically protected — or at least permitted — by the Taba Agreement of 28 Sept. 1995.

⁶² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 192, para. 134.

E. The question of the measures aimed at altering the character and status of Jerusalem

70. The Israeli Law of 30 July 1980 makes Jerusalem the capital of the State of Israel, a situation described as annexation in violation of international law by Security Council resolution 478 (1980) of 20 August 1980. The latter further states that this annexation does not affect the continued application of the Fourth Geneva Convention in this and other occupied territories. Jerusalem, including East Jerusalem, has thus been subject to an annexation confirmed in Israeli domestic law, in disregard of the special international régime established for Jerusalem in the Plan of Partition endorsed by resolution 181 (II) of 29 November 1947.

71. As the Court had occasion to recall in paragraph 75 of its 2004 Opinion:

“From 1967 onwards, Israel took a number of measures in these territories aimed at changing the status of the City of Jerusalem. The Security Council, after recalling on a number of occasions ‘the principle that acquisition of territory by military conquest is inadmissible’, condemned those measures and, by resolution 298 (1971) of 25 September 1971, 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 totally invalid and cannot change that status’.

Later, following the adoption by Israel on 30 July 1980 of the Basic Law making Jerusalem the ‘complete and united’ capital of Israel, the Security Council, by resolution 478 (1980) of 20 August 1980, stated that the enactment of that Law constituted a violation of international law and that ‘all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem . . . are null and void’. It further decided ‘not to recognize the “basic law” and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem’.”

72. There is no doubt at all that the status unilaterally imposed on Jerusalem by Israel is null and void in the eyes of international law, and that the protective measures provided for by the Fourth Geneva Convention are applicable there, as in the rest of the occupied Palestinian territories.

73. The rules applied to the Palestinian inhabitants of East Jerusalem are equally in breach of the obligation to take such protective measures.

74. Indeed, the majority of the Palestinian inhabitants of East Jerusalem are not Israeli citizens but are subject to Israeli civil law, in breach of the status of occupation and thus directly incorporating the applicable measures into Israel’s ordinary domestic law. This transposing of laws based on the status of occupation into legislation forming part of Israeli domestic law clearly contravenes the treatment of territories and their population in a situation of occupation governed by international law. It is therefore not only military measures that are in breach of the status of occupation, but measures whose transposition into Israeli domestic law is changing the face of those measures in a way that does not accord with the status of occupation.

75. The Palestinians living in East Jerusalem have the precarious status of permanent residents, which simply allows them to live and work in the city and to benefit from social services there. Under the terms of various laws, the Israeli authorities have revoked the status of thousands of Palestinians, sometimes retroactively, when they were unable to show that Jerusalem was where they principally lived⁶³. Since 1967, the permanent residency of more than 14,000 Palestinians has been revoked at the discretion of the Ministry of the Interior. Between 1967 and 2017, some 38 per cent of the Palestinian land in East Jerusalem has been expropriated.

76. Significant consequences arise from this in terms of demography and human rights, in violation of the Fourth Geneva Convention, which remains applicable to East Jerusalem. Conversely, the Israeli Jewish settlers living in East Jerusalem have Israeli citizenship and are exempt from the laws and regulations imposed on the Palestinian inhabitants of East Jerusalem.

77. Under international law, Israel is more broadly required not to adopt any legislative or other measures aimed at altering the status of East Jerusalem. In particular, and as called for by the presidential statement adopted by the Security Council on 20 February 2023, France endorses upholding unchanged the historic status quo at the holy sites in Jerusalem.

F. The legal consequences for all States and the United Nations

78. The General Assembly's request for an advisory opinion refers lastly to the legal consequences arising from the violations of international law that may be established by the Court⁶⁴. In this respect, it is helpful to recall that, in its 2004 Opinion, the Court responded to the request for an opinion by distinguishing between the legal consequences for Israel and those for other States and, where appropriate, for the United Nations⁶⁵. The present observations will do likewise.

79. **With regard to Israel**, the first legal consequence arising from its responsibility is cessation of the unlawful conduct. Under the terms of Article 30 (a) of the 2001 Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts, the State responsible for an internationally wrongful act is under an obligation "to cease that act, if it is continuing"⁶⁶. The two essential conditions for this are (i) that the wrongful act has a continuing character, and (ii) that the violated rule is still in force⁶⁷.

80. Analysis of the situation in the occupied Palestinian territories reveals continuing violations of international law which must be ceased by Israel. These concern the right of peoples to self-determination, whose customary character is established, and the rules of international

⁶³ "Almost all East Jerusalemite Palestinians possess residency status as opposed to Israeli citizenship; while this entitles them to some Israeli social rights (including health insurance), this residency status can be cancelled if they leave Jerusalem for a period of time, a threat that Jewish Israelis do not face." (*Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, Michael Lynk — A/HCR/49/87 (12 Aug. 2022), para. 44.)

⁶⁴ A/RES/77/247, para. 18 (b) ("and what are the legal consequences that arise for all States and the United Nations").

⁶⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 197, para. 148.

⁶⁶ Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts, *ILC Yearbook, 2001*, Vol. II, Part Two, p. 26, and annex to resolution A/RES/56/83 (12 Dec. 2001), Art. 30 (a).

⁶⁷ See the Arbitral Award of 30 Apr. 1990 in the *Rainbow Warrior* case, *Reports of International Arbitral Awards*, Vol. XX, p. 270, para. 113; see also the 2001 Articles, commentaries, *ILC Yearbook, 2001*, Vol. II, Part Two, p. 89.

humanitarian law and international human rights law currently in force which are applicable to the situation in the occupied Palestinian territories⁶⁸.

81. France considers that there is a continuing violation of the Palestinian people's right to self-determination in two respects. First, because of the prolonged occupation of Palestinian territory by Israel. And second, due to the policy pursued by Israel in the occupied territories, in so far as that affects the possibility of the people of Palestine exercising their right to self-determination, including with a view to a viable and independent Palestinian State⁶⁹. These policies and practices include the building of settlements, demolishing Palestinian homes, causing harm to natural resources and the environment, and degrading key infrastructure.

82. Moreover, some violations of international humanitarian law and international human rights law also have a continuing character, since they are not confined to a series of sudden actions, but form the purpose of ongoing policy or practices. This concerns in particular the transfers of Israeli population under the policy of settlement pursued by Israel⁷⁰, and the discriminatory or restrictive measures affecting certain rights and freedoms of the Palestinian population in the occupied territories, without being justified by military necessities⁷¹.

83. The obligation of cessation has both legal and material implications. It will thus be recalled that in its 2004 Opinion, the Court held, with regard to the construction of the wall in the Occupied Palestinian Territory, that:

“cessation . . . entails the dismantling forthwith of those parts of that structure situated within the Occupied Palestinian Territory, including in and around East Jerusalem. All legislative and regulatory acts adopted with a view to its construction, and to the establishment of its associated régime, must forthwith be repealed or rendered ineffective”⁷².

84. The only exception mentioned by the Court to the obligation to repeal the legal instruments in question concerned the measures adopted by Israel providing for reparation for the Palestinian population, should restitution prove to be impossible.

85. In the context of these proceedings, and in a similar way, the obligation of cessation implies that the policies and practices identified as violating international law should come to an end, and that the domestic legal acts on which they are based should be repealed. That also implies positive measures to ensure that international law is respected. In this regard, the terms in which the Security Council addressed this question in its resolution 2334 (2016) may be recalled:

“The Security Council,

.....

⁶⁸ See above, paras. 18-22.

⁶⁹ See above, paras. 24-36.

⁷⁰ See above, paras. 49-56.

⁷¹ See above, paras. 57-62.

⁷² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 198, para. 151.

2. *Reiterates* 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;

.....

4. *Stresses* that the cessation of all Israeli settlement activities is essential for salvaging the two-State solution, and calls for affirmative steps to be taken immediately to reverse the negative trends on the ground that are imperilling the two-State solution”⁷³.

86. The offering of assurances and guarantees of non-repetition may also be a consequence of responsibility, as provided for in Article 30 (b) of the 2001 Articles, in order to guard against future violations. Examples of such measures are adopting codes of conduct or issuing instructions to agents of the State so as to avoid repetition of the previous conduct found to be in breach of international law⁷⁴. However, this must be as required by individual circumstances, which would be for the Court to determine in the particular context of this request for an advisory opinion. France leaves that matter in the hands of the Court.

87. The second general obligation resulting from a violation of international law is reparation. In accordance with the celebrated dictum of the Permanent Court of International Justice in the *Factory at Chorzów* case, this must be “full” reparation, so as to “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”⁷⁵.

88. Here too, the position of the Court in its 2004 Opinion may be recalled. It found that Israel had “the obligation to make reparation for the damage caused to all the natural or legal persons concerned”⁷⁶. This entailed, in particular, an obligation to return the land, orchards, olive groves and other immovable property seized for purposes of construction of the wall, or, should that prove materially impossible, an obligation to compensate the persons in question⁷⁷.

89. In connection with the present request for an advisory opinion, France considers that this obligation of reparation extends to all the damage caused to the Palestinian population by the policy and practices of Israel that are contrary to international law. As far as can be, the obligation of reparation must take the form of restitution, or otherwise that of compensation, if restitution is no longer possible⁷⁸. For violations affecting the Palestinian people as a whole, collective or symbolic forms of reparation could be considered. With regard to satisfaction, in the case of serious violations of international humanitarian law and international human rights law committed in the Occupied

⁷³ S/RES/2334 (2016), paras. 2 and 4.

⁷⁴ 2001 Articles, *ILC Yearbook, 2001*, Vol. II, Part Two, commentaries on Art. 30 (b), pp. 89-91, paras. 9-13.

⁷⁵ *Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47. See also 2001 Articles, *ILC Yearbook, 2001*, Vol. II, Part Two, p. 91, Art. 31 (1) and commentaries.

⁷⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 198, para. 152.

⁷⁷ *Ibid.*, para. 153.

⁷⁸ 2001 Articles, *ILC Yearbook, 2001*, Vol. II, Part Two, pp. 96-105, Arts. 35 and 36 and commentaries.

Palestinian Territory, there should be verification and disclosure of the facts by Israel, in order to identify and prosecute the persons responsible⁷⁹.

90. France recalls that, in order to follow up on the 2004 Opinion, and more specifically its paragraphs 152 and 153 on reparation, the United Nations General Assembly requested the Secretary-General to establish a register of damage caused to all natural or legal persons⁸⁰. Therein lies a means for Israel to fulfil its obligation of reparation.

91. **With regard to other States**, in its 2004 Opinion, the Court established the *erga omnes* character of the international obligations breached by Israel in connection with the construction of the wall in the Occupied Palestinian Territory. It found that

“[t]he obligations *erga omnes* violated by Israel are the obligation to respect the right of the Palestinian people to self-determination, and certain of its obligations under international humanitarian law”⁸¹.

92. At the time, its finding concerned those obligations in so far as they were affected by the construction of the wall, in accordance with the terms of the request for an opinion. In the context of the present request for an advisory opinion, the same finding should be made in relation to the infringements of the right of peoples to self-determination resulting from Israel’s prolonged occupation of Palestinian territories, and from the policy and practices implemented in the Occupied Palestinian Territory. It should likewise be made in respect of the violations of international humanitarian law and international human rights law described above.

93. An obligation thus arises not to recognize any territorial situation created in breach of international law. Hence any form of annexation, including partial annexation, cannot be afforded recognition under international law. In this respect, whether in the occupied Palestinian territories or anywhere else, France will never recognize the illegal annexation of territories.

94. Respecting the international status of the occupied Palestinian territories also has economic implications. It will be recalled in this regard that the Security Council, in resolution 2334 (2016), called upon all States “to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967”⁸². That has been reflected in European Union law, for example, which has taken account of international law and of the Court’s 2004 Opinion in differentiating the treatment of products according to their origin⁸³.

95. It is further incumbent upon States not to help maintain a situation that is contrary to international law and to ensure that international humanitarian law is respected. That was recalled by

⁷⁹ A/RES/60/147 (16 Dec. 2005), *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Ann., IX. Reparation for harm suffered, para. 22.

⁸⁰ A/RES/ES-10/15 (2 Aug. 2004), para. 4.

⁸¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 199, para. 155.

⁸² S/RES/2334 (2016) (23 Dec. 2016), para. 5.

⁸³ See for example CJEU, 25 Feb. 2010, *Firma Brita GmbH v. Hauptzollamt Hamburg-Hafen*, C-386/08, and CJEU (Gr. Ch.), 12 Nov. 2019, *Organisation juive européenne and Vignoble Psagot Ltd v. Ministère de l’Économie et des Finances*, C-363/18.

the Court in its 2004 Opinion on the construction of the wall in the Occupied Palestinian Territory⁸⁴. Those obligations also apply to the violations falling within the scope of the present request for an advisory opinion.

96. **With regard to the United Nations**, here too, the recommendations made by the Court in its 2004 Opinion may be used as a guide. The Court was of the view 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, taking due account of the present Advisory Opinion”⁸⁵.

97. In the wider context of the present request for an opinion, the United Nations should similarly make clear what action is to be taken in the light of the Court’s opinion, in terms of the Palestinian people’s right to self-determination and the risk of prejudicing the international status of the occupied Palestinian territories, particularly as regards the guarantees provided by that status to the Palestinian population.

98. Lastly, it must be recalled that in 2004, the Court requested the United Nations as a whole “to redouble its efforts to bring the Israeli-Palestinian conflict . . . to a speedy conclusion, thereby establishing a just and lasting peace in the region”⁸⁶. That call remains more pertinent than ever. It is a reminder of the obligation borne by Israel and Palestine, by virtue of the United Nations Charter and customary international law, to settle their dispute peacefully by engaging in peace negotiations and by implementing the relevant resolutions of the United Nations.

⁸⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 200, para. 159.

⁸⁵ *Ibid.*, p. 200, para. 160.

⁸⁶ *Ibid.*, para. 161.