

International Court of Justice

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

**Request of the United Nations General Assembly
for an Advisory Opinion**

Statement of Ireland

July 2023

Introduction

1. On 30 December 2022, the General Assembly of the United Nations ('General Assembly') adopted resolution 77/247 ('resolution 77/247 (2022)'),¹ entitled 'Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem.' At paragraph 18 of the resolution, the General Assembly decided, in accordance with Article 96 of the Charter of the United Nations ('Charter'), to request the International Court of Justice ('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 [...] above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?*
2. By its Order of 3 February 2023, the Court decided that, *inter alia*, Member States of the United Nations are considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion, and fixed 25 July 2023 as the time-limit within which they may present written statements on the questions. Ireland, accordingly, avails itself of this opportunity to submit the present written statement on the questions submitted by the General Assembly.
3. Ireland supports a comprehensive, two-State solution to the Israeli-Palestinian conflict, as endorsed unanimously by the United Nations Security Council ('Security Council') in its resolution 1515 of 19 November 2003.² Ireland has, for many years, expressed growing concern with Israeli settlement activity in the Occupied Palestinian Territory as a practice inimical to the achievement of that objective. This concern is widely shared within the international community. Seven years ago the Security Council adopted resolution 2334 in which it reaffirmed its determination that the establishment of these settlements 'constitutes a

¹ General Assembly resolution 77/247 of 30 December 2022, [A/RES/77/247\(2022\)](#).

² Security Council resolution 1515 of 19 November 2003, [S/RES/1515\(2003\)](#) ('resolution 1515 (2003)').

flagrant violation’ of international law and ‘a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace’, and reiterated its demand that Israel immediately and completely cease all settlement activity (‘resolution 2334 (2016)’).³

4. Not only has Israel ignored that demand of the Council, but settlement building has actually intensified dramatically since that time. Ireland is increasingly concerned that continued settlement building and associated activities further erode the trust between Palestinians and Israelis so essential to any future, negotiated settlement. Settlement development undermines the viability of a future contiguous Palestinian state and thus the prospect of reaching any just, comprehensive and enduring peace. In the absence of any immediate prospect of a negotiated outcome between the parties Ireland voted in favour of resolution 77/247 (2022) and believes that, at this juncture, clarification by the Court of the international law issues raised by the prolonged occupation of the Palestinian Territory can only help provide a stable foundation on which to build a just resolution of this protracted conflict.

Exercise of the Jurisdiction of the Court

5. In Ireland’s view, the Court has the jurisdiction to provide an advisory opinion in the present case and should exercise its discretion to do so for the following reasons.
6. First, the General Assembly is authorised under Article 96, paragraph 1, of the Charter to request the Court to give an advisory opinion on any legal question. In Ireland’s view, the questions on which the General Assembly requests the Court’s opinion in the present case are legal questions – they are framed in terms of law and raise problems of international law and are therefore, by their very nature, susceptible of a reply based on law.
7. Second, having regard to the Court’s consideration of the practice of the General Assembly,⁴ the request of the latter to the Court for an advisory opinion in this case is, in Ireland’s view, within the General Assembly’s competence to make. Notwithstanding the fact that the situation in the Middle East, including the Palestinian question, remains on the agenda of the Security Council,⁵ the Security Council is not currently exercising, in respect of the situation there, the

³ Security Council resolution 2334 of 23 December 2016, [S/RES/2334\(2016\)](#).

⁴ *Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004 (‘Wall case’), para. 28.

⁵ See website of the Security Council, available at: <https://www.un.org/securitycouncil/content/repertoire/middle-east>.

functions assigned to it under the Charter, and has not in fact taken any action on the situation since the adoption of its resolution 2334 (2016).

8. Third, as the case law of the Court has clearly established, the fact that a legal question submitted to the Court for its advisory opinion might have political aspects does not deprive the Court of its jurisdiction to give that opinion.⁶
9. Fourth, while the Court enjoys, under paragraph 1 of Article 65 of its Statute, a discretionary power not to give an advisory opinion, in Ireland's view it is proper in the present case that the Court does provide an advisory opinion as requested by the General Assembly. Ireland takes this view because, regardless of whether the relevant Israeli or Palestinian authorities withhold consent to its provision, the question of the Occupied Palestinian Territory is directly of concern to the United Nations itself and is a question located in a much broader frame of reference than a bilateral dispute, an important factor in the Court's consideration of the exercise of this power.
10. Finally, as to the argument that an advisory opinion would impede a negotiated, political solution to the Israeli-Palestinian conflict: in Ireland's view it is the prolonged absence of any prospect of such a solution for many years that makes the provision of an advisory opinion at this moment all the more necessary. The Court's authoritative clarification of the important legal issues raised in the present request for an advisory opinion would, in Ireland's view, help to provide an essential basis for a just, lasting and comprehensive peace between Israel and Palestine.
11. As the Court itself concluded in its Advisory Opinion in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* ('Wall case') in 2004, the 'tragic situation can be brought to an end only through implementation in good faith of all relevant Security Council resolutions ... [in order to achieve] as soon as possible, on the basis of international law, a negotiated solution to the outstanding problems and the establishment of a Palestinian State, existing side by side with Israel and its other neighbours, with peace and security for all in the region.'⁷ Unfortunately, that objective has not been realised and, in the intervening 19 years, the situation on the ground has continued to deteriorate seriously.

⁶ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996(I), para. 41.

⁷ *Wall case*, para. 162.

Prolonged Occupation and the Application of International Humanitarian and Human Rights Law

12. Israel has been in occupation of the Palestinian Territory since 1967 and, accordingly, is obliged to respect applicable international humanitarian law, including the law of military occupation, and international human rights law. As the Court determined in the *Wall* case, this includes Section III of the Hague Regulations annexed to the 1907 Hague Convention with respect to the Laws and Customs of War on Land ('Hague Regulations'),⁸ relevant provisions of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War ('Fourth Geneva Convention'),⁹ the International Covenant on Civil and Political Rights (ICCPR),¹⁰ the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹¹ and the 1989 Convention on the Rights of the Child.¹²
13. While Israel has the right to protect itself and its people from attack, any measures taken in exercise of that right must respect the relevant rules of international law. Accordingly, Israel – as the occupying, not the sovereign, power in the Palestinian Territory – must ensure that for the duration of its occupation its administration of that territory is in compliance with its obligations under international humanitarian and human rights law, including by protecting the rights of the Palestinian population.¹³ This it has failed to do, acting in a manner inconsistent with its status as the occupying power and breaching many of its essential legal obligations, as resolutions of the Security Council and of the General Assembly have repeatedly attested.¹⁴
14. Indeed, by its practice of establishing and extending settlements there, Israel has long been engaged in a practice of transferring parts of its own civilian population into the Occupied Palestinian Territory, in violation of Article 49(6) of the Fourth Geneva Convention, despite repeated express condemnation of – and calls to end – this practice by the Security Council and the General Assembly,¹⁵ and notwithstanding the Court's confirmation of the unlawfulness of this practice in the *Wall* case.¹⁶ The Court also found in the latter case that Israel had destroyed and appropriated Palestinian property in a manner unjustifiable by military necessity and in

⁸ *Wall* case, para. 124.

⁹ *Wall* case, para. 101.

¹⁰ *Wall* case, para. 111.

¹¹ *Wall* case, para. 112.

¹² *Wall* case, para. 113.

¹³ See, for example, Hague Regulations, Articles 43 and 46; Fourth Geneva Convention, Article 27.

¹⁴ See, for example, resolution 2334 (2016); and General Assembly resolution 77/126 of 12 December 2022, [A/RES/77/126](#) ('resolution 77/126 (2022)').

¹⁵ See, for example, resolution 1515 (2003); resolution 2334 (2016); and resolution 77/126 (2022).

¹⁶ *Wall* case, para. 120.

breach of Articles 46 and 52 of the Hague Regulations and Article 53 of the Fourth Geneva Convention,¹⁷ but recent reporting by the United Nations Secretary-General (‘Secretary-General’) and the United Nations High Commissioner for Human Rights (‘High Commissioner’) shows that, rather than cease such breaches, Israel has continued unlawfully to destroy and appropriate property throughout the Occupied Palestinian Territory as part of its encouragement and facilitation of the expansion of settlements.¹⁸ The Court also found in the *Wall* case that Israel had violated various human rights of Palestinians, including freedom of movement;¹⁹ such violations appear however to have continued as a consequence of Israel’s rapid expansion of settlements and associated infrastructure, including roads that link settlements but separate and divide Palestinian residential areas.²⁰

15. Recent reporting by the Secretary-General and by the High Commissioner also demonstrates that Palestinians are increasingly subjected to serious violence by Israeli settlers, and do not receive adequate protection against such violence from the Israeli security forces; indeed these reports relate that the security forces often facilitate or participate in the violence.²¹ Both the Secretary-General and the High Commissioner have concluded that Israel has consequently failed to protect the Palestinian population in accordance with its obligations under Article 43 of the Hague Regulations and Article 27 of the Fourth Geneva Convention.²² They have reported that such violence, along with violations of international law including appropriation and destruction of Palestinian property, has in some instances compelled Palestinians to leave their places of residence, raising serious concern that forcible transfer may have occurred, contrary to Article 49(1) of the Fourth Geneva Convention.²³

16. As the occupying power, Israel is obliged to administer public property and natural resources in accordance with the rules of usufruct under Article 55 of the Hague Regulations, and to

¹⁷ *Wall* case, para. 132, 135.

¹⁸ Report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including Jerusalem, and the occupied Syrian Golan (‘Secretary-General Settlements Report’) of 3 October 2022, [A/77/493](#), para. 17-27; Report of the United Nations High Commissioner for Human Rights on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in occupied Syrian Golan (‘High Commissioner Settlements Report’) of 15 March 2023, [A/HRC/52/76](#), para. 25, 34; see also resolution 2334 (2016), preambular para. 4.

¹⁹ *Wall* case, para. 134, 136-137.

²⁰ Secretary-General Settlements Report of 3 October 2022, [A/77/493](#), para. 21, 27; and High Commissioner Settlements Report of 15 March 2023, [A/HRC/52/76](#), para. 9, 60.

²¹ Secretary-General Settlements Report of 3 October 2022, [A/77/493](#), para. 28-40; and High Commissioner Settlements Report of 15 March 2023, [A/HRC/52/76](#), para. 36-43.

²² Secretary-General Settlements Report of 3 October 2022, [A/77/493](#), para. 38, 73; and High Commissioner Settlements Report of 15 March 2023, [A/HRC/52/76](#), para. 61.

²³ Secretary-General Settlements Report of 3 October 2022, [A/77/493](#), para. 38, 48-67; and High Commissioner Settlements Report of 15 March 2023, [A/HRC/52/76](#), para. 49-55.

respect the right of the Palestinian people to permanent sovereignty over their natural resources. The Secretary-General has reported however that Israeli settlement activity has prevented the Palestinian people from controlling their natural resources, and that Israel has exploited those resources for the benefit of its own population and to the detriment of Palestinians.²⁴

Settlements

17. The unlawfulness of Israeli settlements in the Occupied Palestinian Territory is well-established,²⁵ including by the Court in the *Wall* case.²⁶ As set out above, Ireland has also consistently and repeatedly drawn attention to the unlawfulness of settlements, including most recently in statements made while an elected member of the Security Council.²⁷
18. As is clear from the reporting of the Secretary-General and other authoritative sources, settlements are the defining feature of Israel's presence in the Occupied Palestinian Territory. Along with their associated infrastructure and activities, they contribute significantly to the breaches of international humanitarian and human rights law outlined above. The following

²⁴ Secretary-General Settlements Report of 9 October 2013, [A/68/513](#), para. 38-41; Secretary-General Settlements Report of 18 September 2012, [A/67/375](#), para. 13-14; and Secretary-General Settlements Report of 6 November 2009, [A/64/516](#), para. 42. See also Independent Commission of Inquiry, Report on the Occupied Palestinian Territory, including East Jerusalem (14 September 2022), [A/77/328](#), para. 35-40.

²⁵ See, for example, Note by the President of the Security Council, 17 November 1976, [S/12233](#), where the Council agreed that 'the measures taken by Israel in the occupied Arab territories that alter their demographic composition or geographical nature and particularly the establishment of settlements are accordingly strongly deplored. Such measures which have no legal validity and cannot prejudice the outcome of the search for the establishment of peace constitute an obstacle to peace'; UN Security Council resolution 465 of 1 March 1980, [S/RES/465\(1980\)](#), where the Council determined that 'all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War'; and [resolution 2334 \(2016\)](#), in which the Council reaffirmed 'that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law'.

²⁶ *Wall* case, para. 120.

²⁷ See, for example, 'Statement by Minister Coveney at UNSC Debate on the Middle East, Including the Palestinian Question', Security Council Statement, 26 January 2021, available at: <https://www.dfa.ie/our-role-policies/international-priorities/our-international-partners/united-nations/unsecuritycouncilstatements/statementarchive/statement-by-minister-coveney-at-uncs-debate-on-the-middle-east-including-the-palestinian-question.php>; 'Statement by Minister Coveney at UNSC Meeting on the Middle East, Including the Palestinian Question', Security Council Statement, 16 May 2021, available at: <https://www.dfa.ie/pmum/newyork/news-and-speeches/securitycouncilstatements/statementsarchive/statement-by-minister-coveney-at-uncs-meeting-on-the-middle-east-including-the-palestinian-question.html>; and 'Statement at UNSC briefing on the Middle East, Incl. the Palestinian Question', Security Council Statement, 19 December 2022, available at: <https://www.dfa.ie/pmum/newyork/news-and-speeches/securitycouncilstatements/statementsarchive/statement-at-uncs-briefing-on-the-middle-east-incl-the-palestinian-question.html>.

examines the development and nature of the settlements themselves, including the associated legal and administrative regimes.

Control of Land

19. Israeli settlement construction in the Occupied Palestinian Territory has taken place under every Government of Israel since 1967.²⁸ The Secretary-General reviewed the different methods used by Israel to seize land for settlements since that time in a 2013 report.²⁹ In that report, he observed that these methods include requisitioning land on the premise of ‘essential and urgent military needs’, declaring land to be ‘State land’ (including declaring land owned by Palestinians to be such land),³⁰ and employing ‘expropriations [of Palestinian land] for the benefit of the population’.³¹ In 2014, the Secretary-General emphasised that ‘the process of declaring State land is not compatible with international standards of due process and undermines the right of Palestinians to an effective remedy. It also appears to be a measure by the Government of Israel destined to favour the expansion of settlements or the creation of new ones’.³² Despite this, reliable reports establish that Israel continues to use these methods to requisition land.³³ The Secretary-General has reported that, based on ‘previous practice’, once a ‘declaration of State land is endorsed, it is likely that the land is allocated to Israeli settlements’.³⁴ By 2013, Israel had used different methods to ‘seize’ approximately half of the West Bank for settlement use.³⁵
20. The Secretary-General, in his annual reports on settlements, has described how the ‘regularisation of outposts’ contributes to consolidation of settlements.³⁶ Although ‘outposts’ are established without Israeli state approval and are unlawful under domestic Israeli law, the regularisation of outposts is nonetheless facilitated by the Israeli Government,³⁷ a process that ‘effectively rewards settlers for grabbing land in the West Bank’.³⁸ The High Commissioner

²⁸ Secretary-General Settlements Report of 5 November 2008, [A/63/519](#), para. 7.

²⁹ Secretary-General Settlements Report of 9 October 2013, [A/68/513](#), para. 17.

³⁰ Secretary-General Settlements Report of 9 October 2013, [A/68/513](#), para. 20.

³¹ Secretary-General Settlements Report of 9 October 2013, [A/68/513](#), para. 21.

³² Secretary-General Settlements Report of 25 August 2014, [A/69/348](#), para. 21.

³³ See, for example, High Commissioner Settlements Report of 28 April 2022, [A/HRC/49/85](#), para. 8; and Secretary-General Settlements Report of 3 October 2022, [A/77/493](#), para. 7.

³⁴ Secretary-General Settlements Report of 25 August 2014, [A/69/348](#), para. 20.

³⁵ Secretary-General Settlements Report of 9 October 2013, [A/68/513](#), para. 17.

³⁶ Secretary-General Settlements Reports of 5 October 2018, [A/73/410](#); 20 September 2019, [A/74/357](#); 1 October 2020, [A/75/376](#); 23 September 2021, [A/76/336](#); and 3 October 2022, [A/77/493](#).

³⁷ See, for example, Secretary-General Settlements Reports of 3 November 2022, [A/77/493](#), para. 16; 23 September 2021, [A/76/336](#), para. 14; 20 September 2019, [A/74/357](#), para. 14; and 5 October 2018, [A/73/410](#), para. 12.

³⁸ Secretary-General Settlements Report of 31 August 2015, [A/70/351](#), para. 15.

has reported that outpost farms, in particular, enable settlers to ‘take over very large areas of land in a short period of time’; these outpost farms are a ‘more efficient tool for seizing land than settlements’.³⁹ The Secretary-General has explained that the regularisation of outposts typically involves incorporating them into existing settlements, allowing Israel ‘to circumvent the formal establishment of new settlements, possibly avoiding international scrutiny’.⁴⁰ This leads to ‘the entrenchment of otherwise isolated settlement points and their connection with so-called settlement blocs. Joining the dots gradually paves the way for new contiguous areas of settlement control over land.’⁴¹

21. Additionally, the Secretary-General and the High Commissioner have identified the designation of land as closed for military purposes (particularly for military firing zones),⁴² for agricultural projects,⁴³ as nature reserves,⁴⁴ or for archaeological excavations⁴⁵ as modalities used by Israel to assume direct control of land in the Occupied Territory. In this way, Israel exercises direct control over a much larger area of the Occupied Territory than is used for settlements alone.⁴⁶ Sometimes this land is then subsequently used for settlement activity.⁴⁷
22. Reliable reports record that settler violence against Palestinians has reached its highest level since this violence began to be documented in 2005.⁴⁸ Accountability for violence perpetrated by settlers and security forces against Palestinians has been described as ‘gravely deficient’ by the High Commissioner, who has noted that violence appears to be ‘part of a calculated and systematic effort to expand Israeli control beyond the settlement jurisdiction areas.’⁴⁹

³⁹ High Commissioner Settlements Report of 15 March 2023, [A/HRC/52/76](#), para. 12. See also Secretary-General Settlements Report of 25 August 2014, [A/69/348](#), para. 28.

⁴⁰ Secretary-General Settlements Report of 24 August 2016, [A/71/355](#), para. 11.

⁴¹ Secretary-General Settlements Report of 24 August 2016, [A/71/355](#), para. 11.

⁴² High Commissioner Settlements Report of 15 March 2023, [A/HRC/52/76](#), para. 16-19.

⁴³ Secretary-General Settlements Report of 25 August 2014, [A/69/348](#), para. 28; and High Commissioner Settlements Report of 15 March 2023, [A/HRC/52/76](#), para. 12.

⁴⁴ High Commissioner Settlements Report of 15 March 2023, [A/HRC/52/76](#), para. 20; and Secretary-General Settlements Report of 1 October 2020, [A/75/376](#), para. 11.

⁴⁵ High Commissioner Settlements Report of 15 March 2023, [A/HRC/52/76](#), para. 21; and Secretary-General Settlements Report of 25 August 2014, [A/69/348](#), para. 33.

⁴⁶ High Commissioner Settlements Report of 15 March 2023, [A/HRC/52/76](#), para. 7.

⁴⁷ High Commissioner Settlements Report of 15 March 2023, [A/HRC/52/76](#), para. 19, 21.

⁴⁸ High Commissioner Settlements Report of 15 March 2023, [A/HRC/52/76](#), para. 38; and ‘Palestinians resisting forcible transfer in Masaffer Yatta’ UN Office for the Coordination of Humanitarian Affairs Article, 24 March 2022, available at: https://www.ochaopt.org/content/palestinians-resisting-forcible-transfer-masaffer-yatta#ftn_ref5.

⁴⁹ High Commissioner Settlements Report of 15 March 2023, [A/HRC/52/76](#), para. 46 and para. 37.

Development of Permanent Infrastructure

23. The reports of the Secretary-General and of the High Commissioner indicate that once the Israeli authorities control land in the Occupied Palestinian Territory and decide to construct settlements or ancillary infrastructure on it, this is done in a manner strongly indicative of permanence. This is evidenced by the significant financial investment by the Israeli Government in infrastructure,⁵⁰ including connections to water, sewerage, communications and power infrastructure, and the establishment of security, health and education systems.⁵¹
24. In particular, Israel has invested heavily in ‘bypass roads’,⁵² ‘the majority of which form a network linking the Israeli settlements with one another and to Israel itself’,⁵³ while interrupting Palestinian territorial contiguity.⁵⁴ Israel is reported to have recently dedicated a large proportion of its five-year transport plan budget to the development of bypass roads in the Occupied Palestinian Territory.⁵⁵

Settlement Population Growth

25. The number of persons living in settlements in the Occupied Palestinian Territory has grown steadily, at a faster rate than the Israeli population as a whole.⁵⁶ A population of 520,000 settlers in 2012 had increased to almost 700,000 persons by 2022,⁵⁷ an increase of more than one third. Media reports indicate that the Israeli Minister for Finance presented plans in May 2023 to increase settler numbers by a further 500,000 by 2030.⁵⁸ The Secretary-General has

⁵⁰ Secretary-General Settlements Report of 25 August 2014, [A/69/348](#), para. 9.

⁵¹ High Commissioner Settlements Report of 15 March 2023, [A/HRC/52/76](#), para. 10.

⁵² High Commissioner Settlements Report of 15 March 2023, [A/HRC/52/76](#), para. 9.

⁵³ Secretary-General Settlements Report 5 November 2008, [A/63/519](#), para. 28.

⁵⁴ Secretary-General Settlements Report of 18 September 2012, [A/67/375](#), para. 11.

⁵⁵ ‘Minister Regev: NIS 50 billion for the development of transportation in Israel’, Statement of the Minister for Transport, 18 April 2023, available at: <https://www.gov.il/he/departments/news/18-04-2023#:~:text=%D7%94%D7%99%D7%A9%D7%92%20%D7%97%D7%A1%D7%A8%20%D7%AA%D7%A7%D7%93%D7%99%D7%9D%20%D7%9C%D7%A9%D7%A8%D7%AA%20%D7%94%D7%AA%D7%97%D7%91%D7%95%D7%A8%D7%94,%D7%91%D7%99%D7%95%D7%AA%D7%A8%20%D7%91%D7%99%D7%A9%D7%A8%D7%90%D7%9C%2C%20%D7%9C%D7%97%D7%9E%D7%A9%20%D7%94%D7%A9%D7%A0%D7%99%D7%9D%20%D7%94%D7%A7%D7%A8%D7%95%D7%91%D7%95%D7%A>. See also ‘Israel to Divert Funding From Sustainable Transport to Intercity Highways’, Haaretz Article, 20 April 2023, available at: <https://www.haaretz.com/israel-news/2023-04-20/ty-article/.premium/israel-to-divert-funding-from-sustainable-transport-to-intercity-highways/00000187-9ae0-d50b-a78f-fff194260000>.

⁵⁶ Between 2003 and 2012, the settlement population grew at almost three times the rate of the Israeli population as a whole. See Secretary-General Settlements Report of 9 October 2013, [A/68/513](#), para. 10.

⁵⁷ High Commissioner Settlements Report of 15 March 2023, [A/HRC/52/76](#), para. 6.

⁵⁸ See, for example, ‘Far-right Israeli Minister Lays Groundwork for Doubling West Bank Settler Population’, Haaretz Article, 18 May 2023, available at <https://www.haaretz.com/israel-news/2023-05-18/ty-article/.premium/far-right-israeli-minister-lays-groundwork-for-doubling-west-bank-settler-population/00000188-2de6-d6e4-ab9d-ed74a3e0000>; ‘Amid signs of expansion, Israel assures US it’s not planning to double settler numbers’, The Times of Israel Article, 23 May 2023, available at:

confirmed that Israeli settlers have ‘changed the demography of the West Bank’, in a manner that puts the demographic and territorial presence of the Palestinian people ‘at risk’.⁵⁹

26. Population growth is driven primarily by the construction of settlements, approved by the Israeli Government, and of outposts, which are unlawful but facilitated by the Israeli Government, as outlined above.⁶⁰ Additionally, Israel supports settlement growth by providing incentives to Israelis to move to settlements, including reduced housing costs and mortgage subsidies, and tax, education, agricultural and enterprise benefits.⁶¹
27. In 2015, the Secretary-General noted that ‘the specific prohibition of transferring the population of the occupying Power into occupied territory aims at countering attempts at de facto annexation’, and warned that Israeli settlement activity amounted ‘to a slow, but steady annexation of the occupied Palestinian territory’.⁶²

Extension of the Application of Domestic Israeli Law

28. Ireland is concerned by reports that Israel has extended the application of parts of its domestic law to the settlements in the Occupied Palestinian Territory by means of emergency regulations.⁶³
29. In addition, the Secretary-General has reported that the Israeli Parliament also has a ‘practice’ of ‘enacting laws with direct applicability in the West Bank’, which he has described as ‘raising concerns about ‘de facto annexation’’,⁶⁴ concerns that Ireland shares. For example, in 2017, the Secretary-General reported on the adoption of a law that retrospectively regularised unlawful outposts.⁶⁵ Although subsequently deemed unconstitutional by the Israeli High Court

<https://www.timesofisrael.com/amid-signs-of-expansion-israel-assures-us-its-not-planning-to-double-settler-numbers/>; and ‘Israel’s Push to Expand West Bank Settlements, Explained’, The New York Times Article, 29 June 2023, available at: <https://www.nytimes.com/2023/06/29/world/middleeast/israel-west-bank-settlements-expansion.html>.

⁵⁹ Secretary-General Settlements Report of 18 September 2012, [A/67/375](#), para. 12.

⁶⁰ See, for example, Secretary-General Settlements Reports of 3 November 2022, [A/77/493](#), para. 16; 23 September 2021, [A/76/336](#), para. 14; 20 September 2019, [A/74/357](#), para. 14; and 5 October 2018, [A/73/410](#), para. 12.

⁶¹ Secretary-General Settlements Report of 24 August 2016, [A/71/355](#), para. 4.

⁶² Secretary-General Settlements Report of 31 August 2015, [A/70/351](#), para. 17.

⁶³ The Israeli Democracy Institute explains that, since 1967, Israel has applied certain Israeli laws to settlers living in the Occupied Palestinian Territory, conferring on them ‘both obligations (such as taxes, military service, licensing of various professions such as lawyers and medical professions, and so on) and rights (such as national insurance and state health insurance)’ as if they lived in Israel, on the basis of emergency legislation, introduced in 1967 and renewed periodically, entitled the ‘Law to Extend the Emergency Regulations (Judea and Samaria—Jurisdiction and Legal Aid 5727-1967)’: ‘The Judea and Samaria Regulations Law: An Explainer’. Israeli Democracy Institute Article, 7 June 2022, available at: <https://en.idi.org.il/articles/39012>.

⁶⁴ Secretary-General Settlements Report of 1 November 2017, [A/72/564](#), para. 13.

⁶⁵ Secretary-General Settlements Report of 1 November 2017, [A/72/564](#), para. 13.

of Justice,⁶⁶ this was reportedly the first time that the Israeli Parliament had asserted a legislative competence over matters of land and property (and particularly Palestinian property) in the Occupied Palestinian Territory.⁶⁷ Shortly thereafter, the Israeli Attorney General and the legal adviser to the Israeli Parliament issued guidelines that all new legislative proposals should include consideration of whether the proposed legislation could be applied to settlements.⁶⁸ The Secretary-General has separately reported that Israeli legislation relating to higher education⁶⁹ and rental housing⁷⁰ has also been extended to the Occupied Palestinian Territory, and that the jurisdiction of lower Israeli courts has been extended to planning and building petitions in the Territory.⁷¹ The Secretary General described this last development as ‘an additional step towards blurring the distinction between Israel and the Occupied Palestinian Territory’.⁷²

Transfer of Administration of the Territory from Military to Civilian Control

30. Article 42 of the Hague Regulations provides that territory is ‘considered occupied when it is actually placed under the authority of the hostile army’ and that ‘occupation extends only to the territory where such [military] authority has been established and can be exercised.’ The transfer of authority over an occupied territory by an occupying power from military command to a civilian ministry or agency raises concerns that that power intends to absorb the occupied territory into its own territory, thereby breaching the prohibition in international law of the acquisition of territory by threat or use of force.
31. The Occupied Palestinian Territory has been under the authority of the Israeli Coordination of Government Activities in the Territories (COGAT) military unit since the latter was established in 1967 to administer security and civilian matters there. COGAT is accountable to the Israeli

⁶⁶ Secretary-General Settlements Report of 23 September 2021, [A/76/336](#), para. 14.

⁶⁷ Secretary-General Settlements Report of 1 November 2017, [A/72/564](#), para. 13.

⁶⁸ Secretary-General Settlements Report of 5 October 2018, [A/73/410](#), para. 11. See also: ‘New Laws Should Also Consider Settlers in West Bank, Says Israeli Attorney General’, Haaretz Article, 31 December 2017, available at: <https://www.haaretz.com/israel-news/2017-12-31/ty-article/.premium/new-draft-laws-must-also-consider-settlers-in-west-bank-says-israeli-ag/0000017f-f671-d318-aff-f7737f7e0000>.

⁶⁹ Secretary-General Settlements Report of 5 October 2018, [A/73/410](#), para. 10.

⁷⁰ Secretary-General Settlements Report of 3 October 2022, [A/77/493](#), para. 16.

⁷¹ Secretary-General Settlements Report of 5 October 2018, [A/73/410](#), para. 10. See also: ‘Israel Passes New Law Limiting Palestinians’ Access to Court’, Haaretz Article, 17 July 2018, available at: <https://www.haaretz.com/israel-news/2018-07-17/ty-article/.premium/knesset-advances-bill-barring-palestinians-from-petitioning-high-court/0000017f-e21b-d568-ad7f-f37bac270000>.

⁷² Secretary-General Settlements Report of 5 October 2018, [A/73/410](#), para. 10. See also: ‘Israel Passes New Law Limiting Palestinians’ Access to Court’, Haaretz Article, 17 July 2018, available at: <https://www.haaretz.com/israel-news/2018-07-17/ty-article/.premium/knesset-advances-bill-barring-palestinians-from-petitioning-high-court/0000017f-e21b-d568-ad7f-f37bac270000>.

Ministry of Defence. The Israeli ‘Civil Administration’ was subsequently established in 1981 by the then Israel Defence Force (IDF) Area Commander in the Territory as part of COGAT (by way of Military Order 947⁷³). The Civil Administration’s task was to administer the civilian affairs of the Territory in accordance with the directives set out in the Order, although some administrative responsibilities in what became Areas A and B were subsequently transferred to the Palestinian Authority following conclusion of the Oslo Accords in 1993. The Civil Administration’s current Head is a Brigadier General in the IDF.

32. Although some steps had previously been taken to transfer authority for aspects of administration of the Territory to Israeli civilian authorities (which the High Commissioner considered an ‘extension of the jurisdiction of Israeli authorities to the occupied territory ... inconsistent with international humanitarian law’⁷⁴), Ireland is concerned by reports that there has been a significant increase in such transfers since the 37th Israeli Government came to power in December 2022.
33. For instance, last December the Israeli Parliament created a new ministerial position in the Ministry of Defence.⁷⁵ In February this year, it was announced that an agreement within the Israeli Government was reached on division of responsibility between the Minister of Defence and that new Minister.⁷⁶ Under this agreement, a number of powers previously held by the military-led Civil Administration relating to the Occupied Palestinian Territory are to be transferred to the new Minister, that a civilian deputy to the military head of the Civil Administration is to be appointed, and that a new Settlement Directorate is to be created, which will lead on ‘equal citizenship’ reform in the Occupied Palestinian Territory.⁷⁷

⁷³ Jerusalem Media & Communication Centre, *Israeli Military Orders in the Occupied Palestinian West Bank 1967-1992*, Second Edition 1995, available at:

http://www.jmcc.org/documents/JMCCIsraeli_military_orders.pdf.

⁷⁴ For example, responsibility for archaeological sites in Area C was transferred from the Israeli Civil Administration to the Israeli Antiquities Authority of the Israeli Ministry of Culture. See High Commissioner Settlements Report of 15 March 2023, [A/HRC/52/76](#), para. 22.

⁷⁵ [Amendment No. 11 to the Basic Law: The Government, 27 December 2022](#).

⁷⁶ ‘The Prime Minister, the Defense Minister and the Defense Ministry Minister Sign a Memorandum of Understanding on the Division of Responsibility in the Ministry of Defense’ Prime Minister’s Office Press Release, 23 February 2023, available at: <https://www.gov.il/he/departments/news/event-understanding230223>.

⁷⁷ ‘Document of Understanding and Division of Responsibilities and Powers between the Minister of Defense and the Additional Minister in the Ministry of Defense’, 23 February 2023, available at: https://ynet-pic1.yit.co.il/picserver5/wcm_upload_files/2023/02/23/SkyITh4As/.pdf. See also ‘Israeli pro-settler minister formally gains West Bank powers’, Reuters Article, 23 February 2023, available at: <https://www.reuters.com/world/middle-east/israeli-pro-settler-minister-formally-gains-west-bank-powers-2023-02-23/>; and, for an explanation of ‘equal citizenship’, ‘What is Bezael Smotrich’s plan for West Bank settlements? - analysis’, The Jerusalem Post Article, 2 March 2023, available at: <https://www.jpost.com/israel-news/article-733141>.

34. Also in February, the Government is reported to have transferred certain responsibilities regarding unlawful outposts, which it describes as ‘young settlements’ or ‘irregular Israeli settlement’, from the military to the Ministry of the Negev, the Galilee and the National Resilience.⁷⁸ In June, the Government amended the settlement planning process,⁷⁹ reportedly reducing the number and level of approvals needed for certain types of development in the settlements, thereby expediting the planning and approval of settlements, and transferring the power to approve settlement expansion to the new minister in the Ministry of Defence.⁸⁰

Summary of Nature and Scale of Settlements

35. On the basis of the foregoing, Ireland has concluded that Israel’s settlement-related policies and practices in the Occupied Palestinian Territory are wholly inconsistent with the temporary administration of territory in accordance with the law of military occupation. In summary:

- Israel has used different means to take and exercise control for non-military purposes over as much land in the Occupied Palestinian Territory as possible;
- Having taken such control, Israel has undertaken permanent construction on this land, in particular developing or encouraging the development of settlements and their related infrastructure;
- Israel has transferred large numbers of its own citizens into the Occupied Palestinian Territory, accommodating them in these permanent settlements;
- Israel has encouraged and incentivised Israeli population growth in the settlements, effecting an increasingly profound demographic change in the Occupied Palestinian Territory;
- Israel has extended the application of domestic Israeli law to those living in settlements, blurring the distinction between Israel and the Occupied Palestinian Territory; and

⁷⁸ Government Decision No. 109 of 5 February 2023, available at: <https://www.gov.il/he/departments/policies/dec109-2023>.

⁷⁹ Government Decision No. 657 of June 18, amending Government Decision No. 150 of 02 August 1996, available at: <https://www.gov.il/he/departments/policies/dec657-2023>. See also ‘Statement attributable to the Spokesperson for the Secretary-General - on Israel and the Occupied Palestinian Territory’, Statement, 19 June 2023, available at: <https://www.un.org/sg/en/content/sg/statement/2023-06-19/statement-attributable-the-spokesperson-for-the-secretary-general-israel-and-the-occupied-palestinian-territory>.

⁸⁰ See ‘Statement on Israeli Cabinet Decision to Expedite West Bank Settlement Expansion’, Israel Policy Forum Press Release, 19 June 2023, available at: <https://israelpolicyforum.org/2023/06/19/statement-on-israeli-cabinet-decision-to-expedite-west-bank-settlement-expansion/>; and ‘The United States is Deeply Troubled with Israeli Settlement Announcement’, Press Statement United States Department of State, 18 June 2023, available at: <https://www.state.gov/the-united-states-is-deeply-troubled-with-israeli-settlement-announcement/>.

- Israel has transferred the exercise of authority in the Occupied Palestinian Territory in certain areas from military command to Government Ministries and civilian agencies, integrating administration of the Territory into that of Israel.

Annexation

36. In the *Wall* case, the Court confirmed the illegality of acquisition of territory by threat or use of force.⁸¹ The Court assessed the lawfulness of the then ongoing construction by Israel of a wall that deviated from the Armistice Line of 1949 and that, when complete, would result in some 975 square kilometres of the Occupied Palestinian Territory falling on the Israeli side of the wall.⁸² Israel argued that the sole purpose of the wall was to combat terrorist attacks launched from the Occupied Palestinian Territory, and that it was a temporary measure.⁸³ The Court, however, noted that the wall could ‘prejudge the future frontier between Israel and Palestine’ by integrating settlements located on one side of the wall, as well as their means of access, into Israel’s own territory and found 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’.⁸⁴ Furthermore, the Court found that the construction of the wall resulted in ‘a risk of further alterations to the demographic composition of the Occupied Palestinian Territory’.⁸⁵

37. Despite the Court finding that the construction of the wall was contrary to international law and that Israel had an obligation to cease building it and to dismantle those parts of it already completed, building continued after the Court delivered its Opinion. Today, the wall remains unfinished but maintenance and new construction continues on an ongoing basis.⁸⁶ Ireland’s assessment is that the situation envisaged by the Court has, therefore, come to pass through the evident permanence of the wall almost two decades later: the wall and its associated régime have created a situation of *de facto* annexation over those parts of the Occupied Palestinian Territory that lie between the wall and Israel.

⁸¹ *Wall* case, para. 87.

⁸² *Wall* case, para. 84.

⁸³ *Wall* case, para. 116.

⁸⁴ *Wall* case, para. 121.

⁸⁵ *Wall* case, para. 122.

⁸⁶ Secretary-General Settlements Report of 25 August 2014, [A/69/348](#), para. 10.

38. Ireland considers that the situation of annexation created by the wall is part of a wider process of annexation by Israel of territory within the Occupied Palestinian Territory, demonstrated in particular by the settlements and their associated regime. As described above, the settlements – the expansion of which is intensifying – appear clearly to be intended as permanent. This regrettable conclusion is based on the significant demographic change effected by the settlements, and the considerable Israeli state investment in their construction and in the development of ancillary infrastructure. It is furthermore based on the legislative and administrative measures described above, which extend the application of domestic Israeli law to – and civilian administration in – the Occupied Palestinian Territory, and increasingly blur the distinction between the settlements and Israel. These factors clearly demonstrate, in Ireland’s view, a process of annexation, which has been acknowledged as such by the lower house of the Irish Parliament in a resolution supported by the Irish Government.⁸⁷ Ireland’s concerns are compounded by the policy guidelines issued by the new Israeli coalition Government which, *inter alia*, commit the Government to ‘promote and develop the settlement of all parts of the Land of Israel — in the Galilee, the Negev, the Golan and Judea and Samaria’ (the latter being a reference to the Occupied Palestinian Territory).⁸⁸
39. Israel’s *de jure* annexation of East Jerusalem through its 1980 Basic Law⁸⁹ followed a process over many years of *de facto* annexation of that territory. In Ireland’s opinion the information set out above, in addition to the extensive additional material provided in the numerous reports of the Secretary-General, the High Commissioner and others, furnished to the Court, demonstrate that a process of annexation is now also at an advanced stage in the Occupied Palestinian Territory more broadly.
40. When the Government of Israel made an announcement regarding proposed annexation of parts of the Occupied Palestinian Territory in April 2020,⁹⁰ it was met with widespread international criticism and opposition.⁹¹ Considering that experience, it seems unlikely, at this stage, that an

⁸⁷ ‘Annexation of Palestine’, Dáil Éireann Debate, 26 May 2021, vol. 1007, no. 6, available at: <https://www.oireachtas.ie/en/debates/debate/dail/2021-05-26/17/>.

⁸⁸ See the Israeli Parliament website page on the 37th Government of Israel, which includes links to the ‘Coalition Agreements and Basic Guidelines’ of the 37th Government. The policy guidelines are annexed to the coalition agreements. Available at:

<https://main.knesset.gov.il/mk/government/pages/governments.aspx?govid=37>.

⁸⁹ Basic Law: Jerusalem the Capital of Israel, 5740-1980, available at:

<https://main.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawJerusalem.pdf>.

⁹⁰ Secretary-General Settlements Report of 1 October 2020, [A/75/376](#), para. 12.

⁹¹ See, for example, ‘Annexing Parts of the West Bank Will ‘Grievously Harm’ Two-State Solution, Secretary-General Says, Addressing Security Council on Israeli Palestinian Conflict’, Press Release, 24 June 2020,

express declaration of *de jure* annexation by Israel of any territory will be made. In Ireland's view Israel is, nevertheless, already in the process of annexing Palestinian territory. It is doing so *de facto*, through its policy of encouraging demographic change in the Occupied Palestinian Territory by population transfer and the continuous development and maintenance of permanent settlements and infrastructure. Ireland is concerned that it may also be doing so, to some extent, *de jure*, by increasingly extending the application of domestic Israeli law and civilian administration to the settlements in the Occupied Palestinian Territory, thereby integrating them into its own territory and erasing the differences in law between the two territories.

41. Whether *de facto* or *de jure*, or both, this process of annexation is in clear breach of the prohibition in international law of the acquisition of territory by threat or use of force. In Ireland's view, any assertion that this prohibition has not been breached because Israel has not yet formally declared its annexation of the Occupied Palestinian Territory would deny the prohibition any effect. Such an assertion would amount to an acceptance that Israel can acquire territory simply by declining to declare formally what it is attempting to achieve in reality.

Self-Determination

42. The right to self-determination is a peremptory norm of general international law⁹² and was confirmed by the Court in the *Wall* case to be 'a right *erga omnes*'.⁹³ Article 1 common to the ICCPR and ICESCR reaffirms this right, by virtue of which peoples 'freely determine their political status and freely pursue their economic, social and cultural development' and 'freely dispose of their natural wealth and resources'. In the *Wall* case, the Court found that the construction of the wall and its associated regime severely impeded the exercise by the Palestinian people of the right to self-determination and therefore breached Israel's obligation

[SC/14225](#); 'Israel: Statement by the High Representative Josep Borrell on the formation of a new government', Statement, 18 May 2020, available at: https://www.eeas.europa.eu/eeas/israel-statement-high-representative-josep-borrell_en; 'Statement by Tánaiste on developments in Israel', Statement, 23 April 2020, available at: <https://dfa.ie/news-and-media/press-releases/press-release-archive/2020/april/statement-by-tanaiste-on-developments-in-israel.php>; and 'Urging a negotiated two-state solution between Israelis and Palestinians', Statement by UK Foreign Minister at the Security Council briefing on the Middle East Peace Process, 23 June 2020, available at: <https://www.gov.uk/government/speeches/urging-a-negotiated-two-state-solution-between-israelis-and-palestinians>.

⁹² See, for example, International Law Commission ('ILC'), Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001 ('Draft Articles'), in which the ILC explains at para. 5 of the commentary on Article 26 that '[t]hose peremptory norms that are clearly accepted and recognized include ... the right to self-determination'

⁹³ *Wall* case, para. 88, citing *East Timor (Portugal v. Australia)*, Judgment, ICJ Reports 1995, para. 29; see also *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Reports 2019, para. 180.

to respect that right, having regard to the extent to which the wall had detrimentally affected or could affect Palestinian presence on – and use of – land within the Occupied Palestinian Territory.⁹⁴

43. In 2015, the Secretary-General reported that ‘the establishment and maintenance of the settlements amount to a slow, but steady annexation of the occupied Palestinian territory’, which ‘deprives Palestinians of their right to self-determination’.⁹⁵ Today, Israel continues ever more seriously to breach its obligation to respect the right of the Palestinians to self-determination, through its maintenance and extension of the wall (now in existence for over twenty years), its formal annexation of East Jerusalem and its escalating settlement activity, as described above, regardless of whether that activity is deemed to amount to a process of annexation. That escalating settlement activity increasingly fragments Palestinian presence on – and restricts Palestinian use of – land and natural resources in the Occupied Palestinian Territory, and its nature and scale is such that it completely prevents the Palestinian people from exercising their right to self-determination; the Palestinian people cannot exercise that right unless and until that settlement activity is reversed.

Conclusions on Israel’s Legal Obligations

44. As described above, it is clear that Israel is acting inconsistently with its legal status as the occupying power, and in breach of many of its obligations under international humanitarian and human rights law. Far from temporarily administering the Occupied Palestinian Territory in accordance with the law of military occupation, Israel is engaged in escalating unlawful settlement activity, which amounts to a process of annexation, and is in serious breach of its obligation to respect the right of the Palestinian people to self-determination. Ireland regrets to conclude that Israel’s settlement practices amount to an attempt to transform a temporary, albeit prolonged, occupation into an exercise in permanently acquiring territory by a gradual process of annexation.

45. In Ireland’s view, there can be no possible legal justification for this. Even if Israel were facing an armed attack entitling it to exercise the right of self-defence, its settlement activity could not be justified as self-defence. As explained above, Ireland has reluctantly but unavoidably concluded that that activity amounts to a process of annexation and a serious breach of the right to self-determination – a peremptory norm of general international law – which cannot be

⁹⁴ *Wall* case, para. 122.

⁹⁵ Secretary-General Settlements Report of 31 August 2015, [A/70/351](#), para. 17.

justified as self-defence. Even if Israel's settlement activity did not amount to annexation or breach the right to self-determination, it could not possibly be justified as self-defence because it would not, in any event, be a necessary or proportionate measure (as required by international law of any measure taken in the exercise of the right to self-defence).

46. Nor can the wrongfulness of this activity be precluded by a state of necessity under customary international law (as reflected in Articles 25 and 26 of the International Law Commission's Draft Articles on State Responsibility ('Draft Articles')); necessity cannot preclude the wrongfulness of a breach of a peremptory norm.⁹⁶ Even if Israel's unlawful settlement activity did not breach any such norm, its wrongfulness could not be precluded by necessity in that event either, not least because it is plainly not the only way for Israel to safeguard an essential interest against a 'grave and imminent peril'.⁹⁷

Legal Consequences

47. Israel's breaches of international law have legal consequences not only for Israel but also for all other states.

Israel

48. In the *Wall* case, the Court found that Israel was obliged to end the breaches of its legal obligations, including its obligations under international humanitarian law and its obligation to respect the right of the Palestinian people to self-determination, and to make reparation for the damage caused by those breaches.⁹⁸ In the present case, customary international law likewise obliges Israel to bring to an end its breaches, including by reversing its settlement activity, and to make reparation for the damage arising from these breaches by way of restitution and compensation, as appropriate.

Other States

49. In the *Wall* case, the Court found that Israel was in breach of its obligation to respect the right of the Palestinian people to self-determination and certain of its international humanitarian law obligations, and concluded that '[g]iven the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall', that all states are

⁹⁶ Draft Articles, Article 26.

⁹⁷ See *Wall* case, para. 140; Draft Articles, Article 25.

⁹⁸ *Wall* case, para. 149-153.

‘under an obligation not to render aid or assistance in maintaining the situation created by such construction’, and that ‘[i]t is also for all States ... to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end.’⁹⁹

50. Article 41 of the Draft Articles, which reflects customary international law, provides that where a state commits a serious breach of an obligation arising under a peremptory norm of general international law (namely, a breach involving a gross or systematic failure to fulfil the obligation), other states shall cooperate to bring the breach to an end through lawful means, shall not recognise as lawful the situation created by the breach, and shall not render aid or assistance in maintaining that situation.
51. Israel’s ongoing breaches include an ongoing serious breach of its obligation to respect the right of the Palestinian people to self-determination, which is an obligation arising under a peremptory norm of general international law, as well as an obligation *erga omnes* (see above, para. 42). That breach is unquestionably serious given its gravity and the systematic manner in which it has been carried out, in an organised and deliberate way, over many years. As demonstrated above, Israel has not only failed to cease its breach following the Court’s finding in this respect in the *Wall* case, but is continuing to fail seriously to fulfil that obligation.
52. States are obliged to cooperate to bring to an end Israel’s serious breach of its obligation to respect the right of the Palestinian people to self-determination¹⁰⁰ or, as the Court found in the *Wall* case, to see to it that any impediment to the exercise of that right is brought to an end, including through the United Nations (see below, para. 57) and, as appropriate, other international organisations, including the European Union.
53. Customary international law, as reflected by Article 41 of the Draft Articles, also obliges states not to recognise as lawful the situation created by this breach,¹⁰¹ either formally or by acts which would imply such recognition.¹⁰² In its advisory opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, the Court explained the types of acts that would impermissibly imply recognition of the unlawful situation in that case (namely, South Africa’s presence in the previously-mandated territory of Namibia following termination

⁹⁹ *Wall* case, para. 159.

¹⁰⁰ Draft Articles, Article 41(1).

¹⁰¹ Draft Articles, Article 41(2); *Wall* case, para. 159.

¹⁰² Draft Articles, commentary on Article 41, para. 5.

of the mandate), and found that the duty of non-recognition obliged states, *inter alia*, ‘to abstain from entering into economic and other forms of relationship or dealings with South Africa ... which may entrench its authority over the [territory of Namibia]’.¹⁰³

54. The General Assembly and Security Council have called for non-recognition of situations created by annexation or the denial of the right to self-determination, including in relation to the annexation of Crimea in 2014, when the General Assembly called upon ‘all States, international organizations and specialized agencies not to recognize any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol ... and to refrain from any action or dealing that might be interpreted as recognizing any such altered status’.¹⁰⁴ The European Union responded to the annexation of Crimea by implementing a broad range of diplomatic, economic and other measures, which served to preclude any implied recognition of the annexation, and included a ban on imports of goods originating in the annexed territory and a prohibition on investing in it.¹⁰⁵
55. States are, likewise, obliged not to render aid or assistance in maintaining the situation created by Israel’s breach of its obligation to respect the right of the Palestinian people to self-determination.¹⁰⁶ The General Assembly and Security Council have, in the past, called upon all states to refrain from rendering any assistance to the maintenance of situations of denial of self-determination.¹⁰⁷
56. In Ireland’s view, these obligations require all states, as well as international organisations competent in the field of external trade (which for Ireland is the European Union), to review their trading relationships with the settlements in the Occupied Palestinian Territory and to take steps to prevent trade that assists in the maintenance of the situation created by the settlement

¹⁰³ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, para. 121-124. The Court then, importantly, clarified at para. 125 that ‘[i]n general, the non-recognition of South Africa’s administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international co-operation.’

¹⁰⁴ General Assembly resolution 68/262 of 27 March 2014, [A/RES/68/262](#), para. 6. See also, for example, Security Council resolution 439 of 13 November 1978, [S/RES/439\(1978\)](#), para. 1, 3; Security Council resolution 448 of 30 April 1979, [S/RES/448\(1979\)](#), para. 3.

¹⁰⁵ ‘The EU non-recognition policy for Crimea and Sevastopol’, Fact Sheet, March 2016, available at: https://www.europarl.europa.eu/meetdocs/2014_2019/documents/d-ru/dv/dru_dua_20161214_07/dru_dua_20161214_07en.pdf.

¹⁰⁶ Draft Articles, Article 41(2); *Wall* case, para. 159.

¹⁰⁷ See, for example, Security Council resolution 218 of 23 November 1965, [S/RES/218\(1965\)](#), para. 4, 6; and General Assembly resolution 2022 (XX) of 5 November 1965, [A/RES/2022\(XX\)](#), para. 5-6.

activity, or that implicitly recognises or serves to entrench Israel's settlement or annexation of that territory.

57. Finally, states are required to cooperate to bring the serious breach to an end, including collectively at the Security Council and the General Assembly.

Conclusion

58. In Ireland's view there will be no just – and therefore lasting – solution to the Israeli-Palestinian conflict without respect for international law. Accordingly, Ireland encourages the Court to provide its authoritative clarification of the legal issues to the General Assembly, as requested.

59. Ireland remains committed to realisation of the vision of the two-State solution endorsed by the Security Council: a safe and secure Israel and an independent, democratic, contiguous, sovereign and viable Palestinian state, living side by side in peace within secure and recognised borders, based on those of 1967, with Jerusalem as the capital of both states.

Dublin
25 July 2023