

INTERNATIONAL COURT OF JUSTICE

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**LEGAL CONSEQUENCES ARISING FROM THE POLICIES  
AND PRACTICES OF ISRAEL IN THE OCCUPIED  
PALESTINIAN TERRITORY, INCLUDING EAST  
JERUSALEM  
(REQUEST FOR ADVISORY OPINION)**

**WRITTEN STATEMENT OF  
THE REPUBLIC OF THE GAMBIA**

25 JULY 2023

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1.1 In accordance with the Court’s Order of 3 February 2023, the Republic of The Gambia (“**The Gambia**”) submits this written statement in the advisory opinion proceedings concerning the *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*.

1.2 Israel has occupied the Occupied Palestinian Territories (the “**OPT**”), consisting of the West Bank, including East Jerusalem, and Gaza, for over 56 years. For decades, the various bodies of the United Nations have passed myriad resolutions calling on Israel to end its occupation. Numerous UN mandate holders have investigated the situation, and all have come to the same conclusion: that Israel’s occupation of the OPT entails egregious violations of international law, including peremptory norms thereof. The Court itself, in its advisory opinion concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (the “**Wall Advisory Opinion**”), found that Israel’s conduct in that context violated several of its obligations under international law.<sup>1</sup>

1.3 In the almost twenty years since the *Wall Advisory Opinion*, the occupation has only deepened. Israel has annexed more territory and expanded its illegal settlements. The OPT has become increasingly fragmented. An institutionalized system of discrimination, with dual legal and political systems for Israeli settlers and Palestinians—otherwise known as apartheid—has become entrenched.<sup>2</sup> The Palestinian people continue to be deprived of their right to self-determination, indefinitely. And all the while, there is no justification under international law for

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<sup>1</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136 (hereinafter “**Wall Advisory Opinion**”), para. 137.

<sup>2</sup> Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), paras. 51-56.

Israel's continued use of force to maintain the occupation—if there ever was one to begin with.

1.4 A clear decision from the Court regarding the illegality of the occupation will help galvanize international action to protect the rights of the Palestinian people. The Gambia's submission focuses on the second question presented by the General Assembly to the Court, namely regarding the legal status of the occupation and the legal consequences that arise therefrom for all States and the United Nations. As discussed below, Israel's indefinite occupation of the OPT is illegal because it violates the right to self-determination (I), constitutes a regime of apartheid (II), and violates the *jus ad bellum* (III). Most important among the legal consequences that arise from the fact that the occupation is illegal is that it must be brought to an end immediately (IV).

#### **I. ISRAEL'S OCCUPATION IS ILLEGAL BECAUSE IT VIOLATES THE RIGHT OF THE PALESTINIAN PEOPLE TO SELF-DETERMINATION**

1.5 Israel's occupation violates the right of the Palestinian people to self-determination and is therefore illegal. The *erga omnes* right to self-determination is “one of the essential principles of contemporary international law”,<sup>3</sup> a *jus cogens* norm enshrined in the UN Charter.<sup>4</sup> The obligation to respect the right to self-determination is also directly applicable to Israel by virtue of its ratification of the International Covenant on Civil and Political Rights and the International Covenant

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<sup>3</sup> *Case Concerning East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 90, para. 29.

<sup>4</sup> UN Charter, art. 1(2). ILC, *Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries*, UN Doc. A/77/10 (2022), Conclusion 23 (Annex (h)).

on Economic, Social and Cultural Rights.<sup>5</sup> This obligation extends to the entirety of the OPT.<sup>6</sup>

1.6 The Gambia also notes in this regard the UN Declaration on the Granting of Independence to Colonial Countries and Peoples, which declared that “[t]he subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation”.<sup>7</sup>

1.7 There is no end in sight to Israel’s occupation. Its prolonged character indefinitely infringes on the right to self-determination of the Palestinian people.<sup>8</sup> As explained by the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967:

“Since 1967, Israel has wilfully and intentionally violated the self-determination of the Palestinians in the occupied Palestinian territory, by preventing their exercise of territorial sovereignty over natural resources, suppressing their cultural identity and repressing Palestinian political character and resistance. In short, Israeli endeavours in the occupied Palestinian territory are indistinguishable from settler-colonialism; by seizing, annexing, fragmenting, and transferring its civilian population to, the occupied territory, Israeli occupation violates Palestinian territorial sovereignty; by extracting and

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<sup>5</sup> See International Covenant on Civil and Political Rights (16 Dec. 1966), 999 U.N.T.S. 171, art. 1; International Covenant on Economic, Social and Cultural Rights (16 Dec. 1966), 993 U.N.T.S. 3, art. 1.

<sup>6</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95 (hereinafter, “**Chagos Advisory Opinion**”), para. 160. See also UNGA, Resolution 67/19, *Status of Palestine in the United Nations*, UN Doc. A/RES/67/19 (29 Nov. 2012), para. 1.

<sup>7</sup> UNGA, Resolution 1514 (XV), *Declaration on the granting of independence to colonial countries and peoples*, UN Doc. A/RES/1514(XV) (14 Dec. 1960), para. 1.

<sup>8</sup> UNGA, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/72/43106 (23 Oct. 2017), paras. 31-32.

exploiting Palestinians’ resources in order to generate profits benefiting third parties, including “settlers”, it violates Palestinians’ sovereignty over natural resources needed to develop an independent economy; by erasing or appropriating symbols expressing Palestinian identity, the occupation endangers the cultural existence of the Palestinian people; by repressing Palestinian political activity, advocacy and activism, the occupation violates Palestinians’ ability to organize themselves as a people, free from alien domination and control.”<sup>9</sup>

1.8 As a peremptory norm of international law, no derogation is permitted from respecting the right of the Palestinian people to self-determination. As such, Israel’s occupation is illegal and must expeditiously be brought to an end.

## **II. ISRAEL’S OCCUPATION IS ILLEGAL BECAUSE IT CONSTITUTES A REGIME OF APARTHEID**

1.9 Israel’s occupation of the OPT is also illegal because it amounts to a regime of apartheid. Just like the right to self-determination, the prohibition of apartheid is a peremptory norm of international law.<sup>10</sup> This Court has described apartheid as a “flagrant violation of the purposes and principles of the Charter”.<sup>11</sup> Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination, to which both Israel and Palestine are parties, also prohibits apartheid.<sup>12</sup>

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<sup>9</sup> UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 73.

<sup>10</sup> ILC, *Peremptory norms of general international law (jus cogens): Texts of the draft conclusions and Annex adopted by the Drafting Committee on second reading*, UN Doc. A/CN.4/L.967 (11 May 2022), Conclusion 23 (Annex (e)).

<sup>11</sup> *See Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, I.C.J. Reports 1971, p. 16 (hereinafter, “**Namibia Advisory Opinion**”), paras. 129-131.

<sup>12</sup> International Convention on the Elimination of All Forms of Racial Discrimination (21 Dec. 1965), 660 U.N.T.S. 195, art. 3.

1.10 As explained by the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Israel's occupation of the OPT is an apartheid regime:

“First, an institutionalized regime of systematic racial oppression and discrimination has been established. Israeli Jews and Palestinian Arabs in East Jerusalem and the West Bank live their lives under a single regime that differentiates its distribution of rights and benefits on the basis of national and ethnic identity, and that ensures the supremacy of one group over, and to the detriment of, the other. ... The differences in living conditions and citizenship rights and benefits are stark, deeply discriminatory and maintained through systematic and institutionalized oppression.

[] Second, this system of alien rule has been established with the intent to maintain the domination of one racial-national-ethnic group over another. Israeli political leaders, past and present, have repeatedly stated that they intend to retain control over all of the occupied territory in order to enlarge the blocs of land for present and future Jewish settlement while confining the Palestinians to barricaded population reserves. This is a two-sided coin: the plans for more Jewish settlers and larger Jewish settlements on greater tracts of occupied land cannot be accomplished without the expropriation of more Palestinian property together with harsher and more sophisticated methods of population control to manage the inevitable resistance. Under this system, the freedoms of one group are inextricably bound up in the subjugation of the other.

[] Third, the imposition of this system of institutionalized discrimination with the intent of permanent domination has been built upon the regular practice of inhumane and inhuman acts. Arbitrary and extrajudicial killings. Torture. The violent deaths of children. The denial of fundamental

human rights. A fundamentally flawed military court system and the lack of criminal due process. Arbitrary detention. Collective punishment. The repetition of these acts over long periods of time, and their endorsement by the Knesset and the Israeli judicial system, indicate that they are not the result of random and isolated acts but integral to the system of rule by Israel.

[ ] This is apartheid. ...With the eyes of the international community wide open, Israel has imposed upon Palestine an apartheid reality in a post-apartheid world.”<sup>13</sup>

1.11 This is not just the view of a single UN mandate holder. There is a credible international consensus that Israel’s occupation is apartheid. The Committee on the Elimination of Racial Discrimination, for example, found as follows:

“As regards the specific situation in the Occupied Palestinian Territory, the Committee remains concerned (CERD/C/ISR/CO/14-16, para. 24) at the consequences of policies and practices that amount to segregation, such as the existence in the Occupied Palestinian Territory of two entirely separate legal systems and sets of institutions for Jewish communities in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand. The Committee is appalled at the hermetic character of the separation of the two groups, who live on the same territory but do not enjoy either equal use of roads and infrastructure or equal access to basic services, lands and water resources. Such separation is materialized by the implementation of a complex combination of movement restrictions consisting of the Wall, the settlements, roadblocks, military checkpoints, the obligation to use separate roads and

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<sup>13</sup> Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), paras 53-56.



a permit regime that impacts the Palestinian population negatively (art. 3).”<sup>14</sup>

1.12 Senior international leaders and former Israeli officials have come to the same conclusion:

“Ban Ki-moon, the former Secretary-General of the United Nations, wrote in 2021 that the intent of Israel to maintain ‘structural domination and oppression of the Palestinian people through indefinite occupation ... arguably constitutes apartheid’. Nobel Laureate Desmond Tutu stated in 2014: ‘I know firsthand that Israel has created an apartheid reality within its borders and through its occupation.’ The Minister for Foreign Affairs of South Africa, Naledi Pandor, spoke in 2022 about her country’s ‘significant dismay at the continued apartheid practices of Israel against the long-suffering people of Palestine’. Michael Ben-Yair, a former Attorney General of Israel, said in 2022 that Israel had become ‘an apartheid regime ... a one state reality, with two different peoples living with unequal rights’. Ami Ayalon, the former Director of Shin Bet, wrote in his memoir: ‘We’ve already created an apartheid situation in Judea and Samaria, where we control the Palestinians by force, denying them self-determination.’ Furthermore, two former Israeli ambassadors to South Africa – Ilan Baruch and Alon Liel – stated in 2021 that the systematic discrimination of Israel ‘on the basis of nationality and ethnicity’ now constituted apartheid.”<sup>15</sup>

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<sup>14</sup> CERD Committee, *Concluding observations on the combined seventeenth to nineteenth reports of Israel*, UN Doc. CERD/C/ISR/CO/17-19 (27 Jan. 2020), para. 22.

<sup>15</sup> Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), paras 13.

1.13 The most credible human rights non-governmental organizations that report on the situation in the OPT have also concluded that the occupation is an apartheid regime.<sup>16</sup>

1.14 In remarks before the UN General Assembly in May 2021, The Gambia’s Ambassador and Permanent Representative to the United Nations declared The Gambia’s view that the occupation amounts to apartheid.<sup>17</sup>

1.15 As a regime of apartheid, Israel’s occupation of the OPT is illegal and must urgently be brought to an end.

### **III. ISRAEL’S OCCUPATION IS ILLEGAL BECAUSE IT VIOLATES THE *JUS AD BELLUM***

1.16 Israel’s 56-year occupation of the Palestinian Territory violates the laws on the use of force—*jus ad bellum*—and is illegal for that reason as well.

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<sup>16</sup> Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (2021), available at <https://tinyurl.com/3s2vdjw9>, p. 10; Amnesty International, *Israel’s Apartheid Against Palestinians: Cruel System Of Domination And Crime Against Humanity* (1 Feb. 2022), available at: <https://tinyurl.com/bdfscyf2>, p. 267; B’Tselem, *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid* (12 Jan. 2021), available at: [https://www.btselem.org/sites/default/files/publications/202101\\_this\\_is\\_apartheid\\_eng.pdf](https://www.btselem.org/sites/default/files/publications/202101_this_is_apartheid_eng.pdf); Al Haq, *Israeli Apartheid: Tool of Zionist Settler Colonialism* (29 Nov. 2022), p. 181 (endorsed by Addameer, Al Mezan, the Palestinian Centre for Human Rights, the Civic Coalition for Palestinian Rights in Jerusalem, the Jerusalem Legal Aid and Human Rights Center, the Community Action Center of Al-Quds University, and the Palestinian Initiative for the Promotion of Global Dialogue and Democracy (MIFTAH)).

<sup>17</sup> H.E. Lang Yabou, Statement, UN General Assembly, “On The Situation In The Middle East (Item 37); Question Of Palestine (Item 38)” (25 May 2021), available at [https://estatements.unmeetings.org/estatements/10.0010/20210525/wlEcg6g2SBVH/m7kPhqa2S8Qc\\_en.pdf](https://estatements.unmeetings.org/estatements/10.0010/20210525/wlEcg6g2SBVH/m7kPhqa2S8Qc_en.pdf) (“It is time for the international community to stop the policy of apartheid and act decisively to end this long-standing conflict”).

1.17 Article 2(4) of the UN Charter prohibits the threat or use of force.<sup>18</sup> This prohibition is customary international law<sup>19</sup> and a *jus cogens* norm.<sup>20</sup> The only exception to this prohibition is for cases of self-defense.<sup>21</sup> Even when resort to force is justified by the existence of an armed attack, the particular force used may still be illegal if it is unnecessary or disproportionate to the threat against which it is exercised.<sup>22</sup>

1.18 A belligerent occupation arises from and is maintained by the use of force.<sup>23</sup> Thus, belligerent occupations inconsistent with the laws on the use of force are unlawful in and of themselves. The General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States, which reflects customary international law,<sup>24</sup> provides that “the territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter”.<sup>25</sup> The 1987 UN General Assembly Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations stipulates that

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<sup>18</sup> UN Charter, Art. 2(4).

<sup>19</sup> *Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. U.S.)*, 1986 I.C.J. 14, 188, 191 (27 June 1986), paras. 187-190.

<sup>20</sup> ILC, Draft Articles on the Law of Treaties, with commentaries, *Yearbook of the International Law Commission* (1966), Vol. II, p. 247, Art. 50(1).

<sup>21</sup> UN Charter, Art. 51; *Nicaragua v. U.S.*, para. 195.

<sup>22</sup> *Armed Activities in the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, 2005 I.C.J. 116, 165, 171 (19 Dec. 2005), para. 147.

<sup>23</sup> UN General Assembly Resolution 3314 on the Definition of Aggression refers to military occupation as being one among other “measures of force.” UNGA, Resolution 3314 (XXIX), *Definition of Aggression*, UN Doc. A/RES/3314(XXIX) (14 Dec. 1974). *See also ibid.*, para. 3(a) (stating that “any military occupation, however temporary, resulting from such invasion or attack” shall qualify as an act of aggression”).

<sup>24</sup> *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, I.C.J. Reports 2010, p. 403, para. 80.

<sup>25</sup> UNGA, Resolution 2625 (XXV), *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, UN Doc. A/RES/25/2625 (1970).

“[n]either acquisition of territory resulting from the threat or use of force nor any occupation of territory resulting from the threat or use of force in contravention of international law will be recognized as legal acquisition or occupation”.<sup>26</sup>

1.19 The Court has repeatedly determined occupations to be unlawful in the past. In *Legal Consequences for States of the Continued Presence of South Africa in Namibia* (“**Namibia Advisory Opinion**”), the Court found that by “occupying the Territory without title, South Africa incurs international responsibilities”.<sup>27</sup> Similarly, in *Armed Activities in the Territory of the Congo*, the Court concluded that the occupation of the Congolese province of Ituri by Uganda “violated the principle of non-use of force”.<sup>28</sup> The United Nations Security Council<sup>29</sup> and the General Assembly<sup>30</sup> have characterized occupations resulting from unlawful uses of force to be illegal as well.

1.20 In addition, even if the military presence of a State in another State is initially lawful, it may later lose its lawful character and become an illegal occupation. In its *Namibia Advisory Opinion*, the Court found that South Africa was unlawfully occupying Namibia following the termination of its mandate and the corresponding resolution by the Security Council that its continued presence

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<sup>26</sup> UNGA, Resolution 42/22, *Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations*, UN Doc. A/RES/42/22 (18 Nov. 1987).

<sup>27</sup> *Namibia Advisory Opinion*, para. 118.

<sup>28</sup> *Dem. Rep. Congo v. Uganda*, para. 345.

<sup>29</sup> See UNSC Res. 674 (1990), U.N. Doc. S/RES/674 (29 Oct. 1990) (warning Iraq that “it is liable for any loss, damage or injury arising in regard to Kuwait and third states, and their nationals and corporations, as a result of the invasion and illegal occupation of Kuwait by Iraq”); UNSC, Resolution 545 (1983), UN Doc. S/RES/545 (20 Dec. 1983) (condemning South Africa’s military occupation of parts of southern Angola as a “flagrant violation of international law”).

<sup>30</sup> UNGA, Resolution 3061 (XXVIII), *Illegal occupation by Portuguese military forces of certain sectors of the Republic of Guinea-Bissau and acts of aggression committed by them against the people of the Republic*, U.N. Doc. A/RES/3061(XXVIII) (2 Nov. 1973) (“strongly condemn[ing] the policies of the Government of Portugal in perpetuating its illegal occupation of certain sectors of the Republic of Guinea-Bissau.”).

was unlawful.<sup>31</sup> Thus, a lawful belligerent occupation may cease to be so if it cannot be justified by the right of self-defense.

1.21 In determining whether an occupation purportedly justified on the basis of self-defense is lawful, it is necessary to examine not only whether the occupation was prompted by an armed attack, but also whether it was a necessary and proportionate response to that attack. For example, in *Armed Activities on the Territory of the Congo*, the Court observed that:

“the taking of airports and towns many hundreds of kilometres from Uganda’s border would not seem proportionate to the series of transborder attacks it claimed had given rise to the right of self-defence, nor to be necessary to that end”.<sup>32</sup>

1.22 Necessity and proportionality also play a role in determining the legality of a prolonged occupation. For example, South Africa’s lengthy occupation of a buffer zone in Angola from 1981-1988 and Israel’s 22-year presence in South Lebanon from 1978 to 2000 were both claimed to be justified as self-defense, and yet both were repeatedly and universally condemned as not necessary or proportionate.<sup>33</sup>

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<sup>31</sup> See *Namibia Advisory Opinion*, paras. 118-119. Similarly, in *Armed Activities on the Territory of the Congo*, the Court found that, while the DRC had initially allowed Ugandan forces to engage in military action against anti-Ugandan rebels on the DRC’s territory, their subsequent refusal to leave and occupation of certain territory within the DRC violated the principle of the non-use of force. *Dem. Rep. Congo v. Uganda*, paras. 53, 147, 165, 176-179, 345(1). See also UNGA, Resolution 3061 (XXVIII), U.N. Doc. A/RES/3061(XXVIII) (2 Nov. 1973) (“strongly condemn[ing] the policies of the Government of Portugal in perpetuating its illegal occupation of certain sectors of the Republic of Guinea-Bissau” following the refusal of Portugal to terminate its colonial rule over Guinea-Bissau in the wake of the latter’s declaration of independence).

<sup>32</sup> *Dem. Rep. Congo v. Uganda*, para. 147.

<sup>33</sup> See UNSC, Resolution 425 (1978), *On establishment of a UN interim force for Southern Lebanon*, UN Doc. S/RES/425 (19 Mar. 1978) (calling on Israel to end its unlawful occupation of South Lebanon); UNSC, Resolution 545 (1983), UN Doc. S/RES/545 (20 Dec. 1983) (condemning South Africa’s “continued military occupation of parts of southern Angola which constitutes a flagrant

1.23 Israel's occupation of the Palestinian Territory violates the *jus ad bellum* and is therefore unlawful in and of itself. Israel launched the June 1967 war that led to its occupation of the Palestinian Territory.<sup>34</sup> After its surprise attack initiating the war, Israel occupied all remaining Palestinian territory in the West Bank, including East Jerusalem, the Gaza Strip, as well as Syria's Golan Heights and Egypt's Sinai Peninsula, "effectively tripling the size of territory under [its] control".<sup>35</sup> Even assuming *arguendo* that Israel had been subjected to an armed attack, it could not possibly have been necessary to occupy territory many times its own size. Since Israel's use of force was not taken in response to an armed attack and would not have been necessary or proportionate even if it had been, the occupation was a flagrant violation of the laws on the use of force from the outset.

1.24 Even if the occupation were lawful at one time (*quod non*), its continuation for more than five decades means that it could not possibly still be lawful today. *First*, the use of force in self-defense is only justified "within the strict confines" laid down in Article 51 of the Charter, and "does not allow the use of force by a State to protect perceived security interests beyond those parameters".<sup>36</sup> The exercise of the right of self-defence thus "presupposes that an armed attack has occurred".<sup>37</sup> As such, "essentially preventative" uses of force are beyond the scope

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violation of international law and of the independence, sovereignty and territorial integrity of Angola").

<sup>34</sup> UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 37.

<sup>35</sup> "Israel's borders explained in maps," *BBC News* (16 Sept. 2020), available at <https://www.bbc.com/news/world-middle-east-54116567>.

<sup>36</sup> *Dem. Rep. Congo v. Uganda*, para. 148.

<sup>37</sup> *Nicaragua v. U.S.*, para. 232.

of Article 51.<sup>38</sup> The occupation is therefore a use of force “which cannot be dismissed, as Israel often does, by claims of ‘pre-emptive’ self-defence”.<sup>39</sup>

1.25 *Second*, Article 51 does not apply to situations involving alleged attacks not imputable to a foreign State. As the Court explained in the *Wall* Advisory Opinion:

“Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State. However, Israel does not claim that the attacks against it are imputable to a foreign State.”<sup>40</sup>

Nearly 20 years later, Israel still is not facing, and does not even claim to be facing, an ongoing armed attack imputable to a foreign State.

1.26 *Third*, Article 51 does not apply to situations involving conduct taken in response to purported threats emanating from *within* occupied territory.<sup>41</sup> The Court has explained that in such circumstances, “Article 51 of the Charter has no relevance”.<sup>42</sup> Israel therefore cannot justify its occupation as a response to alleged threats—let alone “armed attacks”—emanating from within the OPT itself.

1.27 Thus, Israel is simply not facing an ongoing armed attack and cannot use it as an excuse for its occupation. Furthermore, even assuming *arguendo* that the occupation was initially necessary and proportionate—which it was not—it plainly became unnecessary and disproportionate, and thus unlawful.

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<sup>38</sup> *Cf. Dem. Rep. Congo v. Uganda*, para. 143.

<sup>39</sup> UNGA, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 21 September 2022, UN Doc. A/77/356, paras. 71-72.

<sup>40</sup> *Wall* Advisory Opinion, para. 139.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

1.28 It is simply not possible that it has been *necessary* for Israel to maintain its occupation since 1967. In *Nicaragua v. United States*, the Court found the United States’ use of force to have been unnecessary because it was taken “*several months* after the major offensive of the armed opposition against the Government of El Salvador had been completely repulsed”.<sup>43</sup> In this case, Israel has maintained its occupation through the use of force for *56 years*. It has, moreover, done so in flagrant violation of Palestinians’ right to self-determination, as discussed in Section I above.

1.29 For the same reason, Israel also cannot possibly justify its *settlements upon* and *annexation of* occupied territory as a necessary response to any perceived threat. The “*absolute rule* against the acquisition of territory by force makes no distinction as to whether the territory was occupied through a war of self-defence or a war of aggression; annexation is prohibited in both circumstances”.<sup>44</sup> By settling and annexing occupied territory, Israel has *ipso facto* acted unnecessarily in using force.

1.30 Israel’s prolonged occupation is, moreover, wholly disproportionate to any legitimate aim. Israel’s occupation of the *entirety* of the OPT “long after the period in which any presumed armed attack ... could reasonably be contemplated”<sup>45</sup> makes it even more disproportionate now. And the *manner* in which the occupation has been conducted—including the establishment of an apartheid regime—renders the occupation disproportionate as well.

1.31 In sum, Israel’s decades-long occupation violates the laws on the use of force and is therefore illegal. Even if it had once been a lawful use of force in

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<sup>43</sup> *Nicaragua v. U.S.*, para. 237.

<sup>44</sup> UNGA, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 23 October 2017, UN Doc. A/72/556, para. 31 (emphasis added).

<sup>45</sup> *Cf. Nicaragua v. U.S.*, para. 237.



response to an armed attack—and it was not—it could not possibly have remained lawful for 56 years. Israel has not been facing an ongoing armed attack and the prolonged occupation has been neither necessary nor proportionate. As a result, Israel’s occupation is illegal as a whole and must end.

#### **IV. THE OCCUPATION MUST BE BROUGHT TO AN END IMMEDIATELY**

1.32 If the Court finds that Israel’s occupation of the OPT is illegal—and The Gambia trusts that it will—that finding must have consequences.<sup>46</sup> The Gambia submits that the Court should find that Israel is under the obligations to cease all of its wrongful acts, offer assurances and guarantees of non-repetition, and make full reparation for the injuries caused.<sup>47</sup> Additionally, the Court should find that all States and the United Nations are under the obligations not to recognize as lawful Israel’s occupation and other illegal conduct, not to render aid or assistance in maintaining the occupation, and to cooperate to bring the occupation to an end.<sup>48</sup>

1.33 The Gambia further submits that the Court should find that Israel, all other States, and the United Nations are under an obligation to bring about an end to Israel’s occupation *immediately*, or at least *as rapidly as possible*.

1.34 Such a conclusion is supported by the Court’s prior rulings. In the *Namibia* Advisory Opinion, the Court found that “the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from Namibia *immediately* and thus put an end to its occupation of the Territory”.<sup>49</sup> Similarly, in the advisory opinion concerning the *Legal*

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<sup>46</sup> *Namibia* Advisory Opinion, para. 117.

<sup>47</sup> ILC, *Responsibility of States for Internationally Wrongful Acts*, in Yearbook of the International Law Commission 2001 (Vol. II, Pt. 2) (hereinafter, “**ARSIWA**”), arts. 30, 31, 34-37.

<sup>48</sup> ARSIWA, art. 41. See also ILC, *Draft articles on the responsibility of international organizations*, in Yearbook of the International Law Commission 2011 (Vol. II, Pt. 2), art. 42.

<sup>49</sup> *Namibia* Advisory Opinion, para. 133(1) (emphasis added).

*Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, the Court found that “the United Kingdom is under an obligation to bring an end to its administration of the Chagos Archipelago *as rapidly as possible*, thereby enabling Mauritius to complete the decolonization of its territory in a manner consistent with the right of peoples to self-determination”.<sup>50</sup>

1.35 In this situation, the Palestinian people have been suffering under foreign occupation for over 56 years—an occupation that has taken on the form of a regime of apartheid. The Court should find that Israel’s occupation must be brought to an end immediately, or at least as rapidly as possible.

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<sup>50</sup> *Chagos Advisory Opinion*, para. 178 (emphasis added).

Respectfully submitted,

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AGENT OF THE GAMBIA  
25 JULY 2023