

INTERNATIONAL COURT OF JUSTICE

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

WRITTEN STATEMENT OF BELIZE

25 JULY 2023

TABLE OF CONTENTS

INTRODUCTION.....	1
A. PROCESS LEADING TO THE REQUEST FOR AN ADVISORY OPINION	1
B. THE IMPORTANCE OF THE REQUEST	2
C. ORGANISATION OF BELIZE’S WRITTEN STATEMENT.....	3
CHAPTER 1. THE FIRST QUESTION.....	4
A. SELF-DETERMINATION.....	5
B. PROLONGED OCCUPATION, SETTLEMENT AND ANNEXATION	14
1. Prolonged occupation.....	14
<i>a. The occupation of Gaza.....</i>	<i>15</i>
<i>b. The illegality of the occupation as a whole.....</i>	<i>17</i>
2. Settlement	20
3. Annexation.....	25
<i>a. The prohibition of annexation of the Palestinian territory</i>	<i>25</i>
<i>b. The annexation of East Jerusalem</i>	<i>27</i>
<i>c. The de facto annexation of the remainder of the West Bank and Gaza</i>	<i>28</i>
C. RELATED DISCRIMINATORY LEGISLATION AND MEASURES	32
1. Israel’s system of institutionalised discrimination.....	32
2. Israel’s denial of the ‘right of return’ of the Palestinian people	43
3. Israel’s practices in respect of the Palestinian people constitute apartheid	47
D. LEGAL CONSEQUENCES	53
1. Legal consequences for Israel.....	54
2. Legal consequences for other States	58
<i>a. Violations of peremptory norms</i>	<i>59</i>
<i>b. Violations of obligations erga omnes.....</i>	<i>62</i>
<i>c. Violations of international humanitarian law.....</i>	<i>62</i>
<i>d. Violations giving rise to individual criminal responsibility.....</i>	<i>66</i>
3. Legal consequences for the United Nations.....	67
CHAPTER 2. THE SECOND QUESTION.....	68
A. THE LEGAL STATUS OF THE OCCUPATION.....	68
1. No legal validity and no rights for Israel as a matter of international law.....	68
2. Illegal presence	71
B. LEGAL CONSEQUENCES	73

INTRODUCTION

A. PROCESS LEADING TO THE REQUEST FOR AN ADVISORY OPINION

1. On 30 December 2022, the United Nations General Assembly adopted Resolution 77/247 entitled “Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem”. In that resolution the General Assembly decided, pursuant to Article 96 of the Charter of the United Nations, to request the International Court of Justice to render an advisory opinion on the following questions:

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

(b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?”¹

2. On 17 January 2023, the Secretary-General of the United Nations transmitted the Request to the Court.² On 3 February 2023, in accordance with Article 66(2) of its Statute, the Court fixed time-limits within which “the United Nations and its Member States, as well as the observer State of Palestine” could furnish information on the questions submitted to the Court.³ On 6 February 2023, the Registrar of the Court informed Belize that it may submit a written statement in the proceedings.⁴ Belize submits this Statement pursuant to that invitation.

¹ UNGA Resolution 77/247, UN Doc. A/RES/77/247, 30 December 2022 (*A/RES/77/247 (2022)*), para. 18.

² Letter from the Secretary-General of the United Nations to the President of the International Court of Justice, 17 January 2023.

³ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Request for Advisory Opinion)*, I.C.J. General List No. 186, Order of the Court, 3 February 2023.

⁴ Letter from the Registrar of the Court to the Ambassador of Belize to the Kingdom of the Netherlands, 6 February 2023.

B. THE IMPORTANCE OF THE REQUEST

3. Belize is gravely concerned about Israel's decades-long illegal occupation, settlement and annexation of the territory of the State of Palestine,⁵ its systematic and institutionalised discriminatory regime of brutal oppression and apartheid, and the severe and far-reaching impact that these measures have on the rights of the Palestinian people.⁶ As part of the international community as embodied in the United Nations, Belize has supported Palestine by consistently calling for respect for international law and the dismantling by Israel of its practices and policies that disregard the most foundational rules of international law and the rights of the Palestinian people.
4. One such right, in which Belize has a particular and long-standing interest, is the right to self-determination. Belize participates in the present case, as it did in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* and *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, in recognition of the crucial importance of defending the free and full exercise of the right to self-determination.
5. There has been a recent escalation of violent attacks against Palestinians and an increase in the number of plans to expand illegal Israeli settlements, which are linked directly to Israel's latest policies aimed at further and more formalised annexation of the Palestinian territory.⁷ This conduct signals a deterioration in the already grossly inhuman conditions under which Palestinians live. Belize voted in favour of Resolution 77/247 referring the present questions to the Court because it considers that clear and authoritative legal determinations on the consequences of Israel's ongoing illegal conduct will be useful in supporting efforts to bring such violations and their effects to a permanent end.

⁵ Belize recognised Palestine as a State in 2011: Press Release of the Ministry of Foreign Affairs and Foreign Trade of Belize, "The Government of Belize Recognizes the State of Palestine", 9 September 2011 (available [here](#)).

⁶ "Belize House of Representatives Resolution on Palestine Motion", 26 October 2021 (available [here](#)).

⁷ End-of-Mission Statement of the UN Special Committee to Investigate Israeli Practices, 16 June 2023 (available [here](#)); EU, "2022 Report on Israeli settlements in the occupied West Bank, including East Jerusalem", 15 May 2023 (*EU, "Report on Israeli settlements" (2023)*) (available [here](#)), reporting an almost 30% increase in the number of settlement plans and tenders advanced in 2022 as compared to the previous year. See also para. 51 below.

C. ORGANISATION OF BELIZE'S WRITTEN STATEMENT

6. Following this introduction, Belize's Written Statement proceeds in two chapters. **Chapter 1** addresses the first question referred to the Court, which focuses on the violations of international law being committed by Israel in relation to the Palestinian people and territory, and the consequences thereof. **Chapter 2** addresses the second question referred to the Court, which concerns the legal status of the occupation as a whole and the consequences that flow for all States and the United Nations from such status.
7. Belize considers it to be obvious that the Court has jurisdiction to give the opinion requested pursuant to Article 65(1) of the Statute of the Court, and that the Court should exercise its jurisdiction and answer all questions asked of it. This Written Statement therefore makes no further comment on the Court's jurisdiction or the discretion as to its exercise, and addresses only the substance of the questions asked.
8. For the purposes of these proceedings, in this Written Statement Belize adopts the term "the Palestinian territory" to refer to the territories that are part of the former Mandate of Palestine that have been occupied by Israel since 1967. They consist of the whole of Gaza and the West Bank, including East Jerusalem, as delimited by the 1949 Armistice Agreements or 'Green Line'.⁸

⁸ See, e.g., *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (Wall Advisory Opinion)*, p. 167, para. 78 and p. 177, para. 101; UNGA Resolution 67/19, "Status of Palestine in the United Nations", UN Doc. A/RES/67/19, 29 November 2012 (*A/RES/67/19 (2012)*), para. 1 ("Reaffirms the right of the Palestinian people to self-determination and to independence in their State of Palestine on the Palestinian territory occupied since 1967"); International Criminal Court, Pre-Trial Chamber I, "Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine'", ICC-01/18-143, 5 February 2021 (*ICC, "Decision on the Court's territorial jurisdiction in Palestine" (2021)*), para. 117.

CHAPTER 1. THE FIRST QUESTION

9. The first question asked of the Court is:
- “(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?”
10. The Court has been asked to address the legal consequences arising from three categories of conduct:
- (a) the ongoing violation by Israel of the right of the Palestinian people to self-determination;
 - (b) Israel’s 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
 - (c) Israel’s adoption of related discriminatory legislation and measures.
11. As the Court observed in the *Wall* Advisory Opinion, an assessment of the “legal consequences” of conduct “necessarily encompasses” first an assessment of whether the conduct in question is in breach of international law.⁹ Consequently, in this Chapter, Belize addresses the three categories of conduct identified in the question asked of the Court as constituting breaches of international law, and examines the legal consequences that follow from those breaches.
12. The Chapter is divided into four sections dealing with: (a) violation of the right of the Palestinian people to self-determination (**Section A**); (b) violations of international law arising from Israel’s “occupation, settlement and annexation” of the Palestinian territory (**Section B**); (c) violations of international law arising from Israel’s related

⁹ *Wall* Advisory Opinion, p. 154, para. 39.

discriminatory legislation and measures (**Section C**); and (d) the legal consequences of the violations that Israel has committed and continues to commit (**Section D**).

A. SELF-DETERMINATION

13. The right of peoples to self-determination is a prerequisite to the full enjoyment of all fundamental human rights.¹⁰ The systematic denial by Israel of the civil and political rights of the Palestinian people, and of their economic, social and cultural rights, is discussed in **Section C** below. In relation to the right of the Palestinian people to self-determination specifically, in the *Wall* Advisory Opinion the Court found that *specific* conduct of Israel — namely, the construction of the wall and associated measures — was a breach of Israel’s obligation to respect the right of the Palestinian people to self-determination.¹¹ The Court further found that Israel was obliged to put an end to that violation and, accordingly, to dismantle the wall.¹² To date, this has not occurred.¹³ Israel is thus necessarily still violating its obligation to respect the right of the Palestinian people to self-determination. This Section will focus, beyond that specific violation, on the conduct of Israel *as a whole*, which breaches the right of the Palestinian people to self-determination.
14. As the Court observed in the *Wall* Advisory Opinion, the existence of a Palestinian people with the right to self-determination is no longer in issue.¹⁴ In Article 22 of the Covenant of the League of Nations, the League of Nations recognised that there were certain communities that had the right to statehood.¹⁵ Article 22 provided that “[c]ertain communities formerly belonging to the Turkish Empire have reached a stage of

¹⁰ See, e.g., UNGA Resolution 637 (VII) A, “The right of peoples and nations to self-determination”, UN Doc. A/RES/637(VII)[A], 16 December 1952, preambular para. 1; UNGA Resolution 1514 (XV), “Declaration on the granting of independence to colonial countries and peoples”, UN Doc. A/RES/1514(XV), 14 December 1960 (*A/RES/1514(XV) (1960)*), para. 1.

¹¹ *Wall* Advisory Opinion, p. 184, para. 122.

¹² *Wall* Advisory Opinion, pp. 197-198, paras. 150-151.

¹³ As recognised in the resolution requesting this advisory opinion: A/RES/77/247 (2022), preambular para. 28 and paras. 6 and 11. To the contrary, Israel has begun to modify parts of the ‘wall’ that are currently barbed wire fences by creating concrete walls: “Israel plans 60-mile concrete wall in northern West Bank”, *Al-Monitor*, 28 November 2022 (available [here](#)).

¹⁴ *Wall* Advisory Opinion, pp. 182-183, para. 118.

¹⁵ See also Gerson, “Trustee-Occupant: The Legal Status of Israel’s Presence in the West Bank” (1973) 14(1) *Harvard International Law Journal* 1, p. 27: “The right of the people to eventual exercise of sovereignty was thus immediately recognized”.

development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone”. Palestine was one of the communities identified pursuant to this Article, with the “A” Mandate for Palestine being established in 1922.¹⁶ As the Court has observed, the ultimate objective of the mandate system was the independence of the peoples concerned.¹⁷

15. In addition to recognising this right to statehood, an “international status” was conferred on mandated territories.¹⁸ When a mandate was terminated, if the relevant people had not yet achieved statehood, the special status of the territory in question persisted.¹⁹ When the Mandate for Palestine was terminated in 1948, the Palestinian people had not achieved statehood.²⁰ Thus, the status conferred on the territory of mandated Palestine, and the related right of the Palestinian people to statehood, persisted.
16. By 1960, with the adoption of General Assembly Resolution 1514 (XV) titled “Declaration on the Granting of Independence to Colonial Countries and Peoples”, the right to self-determination had crystallised as a customary rule for colonial peoples.²¹

¹⁶ British Mandate for Palestine, 24 July 1922, in (1922) 3 *League of Nations Official Journal* 1007.

¹⁷ *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 (Namibia Advisory Opinion)*, pp. 31-32, paras. 53-54. See also Ad Hoc Committee on the Palestinian Question, Report of Sub-Committee 2, UN Doc. A/AC.14/32, 11 November 1947, p. 11, para. 15(a): “It will be recalled that the object of the establishment of Class A Mandates, such as that of Palestine, under Article 22 of the Covenant, was to provide for temporary tutelage under the Mandatory Power, and one of the primary responsibilities of the Mandatory was to assist the peoples of the mandated territories to achieve full self-government and independence at the earliest opportunity”.

All of the territories that made up the League of Nations “A” mandates other than Palestine had become independent States and members of the UN by 1955. See Crawford, *The Creation of States in International Law* (2nd edition, 2006), pp. 741-742 (Iraq, Jordan, Syria, Lebanon and Israel).

¹⁸ *International status of South-West Africa, Advisory Opinion, I.C.J. Reports 1950 (International status of South-West Africa Advisory Opinion)*, p. 132; *Namibia Advisory Opinion*, p. 31, para. 52. See further para. 46 below.

¹⁹ This status persisted in relation to Namibia after the termination of the Mandate for South West Africa. See *Namibia Advisory Opinion*, p. 31, para. 52.

²⁰ The Palestine National Council proclaimed the establishment of the State of Palestine in 1988. See Letter dated 18 November 1988 from the Permanent Representative of Jordan to the United Nations addressed to the Secretary-General, UN Doc. A/43/827-S/20278, 18 November 1988.

²¹ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (Chagos Advisory Opinion)*, pp. 131-132, paras. 148-152. See also p. 131, para. 144 (“the Court will confine itself, in this Advisory Opinion, to analysing the right to self-determination in the context of decolonization”).

The right declared in that Resolution was understood to apply to the Palestinian people, who were a colonial people by virtue of having had the Mandate imposed on them.²² Outside of the colonial context, the right to self-determination of peoples subject to foreign occupation crystallised as a customary rule, at the latest, with the adoption of the Friendly Relations Declaration in 1970.²³

17. The rights associated with mandated territories, including the right to statehood of the Palestinian people as the people of an “A” mandate, were progenitors of the right to self-determination which subsequently crystallised at customary international law. Indeed, mandated territories have been described as the “first distinct category of self-determination territory”²⁴ and, as the Court explained in the *Namibia* Advisory Opinion, the subsequent development of international law made the principle of self-determination which was applicable to mandated territories applicable to all non-self-governing territories.²⁵ When the right to self-determination crystallised as a matter of customary international law, the right of the Palestinian people to statehood which had been recognised by the League of Nations was subsumed in that broader customary international law right to self-determination.²⁶

²² See, e.g., UNGAOR, Fifteenth Session, 937th meeting, UN Doc. A/PV.937, 6 December 1960, paras. 125-126 (Iraq): “I do not think that I exaggerate when I say that few nations in the world have suffered as much as the Arab nation under colonial rule ... Syria, Lebanon, Palestine, Jordan and Iraq ... fell under French and British rule during and after the First World War. ... In our area of the Middle East, foreign European rule was perpetuated for a long time under the guise of the Mandates System, imposed on unwilling peoples by the colonial Powers after their countries had been conquered during the First World War. The people of Iraq, Syria, Lebanon, Palestine and Jordan never accepted the Mandates and waged a relentless struggle against this new form of colonialism”. See also, e.g., UNGAOR, Fifteenth Session, 935th meeting, UN Doc. A/PV.935, 5 December 1960, para. 35 (Sudan).

²³ See UNGA Resolution 2625 (XXV), UN Doc. A/RES/2625(XXV), 24 October 1970, Annex: “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations” (*Friendly Relations Declaration*), fifth principle, second para. See also Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1995), p. 90.

²⁴ Crawford, *The Creation of States in International Law* (2nd edition, 2006), p. 567.

²⁵ *Namibia* Advisory Opinion, p. 31, para. 52.

²⁶ The right of the Palestinian people to self-determination has been recognised in numerous UN resolutions. See, e.g., UNGA Resolution 2649 (XXV), UN Doc. A/RES/2649(XXV), 30 November 1970, para. 5; UNGA Resolution 77/208, “The right of the Palestinian people to self-determination”, UN Doc. A/RES/77/208, 15 December 2022.

18. Palestine has already achieved statehood. Belize recognised Palestine as a State in 2011.²⁷ Since then, Palestine has been accorded non-member observer State status by the United Nations General Assembly,²⁸ and 138 other United Nations Member States presently recognise Palestine as a State.²⁹ Palestine has moreover been accepted as a State Party to numerous international treaties by the other States Parties, depository bodies and international institutions, including many treaties administered under the auspices of the United Nations.³⁰ Even after the achievement of statehood, a people's right to self-determination may nonetheless persist. This was recognised in the *Chagos* Advisory Opinion. Although Mauritius is a State, the right of the people of Mauritius to self-determination persists.³¹
19. The policies and practices of Israel as a whole violate the right of the Palestinian people to self-determination in three key ways.³² First, Israel denies the existence of the Palestinian people and their right to self-determination. Second, Israel denies the Palestinian people their right to territorial integrity. Third, Israel is using forcible action to deprive the Palestinian people of their right to self-determination, freedom and independence.³³

²⁷ See Press Release of the Ministry of Foreign Affairs and Foreign Trade of Belize, "The Government of Belize Recognizes the State of Palestine", 9 September 2011 (available [here](#)).

²⁸ A/RES/67/19 (2012), para. 2.

²⁹ See Permanent Observer Mission of the State of Palestine to the United Nations, New York, "Diplomatic Relations" (available [here](#)).

³⁰ The UN Treaty Series database lists Palestine as a party to 108 registered treaties (available [here](#)). See also UN Office of Legal Affairs, Interoffice Memorandum, Issues related to General Assembly resolution 67/19 on the status of Palestine in the United Nations, 21 December 2012, para. 15; ICC, "Decision on the Court's territorial jurisdiction in Palestine" (2021), para. 100.

³¹ In the *Chagos* Advisory Opinion, the Court found that the decolonisation of Mauritius has not been completed, that the relevant conduct of the United Kingdom is a continuing wrongful act in violation of the right of the people of Mauritius to self-determination and that Mauritius must be enabled to complete the decolonisation of its territory in a manner consistent with the right to self-determination. See, e.g., *Chagos* Advisory Opinion, p. 137, para. 174 and pp. 138-139, paras. 177-178.

³² Even on Israel's view that Palestine is not a State, Israel would still be in breach of its obligation to respect the right of the Palestinian people to self-determination. In those circumstances, by virtue of Israel's conduct, the Palestinian people would have been prevented from achieving statehood entirely and thus would have been denied the right to freely determine their political status. See A/RES/1514(XV) (1960), para. 2; International Covenant on Civil and Political Rights, 16 December 1966, entered into force 23 March 1976, 999 UNTS 171 (*ICCPR*), Article 1(1); International Covenant on Economic, Social and Cultural Rights, 16 December 1966, entered into force 3 January 1976, 993 UNTS 3 (*ICESCR*), Article 1(1); Friendly Relations Declaration, fifth principle, first and fourth paras.

³³ Israel's actions also violate the right of the Palestinian people to permanent sovereignty over their natural resources, which forms an integral part of the right to self-determination. See, e.g., UNGA Resolution

20. As to the first, General Assembly Resolution 1514 (XV) provides that “[a]ll peoples have the right to self-determination”.³⁴ The 1966 ICCPR and ICESCR, to which Israel is a party, and the 1970 Friendly Relations Declaration refer to the right of all peoples to self-determination and explicitly provide, respectively, that States “shall respect that right”³⁵ and that “every State has the duty to respect this right”.³⁶ In violation of its obligation to respect the right of the Palestinian people to self-determination, Israel denies the existence of a Palestinian people entitled to self-determination. For example, in March 2023, the Israeli Minister of Finance, who is also the minister in charge of the transfer of administrative powers relating to the West Bank from the Israel Defense Forces to the Israeli civilian authorities,³⁷ stated that “there’s no such thing as a Palestinian people”.³⁸ Earlier, in 2018, the Knesset enacted the Basic Law “Israel – the Nation State of the Jewish People”. That Basic Law states that the “realization of the right to national self-determination in the State of Israel is exclusive to the Jewish People”.³⁹ Under Israeli law, the “State of Israel” includes part of the Palestinian territory, East Jerusalem.⁴⁰ Thus, by virtue of the Basic Law, Israel not only discriminates against non-Jews in Israel, but denies the right of the Palestinian people to self-determination in the Palestinian territory.
21. Second, Israel’s conduct as a whole violates the right of the Palestinian people to self-determination because it denies the right to territorial integrity. As the Court confirmed in the *Chagos* Advisory Opinion, under customary international law, a corollary of the

77/187, “Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources”, UN Doc. A/RES/77/187, 14 December 2022 (*A/RES/77/187 (2022)*); Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, UN Doc. A/77/356, 21 September 2022 (*A/77/356 (2022)*), paras. 47-52 and 73; ICCPR, Article 1(2); ICESCR, Article 1(2).

³⁴ A/RES/1514(XV) (1960), para. 2.

³⁵ ICCPR, Article 1(1) and (3); ICESCR, Article 1(1) and (3). Israel ratified both the ICCPR and ICESCR on 3 October 1991 (see UNTS pages [here](#) and [here](#) respectively).

³⁶ Friendly Relations Declaration, fifth principle, first para.

³⁷ See para. 51 below.

³⁸ “Far-right Minister Smotrich: There’s No Such Thing as the Palestinians, White House Must Hear the Truth”, *Haaretz*, 20 March 2023 (available [here](#)). See also “Israeli minister condemned for claiming ‘no such thing’ as a Palestinian people”, *The Guardian*, 21 March 2023 (available [here](#)); “The mixed legacy of Golda Meir, Israel’s first female PM”, *Al Jazeera*, 18 March 2019 (available [here](#)).

³⁹ Basic Law: Israel – the Nation State of the Jewish People (2018) (available [here](#)), section 1(c).

⁴⁰ See para. 47 below.

right to self-determination is the right to territorial integrity.⁴¹ As stated in General Assembly Resolution 1514 (XV), “repressive measures of all kinds directed against dependent peoples shall cease” and “the integrity of their national territory shall be respected”.⁴² The Resolution further states that “[a]ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations”.⁴³ The Friendly Relations Declaration reiterates that “any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter”.⁴⁴ The Declaration further states that “[e]very State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country”.⁴⁵ As the Court observed in the *Chagos* Advisory Opinion, peoples are “entitled to exercise their right to self-determination in relation to their territory as a whole, the integrity of which must be respected”.⁴⁶

22. Israel has violated its obligation to respect the right of the Palestinian people to territorial integrity in a number of respects:
- (a) By annexing the Palestinian territory (addressed in **subsection B.3** below) Israel has violated the right of the Palestinian people to territorial integrity.⁴⁷
 - (b) Israel is also violating the right of the Palestinian people to territorial integrity through its policies and practices that exclude the Palestinian people from parts of the Palestinian territory. This includes, in particular, Israel’s sustained practice of: (i) building settlements in the Palestinian territory in the West Bank,

⁴¹ *Chagos* Advisory Opinion, p. 134, para. 160.

⁴² A/RES/1514(XV) (1960), para. 4. See also preambular para. 11.

⁴³ A/RES/1514(XV) (1960), para. 6. See also para. 7.

⁴⁴ Friendly Relations Declaration, fourteenth recital.

⁴⁵ Friendly Relations Declaration, fifth principle, eighth para.

⁴⁶ *Chagos* Advisory Opinion, p. 134, para. 160.

⁴⁷ See paras. 47-48 below. This conduct is comparable to the United Kingdom detaching the Chagos Archipelago from Mauritius prior to its independence and treating it as British territory (in that case, the archipelago was initially styled a new colony and later regarded as a British overseas territory), which the Court in the *Chagos* Advisory Opinion considered to be contrary to the right of self-determination: *Chagos* Advisory Opinion, p. 134, para. 160.

including East Jerusalem, as well as its construction of a separation wall (and its associated regime) around those settlements in order to restrict and exclude Palestinians and forcibly displace them from their homes;⁴⁸ (ii) designating closed and restricted areas within the West Bank (Israeli military bases, live firing areas, nature reserves and other closed areas) which Palestinians are not permitted freely to enter, with this designation and exclusion preventing Palestinians from exercising their rights in respect of that land;⁴⁹ and (iii) creating military exclusion or buffer zones inside Gaza running along the perimeter fence and covering all but the smallest of maritime spaces (constituting approximately 17% of Gaza’s total land area, 35% of its agricultural land and up to 85% of its fishing waters).⁵⁰ These policies and practices deny the Palestinian people access to parts of the Palestinian territory, thereby disrupting the national unity and territorial integrity of Palestine and denying the right of the Palestinian people to exercise their right to self-determination in relation to their territory as a whole.⁵¹

⁴⁸ See *Wall Advisory Opinion*, pp. 189-191, para. 133; UNHRC Resolution 52/34, UN Doc. A/HRC/RES/52/34, 4 April 2023 (*A/HRC/RES/52/34 (2023)*), para. 5; UNHRC Resolution 52/35, UN Doc. A/HRC/RES/52/35, 4 April 2023 (*A/HRC/RES/52/35 (2023)*), preambular para. 16: “*Noting* in this regard that the Israeli settlements fragment the West Bank, including East Jerusalem, into isolated geographical units, severely undermining the exercise of Palestinian self-determination”. See further **subsection B.2** below.

⁴⁹ See *Wall Advisory Opinion*, pp. 170-171, para. 85; Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, UN Doc. A/HRC/49/87, 12 August 2022 (*A/HRC/49/87 (2022)*), para. 43; Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, UN Doc. A/77/501, 3 October 2022 (*A/77/501 (2022)*), paras. 13-14; Report of the Secretary General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, UN Doc. A/69/348, 25 August 2014 (*A/69/348 (2014)*), para. 14; UN Office for the Coordination of Humanitarian Affairs (*UNOCHA*), “West Bank, Area C: Key Humanitarian Concerns”, undated (available [here](#)); UNOCHA, “West Bank Access Restrictions”, May 2023 (available [here](#)); A/HRC/RES/52/35 (2023), para. 6(b).

⁵⁰ On Gaza’s military exclusion/buffer and no-fishing zones, see paras. 56(e)(i) and 56(e)(ii) below. On Palestine’s declaration of its maritime areas, see Declaration of the State of Palestine regarding its maritime boundaries in accordance with UNCLOS, 24 September 2019 (available [here](#)). On “fishing waters”, see fn. 192 below.

⁵¹ See also UNHRC Resolution 49/29, UN Doc. A/HRC/RES/49/29, 1 April 2022 (*A/HRC/RES/49/29 (2022)*), preambular para. 16 (“*Noting* ... that the Israeli settlements fragment the West Bank, including East Jerusalem, into isolated geographical units, severely undermining the exercise of Palestinian self-determination”); UNHRC Resolution 49/28, UN Doc. A/HRC/RES/49/28, 1 April 2022, para. 5 (“*Also expresses grave concern* at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are resulting from Israel’s continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall, stresses that this fragmentation, which undermines the possibility of the Palestinian people realizing their

(c) Israel is also violating the right of the Palestinian people to territorial integrity by virtue of the blockade⁵² that it has imposed on Gaza from 2007 onwards and its other policies and practices confining and separating Gaza from the West Bank. By virtue of these policies and practices, Israel controls and restricts the movement of people into Gaza from, and out of Gaza to, the West Bank (including East Jerusalem).⁵³ Israel is in effect attempting to divide the Palestinian territory into separate territories isolated from one another.⁵⁴ These policies and practices are an impermissible “attempt aimed at the partial or total disruption of the national unity and the territorial integrity”⁵⁵ of the Palestinian territory, violating the right of the Palestinian people to territorial integrity.

23. Third, Israel’s policies and practices as a whole amount to forcible action which deprives the Palestinian people of their right to self-determination, freedom and

right to self-determination, is incompatible with the purposes and principles of the Charter of the United Nations”); *Wall* Advisory Opinion, p. 184, para. 122 (also cross-referring to para. 133), concluding that the route of the wall and its effects — including the risk of further alterations to the demographic composition of the Palestinian territory caused by the wall, the closed areas and enclaves created by it, and the departure of Palestinians from certain areas — “severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel’s obligation to respect that right”.

⁵² Unless otherwise specified, the term “blockade” is used in this Written Statement to refer to the closure regime imposed by Israel on Gaza through control of its land borders and crossings, and associated measures restricting movement of persons and goods (imposed in 2007), together with the naval blockade imposed at sea (in 2009). See, in this respect, Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance, UN Doc. A/HRC/15/21, 27 September 2010 (*A/HRC/15/21 (2010)*), para. 59 (treating the closure regime and naval blockade as one measure). See also para. 56(e) below on the blockade more specifically.

⁵³ See, e.g., Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory, UN Doc. A/HRC/40/CRP.2, 18 March 2019 (*A/HRC/40/CRP.2 (2019)*), paras. 162-170 (“Israel’s policy of restrictions on movement of people between Gaza and the West Bank, including East Jerusalem, are deepening the separation between the two parts of the Palestinian territory. ... The vast majority of Gazans are not eligible to apply for an exit permit. ... This policy has exacerbated Gaza’s isolation from the remainder of the OPT ... Throughout 2018, people’s movement in and out of Gaza remained highly restricted. Gazans could exit only on an exceptional basis. ... Even if the Rafah Crossing [into Egypt] were opened regularly, most Palestinians will remain dependent on Israel, for travel to the remaining OPT in the West Bank, including East Jerusalem”); Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/77/328, 14 September 2022 (*A/77/328 (2022)*), para. 20; Report of the Secretary-General, Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/76/333, 20 September 2021 (*A/76/333 (2021)*), para. 36.

⁵⁴ In addition, East Jerusalem is also separated from the remainder of the West Bank by virtue of the wall and permit regime, and concern has recently been raised about new settlements that would serve to completely cut off East Jerusalem from the remainder of the West Bank altogether: see *A/77/328 (2022)*, para. 15; *A/HRC/RES/52/35 (2023)*, preambular para. 18.

⁵⁵ *A/RES/1514(XV) (1960)*, para. 6; Friendly Relations Declaration, fourteenth recital.

independence. As stated in the 1970 Friendly Relations Declaration, States have a “duty to refrain from any forcible action which deprives peoples ... of their right to self-determination and freedom and independence”.⁵⁶ The right to self-determination includes the right of a people “freely to determine, without external interference, their political status and to pursue their economic, social and cultural development”.⁵⁷ Regarding this latter aspect of the right, as explained during the drafting of the ICCPR and the ICESCR, “[e]very people or nation should be free to establish its own political institutions, to develop its own economic resources, and to direct its own social and cultural evolution, without the interference of other peoples or nations”.⁵⁸ In short, a “people should be free ... from interference by other peoples or states”.⁵⁹ A State may not, through forcible action, deprive a people of their right to self-determination, freedom and independence, including their right freely to establish their own political institutions and freely to pursue their economic, social and cultural development.

24. Israel is, however, through forcible action, depriving the Palestinian people of their right to self-determination, freedom and independence. As explained by Cassese, the forcible action which is prohibited includes a situation in which a State:

“sets up institutional, coercive mechanisms designed to prevent the implementation of self-determination or in the course of its military occupation of a foreign country establishes procedures and takes measures designed to thwart any attempt by the occupied people to exercise its right to self-determination”.⁶⁰

Israel has set up “institutional, coercive mechanisms”, and established procedures and taken measures, that thwart the exercise of the Palestinian people’s right to self-determination. Israel’s policies and practices as a whole — and, in particular, those relating to the exercise of Israeli authority over the West Bank and Gaza (discussed in **Subsection B** below) and Israel’s system of institutionalised discrimination and

⁵⁶ Friendly Relations Declaration, fifth principle, fifth para. See also A/RES/1514(XV) (1960), para. 4.

⁵⁷ Friendly Relations Declaration, fifth principle, first para. See also A/RES/1514(XV) (1960), para. 2; ICCPR, Article 1(1); ICESCR, Article 1(1).

⁵⁸ Draft International Covenants on Human Rights: Annotation prepared by the Secretary-General, UN Doc. A/2929, 1 July 1955, p. 42, para. 12.

⁵⁹ Sohn, “The New International Law: Protection of the Rights of Individuals Rather Than States” (1982) 32(1) *American University Law Review* 1, p. 50.

⁶⁰ Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1995), pp. 194-195.

apartheid against Palestinians (discussed in **Section C** below) — thwart the exercise of the right to self-determination. This lack of freedom and thwarting of the exercise of the right to self-determination is particularly stark as regards Gaza, where more than two million Palestinians are confined to what has been repeatedly referred to as the world’s largest “open-air prison” and subjected to complete authority and control by Israel of Gaza’s borders, air and maritime spaces and supply of civilian infrastructure.⁶¹ Israel’s assertion of authority over the Palestinian people prevents the Palestinian people’s free pursuit of economic, social and cultural development — a grave reality which has resulted in what the United Nations and the World Bank have termed “de-development”.⁶²

B. PROLONGED OCCUPATION, SETTLEMENT AND ANNEXATION

25. This Section addresses the violations of international law arising in relation to Israel’s: (a) occupation of the Palestinian territory (**subsection 1**); (b) settlements in the Palestinian territory (**subsection 2**); and (c) annexation of the Palestinian territory (**subsection 3**).

1. Prolonged occupation

26. In the 2004 *Wall* Advisory Opinion, the Court recognised that Israel is in occupation of the West Bank, including East Jerusalem.⁶³ Israel remains in occupation of that territory. This subsection addresses two related issues: (a) Israel’s ongoing occupation of Gaza following its so-called “disengagement” in 2005 (see *a*); and (b) when an occupation becomes unlawful under international law (see *b*).

⁶¹ See, e.g., A/HRC/49/87 (2022), para. 9. On Gaza more specifically, see paras. 27-30 and 56(e) below.

⁶² See, e.g., A/HRC/49/87 (2022), paras. 40 and 45. See also A/HRC/RES/52/35 (2023), para. 6(c): “Expresses its grave concern at and calls for the cessation of: ... Israeli measures in the form of policies, laws and practices that have the effect of preventing the full participation of Palestinians in the political, social, economic and cultural life of the Occupied Palestinian Territory, including East Jerusalem, and prevent their full development in both the West Bank and the Gaza Strip”.

⁶³ *Wall* Advisory Opinion, p. 167, para. 78. The request for the advisory opinion in those proceedings did not require the Court to consider the situation in Gaza.

a. The occupation of Gaza

27. Israel's position appears to be that, since its so-called "disengagement" from Gaza in 2005 — meaning the removal of its settlements and the evacuation of its troops from within Gaza — Israel is no longer occupying Gaza.⁶⁴ That is not the position taken by the United Nations General Assembly, by other United Nations bodies and special procedures or by the International Committee of the Red Cross.⁶⁵ Notwithstanding that Israel no longer maintains a permanent military presence within Gaza, Israel still retains "effective control" of and is occupying Gaza.
28. Various resolutions adopted by the United Nations General Assembly during the 77th session in 2022-23 describe Gaza as occupied territory,⁶⁶ or describe Israel as the occupying Power with respect to Gaza specifically, including the Resolution requesting the present advisory opinion.⁶⁷ Various other United Nations bodies and special procedures also take the position that Gaza is occupied, including: (a) the Human Rights Council;⁶⁸ (b) the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel;⁶⁹ (c) the Independent International Commission of Inquiry on the Protests in the Occupied Palestinian Territory;⁷⁰ (d) the Independent Commission of Inquiry established pursuant to Human Rights Council Resolution S-21/1;⁷¹ (e) the United Nations Fact-

⁶⁴ See, e.g., A/HRC/40/CRP.2 (2019), para. 64.

⁶⁵ See the detailed references in para. 28 below.

⁶⁶ See, e.g., UNGA Resolution 77/30, UN Doc. A/RES/77/30, 6 December 2022, preambular para. 4: "throughout the occupied Palestinian territory, particularly in the Gaza Strip".

⁶⁷ A/RES/77/247 (2022), para. 8 ("use of force by the Israeli occupying forces against Palestinian civilians in violation of international law, particularly in the Gaza Strip") and para. 13 ("Calls upon Israel, the occupying Power, to cease its imposition of prolonged closures and economic and movement restrictions, including those amounting to a blockade on the Gaza Strip"). See also, e.g., A/RES/77/187, preambular para. 14 and para. 8.

⁶⁸ See, e.g., UNHRC Resolution 52/3, UN Doc. A/HRC/RES/52/3, 3 April 2023 (*A/HRC/RES/52/3 (2023)*), para. 19 ("all areas under occupation, including the Gaza Strip"); UNHRC Resolution 49/4, UN Doc. A/HRC/RES/49/4, 31 March 2022 (*A/HRC/RES/49/4 (2022)*), para. 18.

⁶⁹ A/77/328 (2022), para. 19; Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/HRC/50/21, 9 May 2022 (*A/HRC/50/21 (2022)*), para. 16.

⁷⁰ A/HRC/40/CRP.2 (2019), paras. 64-67.

⁷¹ Report of the detailed findings of the Independent Commission of Inquiry established pursuant to Human Rights Council Resolution S-21/1, UN Doc. A/HRC/29/CRP.4, 24 June 2015 (*A/HRC/29/CRP.4 (2015)*), paras. 26-31.

Finding Mission on the Gaza Conflict;⁷² and (f) the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.⁷³ Additionally, the International Committee of the Red Cross considers “Gaza to remain occupied territory on the basis that Israel still exercises key elements of authority over the strip, including over its borders (airspace, sea and land — [with] the exception of the border with Egypt)”.⁷⁴

29. Under customary international law as reflected in Article 42 of the Hague Regulations, territory is considered occupied when it is “actually placed under the authority of the hostile army” and the occupation “extends only to the territory where such authority has been established and can be exercised”.⁷⁵ Territory is occupied where foreign forces have “effective control” over the territory.⁷⁶ Israel has effective control over Gaza, including by virtue of its control over: Gaza’s airspace and maritime areas; Gaza’s land crossings; the supply of civilian infrastructure, including water and electricity; and key governmental functions such as the management of the Palestinian population registry; together with its constant surveillance through the use of drones (and use of such drones to launch attacks that kill and injure civilians) and its maintenance of a military exclusion or buffer zone extending up to 1.5 km into Gaza.⁷⁷

⁷² Report of the United Nations Fact-Finding Mission on the Gaza Conflict, UN Doc. A/HRC/12/48, 25 September 2009 (*A/HRC/12/48 (2009)*), paras. 276-279.

⁷³ See, e.g., Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, UN Doc. A/HRC/7/17, 21 January 2008 (*A/HRC/7/17 (2008)*), para. 11.

⁷⁴ International Committee of the Red Cross (*ICRC*), “What does the law say about the responsibilities of the Occupying Power in the occupied Palestinian territory?”, 28 March 2023 (available [here](#)).

⁷⁵ Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907 (*Hague Regulations*), Article 42; *Wall Advisory Opinion*, p. 167, para. 78.

⁷⁶ See Lieblich and Benvenisti, *Occupation in International Law* (2022), p. 9.

⁷⁷ See A/77/328 (2022), para. 19; A/HRC/29/CRP.4 (2015), para. 29; A/HRC/12/48 (2009), para. 278; A/HRC/7/17 (2008), para. 11; A/HRC/15/21 (2010), para. 64; Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, UN Doc. A/61/500/Add.1, 8 June 2007, para. 22; Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, UN Doc. A/62/360, 24 September 2007, para. 44; “‘Worry and fear’: Incessant Israeli drones heighten Gaza anxiety”, *Al-Monitor*, 30 September 2022 (available [here](#)). On Gaza’s military exclusion/buffer and no-fishing zones, see paras. 56(e)(i) and 56(e)(ii) below.

30. Israel has effective control notwithstanding its so-called “disengagement” from Gaza. A territory may remain under occupation even after foreign forces withdraw from it.⁷⁸ In such a situation, it is sufficient that the foreign forces “could at any time they desired assume physical control of any part of the country”,⁷⁹ that the occupying Power is “in a position to substitute its own authority for that of the occupied authorities” and that it has “the capacity to send troops within a reasonable time to make the authority of the occupying power felt”.⁸⁰ Israel is in such a position in respect of Gaza. Israel is able to redeploy troops into Gaza as and when it wishes, which it has done during military operations and routinely continues to do in order to destroy farmland and agricultural infrastructure in the buffer zone.⁸¹ Through its “disengagement” from Gaza, Israel has merely changed the means by which it exercises control over Gaza. Israel has gone from exercising control through being present in Gaza to exercising control by, among other measures, physically encircling Gaza and confining its people, and enforcing such confinement through violence.⁸²

b. The illegality of the occupation as a whole

31. Whether the existence of an occupation is unlawful under international law is determined by reference to *jus ad bellum*. As stated by the International Committee of the Red Cross, the “legality of any particular occupation is regulated by the UN Charter and the law known as *jus ad bellum*”.⁸³ *Jus ad bellum* determines whether the initial

⁷⁸ See Dinstein, *The International Law of Belligerent Occupation* (2nd ed, 2019), pp. 298-302, paras. 851-858; A/HRC/40/CRP.2 (2019), para. 64; A/HRC/29/CRP.4 (2015), paras. 26-27.

⁷⁹ *The United States of America v. Wilhelm List and others* (“*The Hostage Case*”), Judgment, 19 February 1948, in *Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10*, Vol. XI (1950), p. 1230, at p. 1243.

⁸⁰ ICTY, *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, Trial Chamber, Judgment, 31 March 2003, para. 217.

⁸¹ In respect of the military operations, see, e.g., A/HRC/12/48 (2009), para. 29; A/HRC/29/CRP.4 (2015), para. 58. In respect of the continuing incursions by Israeli forces into the buffer zone to destroy farmland and agricultural infrastructure, see, e.g., Al Mezan Center for Human Rights, “The Gaza Bantustan – Israeli Apartheid in the Gaza Strip” (2021) (*Al Mezan, “The Gaza Bantustan” (2021)*) (available [here](#)), pp. 24-25 (referring to 886 such incursions between 2010 and 2021); Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan, Note by the Secretary-General, UN Doc. A/77/90-E/2022/66, 8 June 2022 (*A/77/90-E/2022/66 (2022)*), para. 50; A/76/333 (2021), para. 46.

⁸² See paras. 56(e)(i)-56(e)(ii) below on the use of excessive, including lethal, force against civilians in Gaza.

⁸³ ICRC, “Occupation and international humanitarian law: questions and answers”, 4 August 2004 (available [here](#)). See also Lieblich and Benvenisti, *Occupation in International Law* (2022), pp. 32-33.

establishment of an occupation is lawful. It also determines when the existence of an occupation that was initially lawful becomes unlawful.

32. Under *jus ad bellum*, an occupation is *prima facie* an unlawful use of force and act of aggression.⁸⁴ An occupation will only be lawful if a justification, such as self-defence, is established.⁸⁵ For self-defence to be established, the State seeking to invoke self-defence must demonstrate that its use of force is both a necessary and proportionate response to the relevant armed attack.⁸⁶ Even if a use of force is initially necessary and proportionate, once either of these two conditions is no longer met, the continuing use of force will no longer be justified in self-defence. That an initially lawful use of force may continue for too long and cease to meet the conditions for self-defence is implicit in the Court's statement in *Nicaragua* that "the reaction of the United States in the context of what it regarded as self-defence was *continued long after* the period in which any presumed armed attack by Nicaragua could reasonably be contemplated".⁸⁷ This was one of the reasons why the United States' conduct could not be justified as an exercise of collective self-defence. Similarly, an occupation may continue for too long and cease to meet the conditions for self-defence. Even if an occupation is initially a necessary and proportionate use of force in self-defence, once either of those conditions is no longer met, the occupying Power is obliged to take steps towards ending, and ultimately to end, its occupation and to extricate itself from the occupied territory.⁸⁸

⁸⁴ See Charter of the United Nations, 26 June 1945, entered into force 24 October 1945 (*UN Charter*), Article 2(4); UNGA Resolution 3314 (XXIX), UN Doc. A/RES/3314(XXIX), 14 December 1974 (*A/RES/3314(XXIX) (1974)*), Annex: "Definition of Aggression", Article 3(a).

⁸⁵ See UN Charter, Article 51.

⁸⁶ See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986 (*Military and Paramilitary Activities*), p. 94, para. 176 and pp. 122-123, para. 237; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996 (*Nuclear Weapons Advisory Opinion*), p. 245, para. 41; *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, I.C.J. Reports 2003, pp. 198-199, paras. 76-77; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005 (*Armed Activities (Merits)*), p. 223, para. 147.

⁸⁷ *Military and Paramilitary Activities*, pp. 122-123, para. 237 (emphasis added).

⁸⁸ See also Gray, *International Law and the Use of Force* (4th ed, 2018), p. 164; Wilde, "Using the Master's Tools to Dismantle the Master's House: International Law and Palestinian Liberation" (2021) 22(1) *The Palestine Yearbook of International Law* 1, pp. 25-26; Lieblich and Benvenisti, *Occupation in International Law* (2022), pp. 32-33.

Where an occupying Power does not do so, but instead remains in occupation, its occupation becomes unlawful.

33. Israel's occupation of the Palestinian territory in June 1967 resulted from a use of force against Egypt and Jordan,⁸⁹ which were then occupying the Palestinian territory. In October 1977, the General Assembly took the position that Israel's occupation of the Palestinian territory had been unlawful from the outset. In Resolution 32/20, the General Assembly stated that it was "[d]eeply concerned that the Arab territories occupied since 1967 have continued, *for more than ten years, to be under illegal Israeli occupation*".⁹⁰ Accordingly, the occupation was unlawful from its inception and continues to be so. Even if the Court were not to reach a view on the legality of Israel's initial use of force, the occupation is in any event now unlawful: the conditions of necessity and proportionality would have ceased to have been met a very long time ago.⁹¹ At the absolute latest, those conditions would have ceased to have been met once Israel concluded peace agreements with Egypt and Jordan,⁹² which occurred in 1979 and 1994 respectively.⁹³ Consequently, Israel has for a very long time been obliged to end its occupation, but it has instead remained in occupation. Its ongoing occupation, as a whole, is therefore unlawful and an act of aggression.

⁸⁹ See also *Wall Advisory Opinion*, p. 167, para. 78 and p. 177, para. 101.

⁹⁰ UNGA Resolution 32/20, UN Doc. A/RES/32/20, 25 November 1977 (*A/RES/32/20 (1977)*), preambular para. 4 (emphasis added). See also UNGA Resolution 33/29, UN Doc. A/RES/33/29, 7 December 1978, preambular para. 4; UNGA Resolution 34/70, UN Doc. A/RES/34/70, 6 December 1979, preambular para. 5; UNGA Resolution 35/122 E, UN Doc. A/RES/35/122[E], 11 December 1980, preambular para. 2; UNGA Resolution 35/207, UN Doc. A/RES/35/207, 16 December 1980, preambular para. 3.

⁹¹ In 1980, the Security Council recognised the need for Israel to end its occupation of the Palestinian territory. See, e.g., UNSC Resolution 471, UN Doc. S/RES/471, 5 June 1980 (*S/RES/471 (1980)*), para. 6 ("Reaffirms the overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem"); UNSC Resolution 476, UN Doc. S/RES/476, 30 June 1980 (*S/RES/476 (1980)*), para. 1. See also A/HRC/RES/49/4 (2022), para. 1 ("Demands that Israel, the occupying Power, withdraw from the Palestinian territory occupied since 1967, including East Jerusalem"); A/HRC/RES/52/3 (2023), para. 1 ("Demands that Israel, the occupying Power, end its occupation of the Palestinian territory occupied since 1967, including East Jerusalem").

⁹² See also Benvenisti, *The International Law of Occupation* (2nd ed, 2012), pp. 245-246.

⁹³ Treaty of Peace between Egypt and Israel, 26 March 1979, 1136 UNTS 100; Treaty of peace between the State of Israel and the Hashemite Kingdom of Jordan, 26 October 1994, 2042 UNTS 351.

34. In addition, Israel’s naval blockade of Gaza is also an unlawful use of force and act of aggression.⁹⁴ In this respect, the blockade has the same character as the entire occupation, being an unlawful act contrary to *jus ad bellum*.

2. Settlement

35. Israel’s practice of settling its own nationals in the occupied West Bank (including East Jerusalem),⁹⁵ and its widespread forced displacement of Palestinians and the appropriation and destruction of their property in order to establish and expand such settlements, constitute clear violations of international law. According to a 2023 Report of the United Nations High Commissioner for Human Rights, there are just under 700,000 Israeli settlers living in the West Bank, including East Jerusalem, in 279 settlements.⁹⁶ Proposals for the expansion of such settlement activity are increasing at an unprecedented rate, with plans and tenders almost 30% higher in 2022 as compared to the previous year.⁹⁷
36. Such settlements have been repeatedly and consistently declared by numerous United Nations bodies, including the Security Council, General Assembly and Human Rights Council, as having “no legal validity”, as being “illegal” and as constituting “a flagrant violation” of international law.⁹⁸ In particular, the transfer by an occupying Power of parts of its own civilian population into the occupied territory is a clear violation of Article 49(6) of the Fourth Geneva Convention and customary international law, and constitutes a war crime.⁹⁹ This violation, long-recognised as such by the United

⁹⁴ See UN Charter, Article 2(4); “Definition of Aggression”, Article 3(c), annexed to A/RES/3314(XXIX) (1974). See also fn. 189 below on the naval blockade.

⁹⁵ Israel withdrew its settler population from Gaza in 2005. See para. 27 above.

⁹⁶ Report of the UN High Commissioner for Human Rights (*UNHCHR*), Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, UN Doc. A/HRC/52/76, 15 March 2023 (*A/HRC/52/76 (2023)*), para. 5 (citing sources that provide data ranging from 2019-2021).

⁹⁷ EU, “Report on Israeli settlements” (2023) (available [here](#)).

⁹⁸ UNSC Resolution 446, UN Doc. S/RES/446, 22 March 1979 (*S/RES/446 (1979)*), para. 1; UNSC Resolution 452, UN Doc. S/RES/452, 20 July 1979 (*S/RES/452 (1979)*), preambular para. 3; UNSC Resolution 465, UN Doc. S/RES/465, 1 March 1980 (*S/RES/465 (1980)*), para. 5; UNSC Resolution 2334, UN Doc. S/RES/2334, 23 December 2016 (*S/RES/2334 (2016)*), para. 1; UNGA Resolution 34/90 C, UN Doc. A/RES/34/90[C], 12 December 1979 (*A/RES/34/90 C (1979)*), para. 1 and see also para. 2; UNGA Resolution 77/126, UN Doc. A/RES/77/126, 12 December 2022 (*A/RES/77/126 (2022)*), paras. 1 and 13-14; A/HRC/RES/52/3 (2023), paras. 4 and 7; A/HRC/RES/49/29 (2022), para. 1.

⁹⁹ Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, entered into force 21 October 1950, 75 UNTS 287 (*GC IV* or the *Fourth Geneva Convention*),

Nations, was confirmed by the Court in the *Wall* Advisory Opinion in 2004, which formed the basis for the Court’s conclusion that such settlements “have been established in breach of international law.”¹⁰⁰

37. The forced displacement of Palestinians within the occupied Palestinian territory — in which Israel is engaging in order to facilitate the establishment and expansion of the settlements and to ensure Israeli control of Palestinian land and other natural resources — also constitutes a violation of Article 49(1) of the Fourth Geneva Convention and customary international law, and is a war crime.¹⁰¹ Such internal forced displacement of Palestinians also amounts to the crime against humanity (for which both States and individuals can be internationally responsible) of deportation or forcible transfer and/or of persecution.¹⁰² In this respect, the Independent International Commission of Inquiry on the Occupied Palestinian Territory considered that:

Article 49(6): “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”. See also Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), 8 June 1977, entered into force 7 December 1978, 1125 UNTS 3 (*AP I*), Article 85(4)(a) and Rome Statute of the International Criminal Court, 17 July 1998, entered into force 1 July 2002, 2187 UNTS 3 (*Rome Statute*), Article 8(2)(b)(viii), both reflective of custom: ICRC, *Customary International Humanitarian Law, Volume I: Rules* (2005) (*ICRC, Customary Study (2005)*), Rule 129. International humanitarian law applies in the occupied Palestinian territory: *Wall* Advisory Opinion, pp. 172-177, paras. 89-101; S/RES/465 (1980), preambular para. 4; A/RES/77/126 (2022), preambular para. 7 and para. 2; A/HRC/RES/52/35 (2023), preambular paras. 6 and 8. Israel is a party to GC IV (Israel ratified on 6 July 1951, see [here](#)). The Hague Regulations are reflective of custom: *Wall* Advisory Opinion, p. 172, para. 89.

¹⁰⁰ *Wall* Advisory Opinion, pp. 183-184, para. 120 and see also p. 192, para. 134.

¹⁰¹ GC IV, Article 49(1): “Individual or mass forcible transfers ... are prohibited, regardless of their motive”. The only exception to the prohibition on transfers of an occupied population within the occupied territory is set out in Article 49(2): “Nevertheless ... if the security of the population or imperative military reasons so demand” — which they do not in the case of forced transfers of Palestinians to facilitate the construction and expansion of settlements. See also ICRC, *Commentary to IV Geneva Convention Relative to the Protection of Civilian Persons in Times of War* (1958) (*ICRC, Commentary to GC IV (1958)*), p. 279. See further GC IV, Article 147; AP I, Article 85(4)(a) (“the deportation or transfer of all or parts of the population of the occupied territory within ... this territory, in violation of Article 49 of the Fourth Convention” constitutes a grave breach), which reflects custom (ICRC, *Customary Study* (2005), Rule 129); Rome Statute, Articles 8(2)(a)(vii) and 8(2)(b)(viii); Zimmermann in Sandoz et al (eds), *Commentary on the Additional Protocols* (1987), p. 1000 (fn. 28) (“paragraph 1 [of Article 49] also prohibits forcible transfers within occupied territory”); Dörmann in Triffterer and Ambos (eds), *Rome Statute of the International Criminal Court: A Commentary* (3rd ed, 2016) p. 347 (“Article 49 of the Fourth Convention prohibits all forcible transfers — also within occupied territories”). See also A/77/501 (2022), para. 12; A/HRC/52/76 (2023), para. 49; Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, UN Doc. A/71/554, 19 October 2016, para. 34; Report by the Secretary General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, UN Doc. A/69/348, 25 August 2014 (*A/69/348 (2014)*), para. 16. See also A/HRC/52/35 (2023), para. 6(b).

¹⁰² See, e.g., UN International Law Commission (*ILC*), Draft articles on Prevention and Punishment of Crimes Against Humanity, with commentaries, *Yearbook of the ILC 2019*, vol. II, Part Two (*ILC, Draft articles*

“Israel has created and is maintaining a complex environment of coercion, which includes the demolition of homes and the destruction of property, excessive use of force by security forces, mass incarceration, settler violence, restricted movement through checkpoints and roads, and limitations on access to livelihoods, basic necessities, services and humanitarian assistance ... Where this coercion leads people to leave their homes, it can also constitute an element of the crime against humanity of deportation or forcible transfer of population under article 7 (1) (d) of the Rome Statute.”¹⁰³

The Commission of Inquiry concluded that:

“the policies identified in the present report that have contributed to the forced displacement of the Palestinian population from certain areas, altered the demographic composition of the Occupied Palestinian Territory and resulted in Palestinian communities being almost completely encircled by Israeli settlements, may constitute the crime against humanity of deportation or forcible transfer of population under article 7 (1) (d) of the Rome Statute. Such policies, appear to form part of an intentional, widespread and systematic attack directed at the Palestinian population with the aim of forcibly transferring them from parts of the West Bank to alter the demographic make-up. These acts may also amount to the crime against humanity of persecution under article 7 (1) (h) of the Rome Statute.”¹⁰⁴

38. Similarly, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context referred to “the institutionalized regime of systematic racial oppression and discrimination that has led to the destruction of Palestinian homes” and concluded that “the intentional and severe deprivation of the fundamental right to housing, contrary to

on Crimes Against Humanity), Articles 2(1)(d) and 2(2)(d), listing and defining “deportation or forcible transfer of population” as a crime against humanity, adopting the definition from the Rome Statute, Articles 7(1)(d) and 7(2)(d). On the responsibility of States for acts that constitute crimes against humanity, see ILC, Draft articles on Crimes Against Humanity, Article 3(1): “Each State has the obligation not to engage in acts that constitute crimes against humanity”.

¹⁰³ A/77/328 (2022), paras. 55 and 57 (citations omitted). See also the numerous UN reports that have raised repeated concern about the practice of forced displacement of Palestinians within the occupied Palestinian territory: by way of one example that deals with concrete cases of forcible transfer and cites to further UN reports see A/HRC/52/76 (2023), paras. 49-55. Non-governmental organisations also take the position that forcible transfer constitutes a crime against humanity: see, e.g., Amnesty International, “Israel’s Apartheid against Palestinians” (2022) (available [here](#)), pp. 30-31 and pp. 219-239 (Section 6.1); Written Statement submitted by Badil Resource Center for Palestinian Residency and Refugee Rights to the Human Rights Council Sixth Session, 30 November 2007 (available [here](#)).

¹⁰⁴ A/77/328 (2022), para. 86.

international law, owing to forcible transfer of population, would likewise satisfy the definition of persecution under Article 7 (2) (g)” of the Rome Statute.¹⁰⁵

39. The attendant appropriation and destruction of private and public Palestinian property by Israel in the execution of its settlement policies and practices contravenes Article 53 of the Fourth Geneva Convention (which prohibits the destruction of private and public property except where “rendered absolutely necessary by military operations”) and Articles 46 and 52 of the Hague Regulations (prohibiting the confiscation of private property and limit requisitions), which are reflective of customary international law.¹⁰⁶ Where extensive, not justified by military necessity, and carried out unlawfully and wantonly, such conduct constitutes a war crime.¹⁰⁷ The Court in the *Wall* Advisory Opinion found violations of these provisions in relation to the “destruction or requisition of properties” in connection with the construction of the separation wall — a measure supporting and maintaining the settlements — and held that Israel is obliged to return property or to compensate for material damage where such restitution had become materially impossible.¹⁰⁸ Similar violations continue to be perpetrated in relation to Israel’s establishment and expansion of the settlements themselves, and through its ex-post facto authorisation of outpost settlements established by private Israelis.¹⁰⁹

¹⁰⁵ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Balakrishnan Rajagopal, UN Doc. A/77/190, 19 July 2022 (*A/77/190 (2022)*), para. 45.

¹⁰⁶ GC IV, Article 53 (“Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations”); Hague Regulations, Article 46 (“private property ... must be respected. Private property cannot be confiscated”) and Article 52 (“Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation”). See also Article 55 (which obliges the occupying Power as “administrator and usufructuary” to safeguard and administer certain immoveable public property in the occupied territory “in accordance with the rules of usufruct”); ICRC, *Customary Study* (2005), Rule 51. On the destruction of property by civilians (Israeli settlers) including where facilitated by Israeli forces, see below para. 56(b) (settler attacks), para. 86 and fn. 303 (duty to ensure respect for international humanitarian law), and the customary rule reflected in Article 43 of the Hague Regulations (which obliges an occupying Power to restore and ensure public order and safety in occupied territory; *Armed Activities (Merits)*, p. 231, para. 178, p. 243, para. 217 and p. 244, para. 219).

¹⁰⁷ GC IV, Article 147; Rome Statute, Article 8(2)(a)(iv).

¹⁰⁸ *Wall* Advisory Opinion, p. 189, para. 132 and p. 198, paras. 152-153.

¹⁰⁹ On outposts specifically, see: *A/77/328 (2022)*, paras. 26-30; Statement by the President of the Security Council, UN Doc. S/PRST/2023/1, 20 February 2023, paras. 3 and 5.

40. Israel's settlement practices have also involved encouraging, incentivising and authorising private companies to operate in the West Bank.¹¹⁰ The appropriation and extraction of the natural resources of the West Bank by private companies for profit constitutes pillage,¹¹¹ which is prohibited by Article 33(2) of the Fourth Geneva Convention and customary international law (as reflected in Article 47 of the Hague Regulations), and also constitutes a war crime.¹¹² Israel is acting contrary to its obligation to take appropriate measures to prevent the pillage of natural resources by private persons by encouraging, incentivising and authorising such activities, and by receiving royalties therefrom.¹¹³ Such conduct is moreover in breach of Israel's duty as occupying Power under customary international law to act only as administrator and usufructuary of immovable public property in occupied territory.¹¹⁴
41. These settlement practices and policies form part of a wider set of Israeli legislative and administrative actions and measures intended to change the demographic composition of the West Bank, including East Jerusalem.¹¹⁵ Such measures and actions have been repeatedly declared by United Nations bodies — including in mandatory decisions of

¹¹⁰ A/77/328 (2022), paras. 36-37.

¹¹¹ A/77/328 (2022), paras. 37 and 87; The State of Palestine, "It is Apartheid: The Reality of Israel's Colonial Occupation of Palestine" (2020) (*The State of Palestine, "It is Apartheid" (2020)*) (available [here](#)), p. 26.

¹¹² GC IV, Article 33(2) ("Pillage is prohibited"); Hague Regulations, Article 47 ("Pillage is formally forbidden"); ICRC, *Customary Study* (2005), Rule 52. See also the Charter of the International Military Tribunal (Nuremberg Tribunal) (available [here](#)), Article 6(b) (listing as a war crime "plunder of public or private property"); Rome Statute, Article 8(2)(b)(xvi). Pillage is the appropriation or obtaining of public or private property by an individual ("either by combatants or by civilians") for private use without the owner's consent and where not justified by international humanitarian law: ICRC, *Commentary on the First Geneva Convention* (2nd ed, 2016), Article 15, paras. 1494-1496.

¹¹³ See *Armed Activities (Merits)*, pp. 252-253, paras. 245 and 248-250, regarding Uganda's responsibility for failing to prevent pillage of natural resources by private persons in occupied Ituri (DRC) and by facilitating such conduct by commercial entities. The Court based Uganda's responsibility in the duty of occupying Powers under Article 43 of the Hague Regulations to restore and ensure public order and safety in an occupied territory. Taking appropriate steps to prevent pillage by private persons in occupied territory would equally be required by the duty in Article 1 common to the four Geneva Conventions and in customary international law to respect and ensure respect for international humanitarian law in all circumstances (as to which see para. 86 below). See also ICRC, *Commentary to GC IV* (1958), pp. 226-227, which considers that GC IV Article 33 directly prohibits the authorisation of pillage: in Article 33 the "High Contracting Parties prohibit the ordering as well as the authorization of pillage. They pledge themselves furthermore to prevent or, if it has commenced, to stop individual pillage ... It guarantees all types of property, whether they belong to private persons or to communities or the State".

¹¹⁴ Hague Regulations, Article 55; ICRC, *Customary Study* (2005), Rule 51(b) ("immovable public property must be administered according to the rule of usufruct"); A/77/328 (2022), para. 40.

¹¹⁵ On other such Israeli measures, see **subsection B.3** below on annexation, and **Section C** on related discriminatory measures.

the Security Council — as being “null and void”, having “no legal validity” and constituting a “flagrant violation” of the Fourth Geneva Convention.¹¹⁶ The Court in the *Wall* Advisory Opinion similarly confirmed that, by contributing to demographic changes, the wall and its associated regime, including the settlements and related measures that forced the displacement of Palestinians, violate international humanitarian law and mandatory Security Council resolutions.¹¹⁷

42. Moreover, the related policies and practices instituted by Israel to maintain and further the expansion of the illegal settlements are discriminatory and violate a great number of the fundamental human rights of the Palestinian people, as detailed in **Section C** below.

3. Annexation

43. This subsection first sets out the prohibition of annexation (see *a*) and then addresses whether East Jerusalem, the remainder of the West Bank and Gaza have been annexed by Israel (see *b* and *c*).

a. The prohibition of annexation of the Palestinian territory

44. The prohibition of annexation under international law is reflected in Article 2(4) of the Charter of the United Nations. Pursuant to Article 2(4), “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”. The corollary of Article 2(4) is that the acquisition of territory resulting from the use of force is illegal.¹¹⁸ Both the principles regarding the

¹¹⁶ See, e.g., S/RES/446 (1979), paras. 1 and 3; S/RES/465 (1980), paras. 5-6; S/RES/471 (1980), preambular para. 4 and see also para. 4; Note by the President of the Security Council, UN Doc. S/12233, 17 November 1976 (*S/12233 (1976)*), paras. 3-4; S/RES/2334 (2016), preambular para. 4 and para. 1; A/RES/34/90 C (1979), preambular para. 2 and paras. 1 and 4; UNGA Resolution ES-7/6, UN Doc. A/RES/ES-7/6, 19 August 1982 (*A/RES/ES-7/6 (1982)*), para. 4(a); UNGA Resolution ES-10/14, UN Doc. A/RES/ES-10/14, 8 December 2003 (*A/RES/ES-10/14 (2003)*), preambular para. 13. See also A/HRC/52/76 (2023), para. 5.

¹¹⁷ *Wall* Advisory Opinion, p. 192, para. 134, cross-referring to pp. 183-184, para. 120 (settlements) and pp. 189-191, para. 133 (restrictions on freedom of movement and other impacts compelling the departure of Palestinians from certain areas), and finding that such measures that contributed to demographic changes violated Article 49(6) of the Fourth Geneva Convention and mandatory UNSC Resolutions S/RES/446 (1979), S/RES/452 (1979) and S/RES/465 (1980).

¹¹⁸ *Wall* Advisory Opinion, p. 171, para. 87.

use of force expressed in Article 2(4), and the corollary prohibition of the acquisition of territory by force, reflect customary international law.¹¹⁹ In the 1970 Friendly Relations Declaration, States reaffirmed that “[n]o territorial acquisition resulting from the threat or use of force shall be recognized as legal”.¹²⁰ Unlike the position that pertained historically, by virtue of the principles expressed in Article 2(4), a State cannot acquire title by conquest; that is, through occupation, subjugation and annexation.¹²¹ Rather, annexation is an act of aggression.¹²²

45. Annexation may be effected through a formal declaration of annexation. However, annexation may also occur in the absence of such a formal declaration. Territory will have been annexed where a State has “clearly manifested its intention to hold the said territory permanently under its dominion”.¹²³ Such an intention can be “manifested implicitly, as, for example, by a long-continued performance, without intermission, of the functions usually performed by a ruler”.¹²⁴ As the Court indicated in the *Wall* Advisory Opinion, the *permanence* of measures taken by an occupying Power can evidence such an intention.¹²⁵ An annexation evidenced by such measures, as opposed to one effected by a formal declaration, can be described as “*de facto* annexation”.¹²⁶

¹¹⁹ *Wall* Advisory Opinion, p. 171, para. 87.

¹²⁰ Friendly Relations Declaration, first principle, tenth para.

¹²¹ See Jennings, *Acquisition of Territory in International Law* (1963), pp. 52-56; Phillipson, *Termination of War and Treaties of Peace* (1916), pp. 9-10. Annexation is also prohibited by *jus in bello*. See ICRC, *Commentary to GC IV* (1958), commentary to Article 47, p. 275; Dinstein, *War, Aggression and Self-Defence* (6th ed, 2017), p. 190, para. 511.

¹²² “Definition of Aggression”, Article 3(a), annexed to A/RES/3314(XXIX) (1974).

¹²³ Phillipson, *Termination of War and Treaties of Peace* (1916), p. 9. See also Jennings, *Acquisition of Territory in International Law* (1963), p. 52: “there must be not only the physical apprehension of territory, but also the intention to annex it”.

¹²⁴ Phillipson, *Termination of War and Treaties of Peace* (1916), p. 9.

¹²⁵ *Wall* Advisory Opinion, p. 184, para. 121.

¹²⁶ See *Wall* Advisory Opinion, p. 184, para. 121. Regarding the distinction between *de jure* and *de facto* annexation, see A/77/328 (2022), paras. 12-13 (“De jure annexation is the formal extension of a State’s sovereignty into a territory recognized under its domestic law (but not necessarily under international law). ... De facto annexation implies a gradual or incremental process in which it is not always clear at what point the threshold has been crossed. The transition involves establishing ‘facts on the ground’ that are intended to be irreversible and permanent while avoiding any formal proclamation in order to evade diplomatic and political repercussions”); Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, UN Doc. A/73/447, 22 October 2018 (A/73/447 (2018)), paras. 29-30.

46. Israel of course did not acquire sovereignty over the West Bank or Gaza when it invaded the Palestinian territory in 1967. In light of the then-accepted modes for acquisition of territory, there is no possible basis on which Israel could have acquired sovereignty over the Palestinian territory.¹²⁷ In addition, it was not possible for Israel to have acquired sovereignty over the Palestinian territory given the territory’s “international status”.¹²⁸ In 1967, sovereignty over the Palestinian territory, as former mandate territory, was “in abeyance”.¹²⁹ It was only “if and when the inhabitants of the Territory obtain recognition as an independent State” — as the State of Palestine — that “sovereignty will revive and vest in the new State”.¹³⁰ In the *Wall* Advisory Opinion, the Court proceeded on the basis that Israel did not acquire sovereignty over the Palestinian territory, finding that the West Bank was “occupied by Israel in 1967”.¹³¹

b. The annexation of East Jerusalem

47. It is clear that Israel subsequently annexed East Jerusalem in violation of international law.¹³² In June 1967, Israel extended its law, jurisdiction and administration to East Jerusalem and surrounding villages, and extended the boundaries of its Jerusalem municipality to include those areas.¹³³ The illegality of Israel’s annexation of East Jerusalem was recognised by the United Nations General Assembly and Security Council. In Resolution 2253 (ES-V), the General Assembly stated that it considered the measures taken by Israel to change the status of Jerusalem to be “invalid” and called on

¹²⁷ Those modes of acquisition are: (a) occupation of *terra nullius*; (b) prescription (acquiescence of the existing sovereign to acts *à titre de souverain* of another State); (c) cession and (d) accretion. Even if it had been acting in self-defence, Israel could not have acquired the Palestinian territory. See Jennings, *Acquisition of Territory in International Law* (1963), pp. 53-56.

¹²⁸ See para. 15 above.

¹²⁹ *International status of South-West Africa* Advisory Opinion, Separate Opinion by Sir Arnold McNair, p. 150.

¹³⁰ *International status of South-West Africa* Advisory Opinion, Separate Opinion by Sir Arnold McNair, p. 150.

¹³¹ *Wall* Advisory Opinion, p. 167, para. 78 (emphasis added).

¹³² See also A/73/447 (2018), paras. 34-47.

¹³³ Report of the Secretary-General under General Assembly Resolution 2254 (ES-V) relating to Jerusalem, UN Doc. A/6793-S/8146, 12 September 1967, paras. 39-40; A/73/447 (2018), para. 34. For a map showing the part of the Palestinian territory that was incorporated in Israel’s Jerusalem municipality in 1967, see: “The Status of Jerusalem: Prepared for, and under the guidance of, the Committee on the Exercise of the Inalienable Rights of the Palestinian People”, 1997, p. 15, Map 4 (available [here](#)); Palestinian Academic Society for the Study of International Affairs (PASSIA), “Jerusalem after the 1967 War” (available [here](#)).

Israel to rescind the measures.¹³⁴ In Resolution 242 (1967), the Security Council then “[e]mphasiz[ed] the inadmissibility of the acquisition of territory by war” and “[e]mphasiz[ed] further that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter”.¹³⁵

48. In the 1980 Basic Law “Jerusalem, the Capital of Israel”, Israel declared that the “complete and united Jerusalem” is the capital of Israel.¹³⁶ The illegality of this conduct was again noted by the Security Council. In Resolution 478 (1980), the Security Council “[r]eaffirm[ed] again that the acquisition of territory by force is inadmissible”.¹³⁷ It affirmed that the Basic Law “constitutes a violation of international law” and that it “does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War”.¹³⁸ Whatever the content and effect of the Basic Law as a matter of domestic Israeli law, it did not change the status of Israel as occupying Power as a matter of international law. The Security Council also “[d]etermin[ed] that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent ‘basic law’ on Jerusalem, are null and void and must be rescinded forthwith”.¹³⁹

c. The de facto annexation of the remainder of the West Bank and Gaza

49. In the *Wall* Advisory Opinion, the Court observed that, should the wall and its associated regime become permanent, “it would be tantamount to *de facto* annexation”.¹⁴⁰ Given the maintenance of the wall and its associated regime in the

¹³⁴ UNGA Resolution 2253 (ES-V), UN Doc. A/RES/2253(ES-V), 4 July 1967 (*A/RES/2253(ES-V) (1967)*), paras. 1-2.

¹³⁵ UNSC Resolution 242, UN Doc. S/RES/242, 22 November 1967, preambular paras. 2-3.

¹³⁶ Basic Law: Jerusalem, the Capital of Israel (1980) (available [here](#)), section 1.

¹³⁷ UNSC Resolution 478, UN Doc. S/RES/478, 20 August 1980 (*S/RES/478 (1980)*), preambular para. 2.

¹³⁸ S/RES/478 (1980), para. 2.

¹³⁹ S/RES/478 (1980), para. 3.

¹⁴⁰ *Wall* Advisory Opinion, p. 184, para. 121.

ensuing 20 years, these measures have become permanent and, thus, there has been *de facto* annexation of the part of the West Bank between the Green Line and the wall.¹⁴¹

50. Regarding the remainder of the West Bank, various United Nations bodies and special procedures have taken the position that there has been *de facto* annexation of the entirety of the West Bank. The Human Rights Council, for example, has repeatedly “[r]eaffirm[ed] the principle of the inadmissibility of the acquisition of territory by force” and expressed concern at the fragmentation of the Palestinian territory, including “through settlement activities and other measures that are tantamount to *de facto* annexation”.¹⁴² Similarly, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, identified the following actions as amounting to *de facto* annexation of the West Bank: “expropriating land and natural resources, establishing settlements and outposts, maintaining a restrictive and discriminatory planning and building regime for Palestinians and extending Israeli law extraterritorially to Israeli settlers in the West Bank”.¹⁴³ It also noted the “strength of *prima facie* credible evidence available that convincingly indicates that Israel has no intention of ending the occupation, has clear policies for ensuring complete control over the Occupied Palestinian Territory, and is acting to alter the demography through the maintenance of a repressive environment for Palestinians and a favourable environment for Israeli settlers”.¹⁴⁴ Likewise, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has stated that “throughout the years of occupation since the June 1967 war, Israel has continuously entrenched its *de facto* annexation of the West Bank by imposing intentionally irreversible changes to occupied territory that are proscribed by international humanitarian law”. In this regard, the Special Rapporteur refers to (among other things) the establishment of a large number of settlements in the West Bank

¹⁴¹ Israel also plans to replace parts of the wall that are made up of fencing with concrete structures. See “Israel plans 60-mile concrete wall in northern West Bank”, *Al-Monitor*, 28 November 2022 (available [here](#)).

¹⁴² A/HRC/RES/52/3 (2023), preambular para. 14; A/HRC/RES/49/4 (2022), preambular para. 14. See also A/HRC/RES/52/35 (2023), preambular para. 15 (Israel’s “settlement policies and practices ... constitute an attempted acquisition of sovereignty over territory”) and preambular para. 17 (“deeply concerned that the magnitude, persistence and character of the settlement enterprise suggest that the occupation has been established with the intention of making it permanent, in violation of the prohibition of acquisition of territory resulting from the use of force”).

¹⁴³ A/77/328 (2022), para. 76.

¹⁴⁴ A/HRC/50/21 (2022), para. 70.

populated by hundreds of thousands of Israeli settlers and the “explicit statements by a wide circle of senior Israeli political leaders calling for the formal annexation of parts or all of the West Bank”.¹⁴⁵ As noted above, according to the Report of the United Nations High Commissioner for Human Rights to the Human Rights Council in 2023, there are just under 700,000 Israeli settlers living in 279 settlements.¹⁴⁶

51. By virtue of these measures, and in particular Israel’s longstanding settlement activities carried out across the West Bank,¹⁴⁷ Israel has manifested the intention to permanently hold the whole of the West Bank. As observed by the Special Rapporteur, “[n]o country creates civilian settlements in occupied territory unless it has annexationist designs”.¹⁴⁸ Israel’s intention to permanently hold the West Bank has become even clearer recently. The current Government’s 2022 Coalition Agreement states that “the prime minister will work towards the formulation and promotion of a policy whereby sovereignty is applied to Judea and Samaria” (biblical names for the West Bank).¹⁴⁹ In a letter dated 19 June 2023, the Cabinet Secretary asserted that Israel has “a right to impose its sovereignty over these areas”, which are “an inseparable part of the land of Israel”.¹⁵⁰ Additionally, Israel has in 2023 commenced transferring administrative powers relating to the West Bank from the Israel Defense Forces to the Israeli civilian authorities,¹⁵¹

¹⁴⁵ A/73/447 (2018), para. 25. See also paras. 48-59.

¹⁴⁶ See para. 35 above (relying on sources that use data from 2019-2021).

¹⁴⁷ For the location of Israel’s settlement activities in the West Bank and the location of further sections of the wall that are under construction, see the UNOCHA’s maps available [here](#) (2018) and [here](#) (2023). Regarding Israel’s settlement activities generally, see further **subsection B.2** above.

¹⁴⁸ A/73/447 (2018), para. 49.

¹⁴⁹ See End-of-Mission Statement of the UN Special Committee to Investigate Israeli Practices, 16 June 2023 (available [here](#)). See also A/HRC/RES/52/35 (2023), preambular para. 13: “*Expressing its grave concern also at the calls made by Israeli officials for the annexation of Palestinian territory in whole or in part, and recalling that such measures are internationally wrongful and are not to be recognized, aided or assisted*”.

¹⁵⁰ Letter from Cabinet Secretary to Adalah – The Legal Center for Arab Minority Rights in Israel, 19 June 2023 (available [here](#)).

¹⁵¹ See End-of-Mission Statement of the UN Special Committee to Investigate Israeli Practices, 16 June 2023 (available [here](#)). These measures clearly violate international humanitarian law. See Hague Regulations, Article 42 (defining occupation by reference to foreign military rule); GC IV, Article 47 (the occupied population “shall not be deprived ... of the benefits of [GC IV] by any change introduced ... into the institutions or government of the said territory ... nor by any annexation”).

with the minister in charge speaking publicly in front of a map of “Greater Israel”, which included the Palestinian territory.¹⁵²

52. Israel has also manifested the intention permanently to exercise control over Gaza akin to the control it exercises over any part of its own territory, and in that way hold the territory of Gaza indefinitely under its dominion, which constitutes *de facto* annexation.¹⁵³ Israel’s blockade of Gaza was established in 2007 and continues today, some 16 years later. In announcing the blockade in 2007, Israel’s Ministerial Committee on National Security Affairs made clear that the blockade was being imposed in response to Hamas taking control of Gaza and specified no time limit on the measures to be imposed.¹⁵⁴ Israel has since articulated its aim as being the “transformation of the Gaza Strip into a completely demilitarised territory”,¹⁵⁵ which must presumably include the total removal of Hamas — designated by Israel as a terrorist organisation — despite it being a political party representing almost half the population of Palestine.¹⁵⁶ Israel cannot demand the demilitarisation of Gaza and such demilitarisation is also unattainable. It cannot realistically be expected that such a point will be reached in circumstances where Israel maintains its blockade and its unlawful, discriminatory and repressive policies in respect of Gaza. By expressing the intention to hold Gaza until such a time, Israel has in effect manifested the intention to hold the territory permanently. Moreover, the measures taken by Israel in relation to Gaza clearly go beyond those seeking to achieve demilitarisation and rather manifest an intention to control and dominate the Palestinian people on a permanent basis.¹⁵⁷

¹⁵² See, e.g., “Bezalet Smotrich, Israel’s ultra-nationalist minister, delivers anti-Palestinian diatribe in Paris”, *Le Monde*, 20 March 2023 (available [here](#)).

¹⁵³ See para. 45 above.

¹⁵⁴ Ministry of Foreign Affairs of Israel, “Security Cabinet declares Gaza hostile territory”, 19 September 2007 (available [here](#)). The naval aspect of the blockade commenced in 2009: see fn. 189 below. On the definition of “blockade” used in this Written Statement, see fn. 52 above.

¹⁵⁵ The State of Israel, “The 2014 Gaza Conflict, 7 July – 26 August 2014, Factual and Legal Aspects”, May 2015 (available [here](#)), para. 77.

¹⁵⁶ According to Palestine’s estimated statistics, the population of Gaza is approximately 40% of the total population in Gaza and the West Bank, including East Jerusalem: “Palestinian Central Bureau of Statistics (PCBS) Presents the Conditions of Palestinian Populations on the Occasion of the International Population Day”, 11 July 2022 (available [here](#)).

¹⁵⁷ See the description of the measures in paragraphs 29-30 above and 56(e) below, and the sources cited in those paragraphs. Regarding the consequences of Israel’s annexation of the Palestinian territory, see **Section D** below.

C. RELATED DISCRIMINATORY LEGISLATION AND MEASURES

53. Israel's unlawful occupation, settlement and annexation of the Palestinian territory is supported and furthered by the adoption of legislation and other measures that systematically discriminate against the Palestinian population, deny their fundamental rights and are used as tools to institutionalise oppression. The subsections below address Israel's system of discrimination in general, including identifying a number of the human rights and humanitarian law violations constituted by its measures (**subsection 1**), considering the violation of the right to return of Palestinians (**subsection 2**) and explaining how Israel's policies and practices constitute apartheid (**subsection 3**).

1. Israel's system of institutionalised discrimination

54. Israel has imposed a system of institutionalised discrimination against Palestinians in clear violation of international human rights and humanitarian law in order to maintain and further its illegal occupation, settlement and annexation practices and policies, and its denial of the right of the Palestinian people to self-determination. The United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 recognised in 2022 that:

“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.”¹⁵⁸

55. Similarly, the Human Rights Council has recognised that:

“Israeli policies and practices relating to settlement activity in the Occupied Palestinian Territory, including East Jerusalem, amount to blatant discrimination, including through the creation of a system privileging Israeli

¹⁵⁸ A/HRC/49/87 (2022), para. 55.

settlements and settlers against the Palestinian people, and in violation of their human rights”.¹⁵⁹

The Council called on Israel to:

“take immediate measures to prohibit and eradicate all policies and practices that discriminate against and disproportionately affect the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem, by, inter alia, putting an end to the system of separate roads for the exclusive use of Israeli settlers, who reside illegally in the said territory, the complex combination of movement restrictions consisting of the wall, roadblocks and a permit regime that only affects the Palestinian population, the application of a two-tier legal system that has facilitated the establishment and consolidation of the settlements, and other violations and forms of institutionalized discrimination”.¹⁶⁰

56. The impact of the discriminatory and coercive policies and measures imposed on the Palestinian people is immense and far-reaching, and severely deprives Palestinians of their fundamental rights.¹⁶¹ Key features of this discriminatory system include (but are not limited to):

(a) *Discriminatory zoning, planning and land use policies, and access to natural resources*: In addition to being displaced from their homes and land, having their property appropriated or destroyed, and having their natural resources pillaged (as addressed in **subsection B.2** above), Palestinians in the West Bank are subjected to a discriminatory urban planning and zoning system. Within Area C in the West Bank,¹⁶² 70% of the land is designated as Israeli State land and only

¹⁵⁹ A/HRC/RES/52/35 (2023), preambular para. 21; A/HRC/RES/49/29 (2022), preambular para. 21.

¹⁶⁰ A/HRC/RES/52/35 (2023), para. 7(c); A/HRC/RES/49/29 (2022), para. 7(c).

¹⁶¹ Israel is obliged to respect and to ensure the human rights of all persons within its territory and subject to its jurisdiction, that is those within its power or effective control (ICCPR, Article 2(1); UN Human Rights Committee (*UN HR Committee*), General Comment No. 31, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 10). This includes persons in Israel and in territory occupied by Israel, that is, all of the Palestinian territory: see *Wall* Advisory Opinion, pp. 178-181, paras. 107-113. Israel is also obliged to comply with international humanitarian law in respect of the Palestinian territory (see above, fn. 99). These regimes are largely consistent and apply together, but where they conflict, international humanitarian law as *lex specialis* determines the permissibility of conduct to the extent of the inconsistency (*Nuclear Weapons* Advisory Opinion, p. 240, para. 25; *Wall* Advisory Opinion, pp. 177-178, paras. 105-106).

¹⁶² Under the 1993 and 1995 Oslo Accords, the West Bank was divided into Palestinian enclaves (Areas A and B) in which the Palestinian Authority has varying degrees of administrative authority, and Area C, which is subject to exclusive Israeli administration and control. Area C consists approximately 60% of the West Bank, contains all of the Israeli settlements as well as the majority of the agricultural lands, water sources and underground reservoirs in the West Bank. See Report of the UNHRHC, The allocation of water

1% is zoned for Palestinians.¹⁶³ In East Jerusalem, Israel has expropriated at least 35% of the city for the construction of settlements and has restricted Palestinians to less than 13% of the land.¹⁶⁴ Construction permits are exceedingly difficult for Palestinians to obtain, with less than 1 per cent of Palestinian requests for construction permits in Area C being granted between 2016 and 2020, compared to 98% of Israeli requests.¹⁶⁵ This includes permit requests by Palestinians for homes, schools, health facilities and other public facilities (including following the destruction of such facilities by Israel where they were built without a permit).¹⁶⁶ Home demolitions, forced evictions and forced displacements have been held to violate the rights of Palestinians to adequate housing and privacy.¹⁶⁷ Home demolitions that are undertaken expressly as a punitive measure — such as the demolition of the homes of family members of persons alleged to have attacked Israeli settlers or Israel — constitute collective punishment prohibited by international humanitarian law.¹⁶⁸ Israel has also taken control of all water sources in the West Bank, is using them primarily for its own purposes and those of its nationals, and has prohibited Palestinians from constructing new water installations or maintaining existing installations without a permit.¹⁶⁹ Even

resources in the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/HRC/48/43, 23 September 2021 (*A/HRC/48/43 (2021)*), para. 21.

¹⁶³ A/77/328 (2022), paras. 41-42; UNOCHA, “West Bank Area C: Key Humanitarian Concerns”, undated (available [here](#)).

¹⁶⁴ UNOCHA, “East Jerusalem: Key Humanitarian Concerns”, August 2014 (available [here](#)). The proportion of East Jerusalem expropriated today is likely to be higher: see, generally, EU, “Report on Israeli settlements” (2023) (available [here](#)), tracking the expansion of the settlements over a number of years.

¹⁶⁵ A/77/501 (2022), para. 27; A/77/328 (2022), para. 42.

¹⁶⁶ CCPR/C/ISR/CO/5 (2022), para. 42; A/77/328 (2022), paras. 44 and 62; A/77/501 (2022), para. 15; Human Rights Watch, Submission to the United Nations Committee on the Rights of the Child, Review of Israel, November 2022 (*HRW, Submission to UNCRC (2022)*) (available [here](#)), pp. 7-8.

¹⁶⁷ Report of the UNHCHR, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, UN Doc. A/HRC/46/65, 15 February 2021 (*A/HRC/46/65 (2021)*), para. 53; A/69/348 (2014), para. 16; Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, UN Doc. A/HRC/25/38, 12 February 2014, paras. 15-16; ICESCR, Article 11(1); ICCPR, Article 17.

¹⁶⁸ GC IV, Article 33; A/RES/77/247 (2022), para. 2; A/77/328 (2022), para. 80. For data on displacement and demolitions since 2009, see UNOCHA, “Data on Demolition and Displacement in the West Bank”, 19 July 2023 (available [here](#)).

¹⁶⁹ A/77/328 (2022), para. 35; A/HRC/48/43 (2021), para. 18. See also Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, with a focus on access to water and environmental degradation, UN Doc. A/HRC/40/73, 30 May 2019. See further as regards the role of Israeli

rainwater harvesting cisterns owned by Palestinians are often destroyed by the Israeli armed forces.¹⁷⁰ As a result, hundreds of Palestinian communities in the West Bank have no access to running water, and even in villages that are connected to the water network the taps often run dry, leaving Palestinians no choice but to purchase at high prices water brought in on trucks — a system that forces Palestinians essentially to buy back their own water that Israel and Israeli companies have appropriated.¹⁷¹ The United Nations Committee on the Elimination of Racial Discrimination has recognised that such measures amount to the discriminatory allocation of land and water in the Palestinian Territory.¹⁷²

- (b) *Systematic violation of the right to life, liberty and security of the person, fair trial guarantees and equality before the law*: Palestinians are routinely targeted and subjected to excessive uses of force and arbitrary killing by Israeli security and other officials, including through the use of drones and including during peaceful protests against the denial of their rights.¹⁷³ A recent example of the wholly disproportionate force used by Israeli forces against Palestinians is the July 2023 assault on the Jenin refugee camp in the West Bank in which 12 Palestinians were killed and at least 120 more were wounded. This assault was immediately and forcefully condemned by numerous United Nations officials, including the Secretary-General.¹⁷⁴ Palestinians and their homes and property

companies in control of water in the Palestinian territory: Al-Haq, “Corporate Liability: The Right to Water and the War Crime of Pillage” (2022) (available [here](#)).

¹⁷⁰ Amnesty International, “The Occupation of Water”, 29 November 2017 (available [here](#)).

¹⁷¹ Amnesty International, “The Occupation of Water”, 29 November 2017 (available [here](#)); “Palestine runs dry: ‘Our water they steal and sell to us’”, *Al Jazeera*, 15 July 2021 (available [here](#)). See also A/HRC/48/43 (2021), para. 18, noting that an Israeli company operating under the Israeli Ministry of Energy and the Water Authority assumed ownership of all West Bank water supplies in 1982.

¹⁷² UN Committee on the Elimination of Racial Discrimination (*UN CERD Committee*), Concluding Observations: Israel, UN Doc. CERD/C/ISR/CO/17-19, 27 January 2020 (*CERD/C/ISR/CO/17-19 (2020)*), para. 22; Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966, entered into force 4 January 1969, 660 UNTS 195 (*CERD*), Article 3.

¹⁷³ See, e.g., A/77/501 (2022), para. 10; A/HRC/RES/52/3 (2023), para. 15; A/HRC/49/87 (2022), para. 55; A/HRC/40/CRP.2 (2019), paras. 183 and 691-694; and see further para. 29 above on the use of drones. On the intentional targeting and wilful killing of civilians as a violation of the right to life, the principle of distinction, and as constituting a war crime, see fn. 191 below.

¹⁷⁴ “UN News: Israel-Palestine: UN chief strongly condemns mounting violence, acts of terror”, 6 July 2023 (available [here](#)); “Israeli air strikes and ground operations in Jenin may constitute war crime: UN experts”, 5 July 2023 (available [here](#)); “Comment by the UN Human Rights Chief Volker Türk on Israeli-Palestinian violence”, 4 July 2023 (available [here](#)).

are also subjected to increasing numbers of attacks from Israeli settlers who operate with “complete impunity” and whose violent actions are in many instances directly facilitated or participated in by Israeli security forces.¹⁷⁵ Such conduct breaches Israel’s obligation not to violate the rights of Palestinians under international human rights and humanitarian law, as well as its obligation to exercise due diligence to prevent private persons from committing such violations.¹⁷⁶ Palestinians who are arrested are often unlawfully transferred into Israel¹⁷⁷ and arbitrarily detained, including through administrative detention pursuant to which they are detained for extensive periods without charge or trial.¹⁷⁸ Those who are tried, including children, are subject to discriminatory military courts that lack fair trial guarantees, whereas Israelis are subject to civil and criminal law for their conduct in the Palestinian territory.¹⁷⁹

- (c) *Sustained denial of the rights to freedom of movement, expression, association, assembly and participation in public affairs, as well as social, economic and cultural rights*: the settlements and the associated regime of segregation, including the separation wall, closed areas, segregated roads in the West Bank, and restrictive permit requirements to move between different zones in the West Bank and in and out of Gaza, severely limit Palestinians’ freedom of movement and cut off Palestinians from their land, places of work, and access to essential services including healthcare and education, thereby violating their freedom of

¹⁷⁵ See, e.g., A/77/501 (2022), paras. 22-26 and see also paras. 31-32; End-of-Mission Statement of the UN Special Committee to Investigate Israeli Practices, 16 June 2023 (available [here](#)); A/HRC/RES/52/35 (2023), preambular para. 19 and para. 7(f); A/77/126 (2022), preambular para. 26.

¹⁷⁶ See, in particular, Hague Regulations, Article 43 (duty to ensure public order and safety), Article 46 (respect for private property and family life) and Article 47 (prohibition on pillage); GC IV, Article 1 (duty to respect and ensure respect for international humanitarian law), Article 27 (protection of protected persons), Article 33(2) (prohibition on pillage); AP I, Articles 51(1)-(2) (protection of the civilian population) and Articles 75(1)-(2)(a) (protection of occupied or detained persons from violence to life, health or physical or mental well-being); ICRC, *Customary Study* (2005), Rules 1, 7, 87 and 88; ICCPR, Articles 2(1) and 17.

¹⁷⁷ Contrary to GC IV, Article 49(1), the violation of which constitutes a grave breach (see GC IV, Article 147); AP I, Article 85(4)(a), reflecting custom: ICRC, *Customary Study* (2005), Rule 129.

¹⁷⁸ See, e.g., A/HRC/RES/52/3 (2023), preambular para. 24 and para. 23.

¹⁷⁹ See, e.g., A/HRC/49/87 (2022), para. 41; “UN experts condemn Israel’s arbitrary detention and conviction of Palestinian aid worker”, 16 June 2022 (available [here](#)); Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, UN Doc. A/HRC/53/59 (*A/HRC/53/59 (2023)*), 9 June 2023, paras. 56-59. Denial of a fair trial is a war crime: GC IV, Article 147; AP I, Article 85(4)(e); ICRC, *Customary Study* (2005), Rule 100.

movement and rights to work, to health and to education and to an adequate standard of living.¹⁸⁰ Moreover, the imposition of restrictions impeding access by Palestinians to, and attacks on, mosques and places of worship infringe Palestinians' freedom to manifest their religion.¹⁸¹ United Nations bodies have also reported that Israeli restrictions on freedom of expression, association and peaceful assembly have "escalated to unprecedented levels", highlighting in particular the use of counter-terror legislation and military orders to halt, restrict or criminalise legitimate human rights and humanitarian work and "seriously inhibit" the rights to freedom of association, opinion, expression and the right to participate in public affairs.¹⁸² Restrictions on the right to participate in public affairs have also involved, among other measures, Israel arresting Palestinian law makers, revoking residency permits of individuals who run for office in Palestinian parliamentary elections, closing buildings used by political parties, and criminalising on penalty of 10 years' imprisonment the attendance at an assembly of 10 or more people without a permit for an issue that "may be construed as political".¹⁸³

¹⁸⁰ *Wall Advisory Opinion*, pp. 189-192, paras. 133-134 and pp. 192-193, para. 136; ICCPR, Article 12; ICESCR, Articles 7, 11, 12 and 13. See also A/77/328 (2022), paras. 60-63 in respect of other aspects of the settlement activities relating to the demolition of houses, refusal to issue permits and forced transfers amounting to a violation of the right to an adequate standard of living (and also noting the violations of international humanitarian law addressed in **subsection B.2** above). On segregated roads in the West Bank, see A/HRC/49/87 (2022), para. 42 and A/HRC/53/59 (2023), para. 83. On further violations of rights in respect of Gaza specifically, see para. 56(e) below.

¹⁸¹ A/HRC/RES/52/3 (2023), para. 10; "Israel: UN expert condemns brutal attacks on Palestinians at Al-Asqa Mosque", 6 April 2023 (available [here](#)); ICCPR, Article 18.

¹⁸² A/77/501 (2022), paras. 38-39; ICCPR, Articles 19, 21, 22 and 25. See also A/HRC/RES/52/3 (2023), paras. 21-22. See also fn. 173 above regarding the use of force against peaceful protests in violation of their right to freedom of expression and peaceful assembly (ICCPR, Articles 19 and 21; CRC, Article 13); A/HRC/40/CRP.2, paras. 702-703.

¹⁸³ See ICCPR, Article 25; Amnesty International, "Israel's Apartheid against Palestinians" (2022) (available [here](#)), p. 21; Al-Haq, "Al-Haq Sends Letters to EU Member States Calling for Immediate and Effective Measures to Ensure that Israel Respects the Democratic Process of the Palestinian Elections", 24 April 2021 (available [here](#)); Addameer Prisoner Support and Human Rights Association, "Statistics", 11 July 2023 (available [here](#)), listing as among Israel's detainees four members of the Palestinian Legislative Council; HaMoked Center for the Defence of the Individual, "Israeli human rights organizations: New Israeli law that lets interior minister revoke Palestinian residency in Jerusalem for 'breach of loyalty' is illegal", 8 March 2018 (available [here](#)) noting that four Palestinian parliamentarians from East Jerusalem had their residency permits revoked; "Israel extends closure of Palestinian institutions in East Jerusalem", *The Times of Israel*, 31 January 2019 (available [here](#)), noting that the headquarters of the PLO had been closed. See also, on restrictions on the participation of Palestinians in public affairs *within Israel* as also raising issues under Article 25 of the ICCPR: UN HR Committee, Concluding Observations, UN Doc. CCPR/C/ISR/CO/5, 5 May 2022 (*CCPR/C/ISR/CO/5 (2022)*), paras. 50-51.

- (d) *Egregious denial of the rights of children*: Children are regularly killed arbitrarily by Israeli security forces, subjected to arbitrary arrest and detention, physically abused, denied procedural rights, and are routinely prosecuted in military courts that lack fair trial guarantees and where the conviction rate is above 99%.¹⁸⁴ The common charge is stone throwing — an act punishable by 10 years in prison, or 20 years if committed against a moving vehicle, with mandatory minimum terms of two and four years respectively.¹⁸⁵ Children (including those as young as 10 years old) are also used as child labourers in illegal settlement farms, where they are exposed to exploitative and dangerous work conditions including due to pesticides, dangerous equipment, long hours and extreme heat.¹⁸⁶ The right of children to access education is also infringed through, among other measures, Israel’s demolition of schools without replacing them, refusing to issue permits for the construction or renovation of schools, and by revoking the operating licences of Palestinian schools in East Jerusalem where they refuse to amend the Palestinian curriculum concerning Israel’s conduct in respect of the occupation of the Palestinian territory.¹⁸⁷
- (e) *The blockade of Gaza*: The blockade¹⁸⁸ of Gaza has extreme implications for the rights of Palestinians. It was imposed in 2007 after Hamas assumed control in

¹⁸⁴ UN Committee on the Rights of the Child, Concluding Observations: Israel, UN Doc. CRC/C/ISR/CO/2-4, 4 July 2013, paras. 25 and 36 (CRC, Article 6 and 37(a), and also noting violations of the principles of proportionality and distinction under international humanitarian law (see Article 38)); CCPR/C/ISR/CO/5 (2022), paras. 34-35; HRW, Submission to UNCRC (2022) (available [here](#)), pp. 2-6 (CRC, Articles 2, 6, 9, 37, 38 and 40); Defence for Children International, “Arbitrary by Default”, 31 May 2023 (available [here](#)) (generally, and see p. 1 on the conviction rate). See also fn. 179 above on the denial of fair trial guarantees as a war crime. See fn. 191 below on the right to life, the principle of distinction and wilful killing as a war crime.

¹⁸⁵ Defence for Children International, “Arbitrary by Default”, 31 May 2023 (available [here](#)), p. 12; Adalah (Legal Centre for Arab Minority Rights in Israel), “Mandatory minimum sentences for convicted stone throwers – Amendment No. 120 of the Israeli Penal Code” (available [here](#)).

¹⁸⁶ Human Rights Watch, “Ripe for Abuse: Palestinian Child Labor in Israeli Agricultural Settlements in the West Bank” (2015) (available [here](#)); HRW, Submission to UNCRC (2022) (available [here](#)), p. 11; A/77/328, para. 58.

¹⁸⁷ UN Committee on Economic, Social and Cultural Rights, Concluding Observations: Israel, UN Doc. E/C.12/ISR/CO/4, 12 November 2019, para. 64(a); HRW, Submission to UNCRC (2022) (available [here](#)), pp. 7-8; “Israel revokes licenses of six schools in East Jerusalem”, *Al-Monitor*, 12 August 2022 (available [here](#)).

¹⁸⁸ See fn. 52 above for the definition of “blockade” used for the purposes of this Written Statement.

Gaza following its victory in the 2006 legislative elections.¹⁸⁹ The blockade is characterised by complete Israeli control of Gaza’s land boundaries, maritime areas and airspace, and severe restrictions on the movement of goods and people:

- (i) For the land boundary, Israel’s control is physically represented by the perimeter fence encircling Gaza and reinforced by a military exclusion or buffer zone extending up to 1.5 km inside the fence within Gaza along the entirety of its land boundary with Israel (constituting, as noted above, approximately 17% of Gaza’s total land area and 35% of its agricultural land).¹⁹⁰ Excessive, including lethal, force is regularly used in the buffer zone against civilians (including those peacefully protesting the blockade) in circumstances where they pose no threat to life and are not directly participating in hostilities, contrary to international human rights and humanitarian law.¹⁹¹
- (ii) With respect to the maritime areas, Israel’s control is manifested through exclusion and no-fishing zones extending along Gaza’s northern and southern maritime boundaries as well as its seaward projection, which

¹⁸⁹ The closure on the Gaza Strip was imposed by Israel after Hamas took control of the Gaza Strip in June 2007. The naval blockade was imposed from 3 January 2009. See A/HRC/15/21 (2010), paras. 30 and 32; A/77/328 (2022), para. 20. See also Ministry of Foreign Affairs of Israel, “Security Cabinet declares Gaza hostile territory”, 19 September 2007 (available [here](#)).

¹⁹⁰ See Al Mezan, “The Gaza Bantustan” (2021) (available [here](#)), pp. 19-20 and 45, and see the map on p. (v), and see also pp. 24-25 regarding Israel’s continuing incursions to destroy farmland in the buffer zone; Amnesty International, “Israel’s Apartheid against Palestinians” (2022) (available [here](#)), p. 145 (also explaining that Israel had, by mid-2006, demolished houses and levelled the land to create the buffer zone) and see p. 184 (on Israel’s use of pesticides in the buffer zone inside Gaza to prevent farming); UNOCHA, “Access restricted areas in the Gaza Strip”, July 2013 (available [here](#)). Israel began to enforce the buffer zone after the implementation of its disengagement plan in September 2005: Al Mezan Centre for Human Rights, “Factsheet: The Access-Restricted Area (‘Buffer Zone’) in the Gaza Strip” (available [here](#)).

¹⁹¹ Al Mezan, “The Gaza Bantustan” (2021) (available [here](#)), pp. 24-25; Amnesty International, “Israel’s Apartheid against Palestinians” (2022) (available [here](#)), p. 145; CCPR/C/ISR/CO/5 (2022), para. 36; A/HRC/40/CRP.2 (2019), paras. 691-694 (reporting on Israel’s attacks of peaceful protestors in Gaza in 2018, and concluding that “demonstrators who were hundreds of metres away from the Israeli forces and visibly engaged in civilian activities” including journalists, health workers, children, women and persons with disabilities, “were intentionally shot” in violation of their right to life and the principle of distinction under international humanitarian law). In respect of the right to life, see: ICCPR, Article 6. In respect of international humanitarian law, the targeting of civilians not directly participating in hostilities is a violation of the principle of distinction at customary international law: *Nuclear Weapons Advisory Opinion*, p. 257, para. 78; ICRC, *Customary Study* (2005), Rule 1; AP I, Article 51(2). Such conduct also constitutes the war crime of wilful killing: GC IV, Article 147; AP I, Article 85(3)(a); Rome Statue, Article 8(2)(b)(i). See also ICCPR, Articles 19, 21 and 22.

have covered up to 85% of Gaza’s fishing waters.¹⁹² Israel routinely changes Gaza’s fishing limits, including reducing them or completely closing Gaza’s fishing zones in direct response to hostile acts directed at Israel from within Gaza.¹⁹³ At present, fishing is permitted up to 3, 6, 12 and 15 nautical miles off different parts of Gaza’s coast.¹⁹⁴ These restrictions have adverse effects on fish stocks and devastating implications for the economic livelihood of fishing communities.¹⁹⁵ The Israeli navy enforces the fishing limits, including by opening live fire at fishing boats, resulting in casualties and damage,¹⁹⁶ contrary to international human rights and humanitarian law.¹⁹⁷ Israel also prevents access by Palestinians to natural resources within Gaza’s maritime areas, but issues licences to Israeli and foreign companies operating in those areas, contrary to the prohibition on pillage under international

¹⁹² UNOCHA, “Access restricted areas in the Gaza Strip”, July 2013 (available [here](#)); Amnesty International, “Israel’s Apartheid against Palestinians” (2022) (available [here](#)), pp. 145 and 185. The figure of 85% appears to be calculated by reference to the 20 nautical mile fishing limit agreed in the Oslo Accords. The percentage of Gaza’s fishing waters calculated under the international law of the sea entitlements to which Israel restricts access would be greater. Palestine has declared its maritime areas, including a 200 nautical mile EEZ: Declaration of the State of Palestine regarding its maritime boundaries in accordance with UNCLOS, 24 September 2019 (available [here](#)).

¹⁹³ UNOCHA, “Gaza’s fisheries: record expansion of fishing limit and relative increase in fish catch; shooting and detention incidents at sea continue”, 19 November 2019 (*UNOCHA, “Gaza’s fisheries” (2019)*) (available [here](#)); B’Tselem, “Lift the restrictions on the Gaza fishing range”, 24 March 2013 (available [here](#)); A/76/333 (2021), paras. 36-37.

¹⁹⁴ UNOCHA, “Gaza’s fisheries” (2022) (available [here](#)); UNOCHA, “Gaza Strip access and movement map”, July 2022 (available [here](#)).

¹⁹⁵ Al Mezan, “The Gaza Bantustan” (2021) (available [here](#)), p. 46; UNOCHA, “Gaza’s fisheries” (2022) (available [here](#)) (noting the availability of different fish species in different water depths); Amnesty International, “Israel’s Apartheid against Palestinians” (2022) (available [here](#)), p. 186 (noting that as at 2018, approximate 95% of fishermen in Gaza were living below the poverty line).

¹⁹⁶ CCPR/C/ISR/CO/5 (2022), para. 36; A/76/333 (2021), para. 47; UNOCHA, “Gaza’s fisheries” (2022) (available [here](#)) (noting 248 occasions of live fire between January and October 2019 to enforce fisheries limits); Al Mezan, “The Gaza Bantustan” (2021) (available [here](#)), p. 25 (referring to 2,265 attacks in Palestinian territorial waters between 2007 and 2021); Amnesty International, “Israel’s Apartheid against Palestinians” (2022) (available [here](#)), p. 185.

¹⁹⁷ On the right to life under international human rights law, and the principle of distinction under international humanitarian law, see fn. 191 above. These measures also violate the right to work, which includes the right to work in safe and healthy conditions: ICESCR, Article 7 (to which Israel is a party: see fn. 35 above) and Al Mezan, “The Gaza Bantustan” (2021) (available [here](#)), pp. 25 and 29-30 (also referring to arbitrary arrest and detention and the right to freedom from ill-treatment and torture).

humanitarian law and Israel's obligations as an occupying Power in relation to natural resources of the occupied territory.¹⁹⁸

- (iii) With respect to Gaza's airspace, Israel's 2005 disengagement plan asserted that "Israel will hold sole control of Gaza airspace", which it continues to do, including through the constant use of drones for surveillance and military strikes.¹⁹⁹
- (iv) Movement of persons and goods in and out of Gaza, whether by land or by sea, is severely restricted through entry/exit permit requirements, a prohibition on access to dual-use goods — goods Israel deems to have a military as well as civilian use, which captures items critical for civilian projects including communications and medical equipment, construction materials, technology and chemicals — and periods of total closure by Israel.²⁰⁰ As a result of these restrictions, Israel exercises complete control over the movement of people and goods in and out of Gaza, including the supply of civilian infrastructure, such as water and electricity.²⁰¹ These measures violate the right of Palestinians in Gaza to freedom of movement — including the right to leave and enter one's own country — and impede access to basic services, including safe drinking water.²⁰²

¹⁹⁸ On the relevant international humanitarian law principles relating to pillage, see para. 40 above. On Israel preventing access by Palestinians to Gaza's offshore resources and granting rights to Israeli and foreign companies: A/77/90-E/2022/66 (2022), para. 70; The State of Palestine, "It is Apartheid" (2020) (available [here](#)), p. 26; Al-Haq, "Annexing Energy: Exploiting and Preventing the Development of Oil and Gas in the Occupied Palestinian Territory", August 2015 (available [here](#)); Al-Haq, "Al-Haq Welcomes the State of Palestine's Maritime Coordinates of Delimitation and Warns Companies Against Illegal Activities in the Sea off the Coast of Gaza", 25 October 2019 (available [here](#)).

¹⁹⁹ B'Tselem, "Israel's control of the airspace and the territorial waters of the Gaza Strip", 1 January 2011 (available [here](#)); and see para. 29 above and sources cited therein on the use of drones for surveillance and strikes.

²⁰⁰ A/HRC/40/CRP.2 (2019), paras. 157-170; A/76/333 (2021), paras. 36-37; Amnesty International, "Israel's Apartheid against Palestinians" (2022) (available [here](#)), p. 145 (noting that the dual-use importation policy applies also to Palestinian importers in the West Bank, but not to Israelis in Israel or settlers in the West Bank). For a translation of the relevant Israeli legislation, see: Gisha – Legal Centre for Freedom of Movement, "Controlled dual-use items – in English", undated (available [here](#)).

²⁰¹ See also para. 29 above.

²⁰² CERD/C/ISR/CO/17-19 (2020), para. 44; CCPR/C/ISR/CO/5 (2022), paras. 36 and 38 (referring to ICCPR, Articles 1, 2, 6, 7, 12 and 26). Access to water is a particular issue: the coastal aquifer, which is the only source of groundwater in Gaza, is contaminated by sewage, rendering more than 95% of the fresh water available in Gaza unfit for human consumption: UNOCHA, "Study warns water sanitation crisis in

- (v) The above-mentioned measures have led to shortages of housing, potable water, electricity, food, educational equipment, building materials, essential medicines, as well as restricted access to medical care (including because Palestinians from Gaza are restricted in their ability to access hospitals outside Gaza) and have caused high unemployment rates.²⁰³ In addition, since the beginning of the blockade, Israel has launched four protracted military assaults on Gaza: in 2008, 2012, 2014 and 2021, in addition to attacking civilians engaged in peaceful protests in 2018, each of which has caused loss of civilian life and damage to civilian objects and infrastructure, exacerbating the already dire situation.²⁰⁴ The blockade undermines the civil, political, economic, social and cultural rights of Palestinians in Gaza,²⁰⁵ and disproportionately affects children, who constitute 47% of Gaza’s population.²⁰⁶
- (vi) United Nations bodies have repeatedly expressed concern about the impact of the Gaza blockade on the civilian population and have found that this measure inflicts disproportionate civilian damage contrary to the principle of proportionality in international humanitarian law,²⁰⁷ and amounts to collective punishment prohibited by international

Gaza may cause disease outbreak and possible epidemic” (2018) (available [here](#)); A/77/90-E/2022/66 (2022), para. 61.

²⁰³ See, e.g., Amnesty International, “Israel’s Apartheid against Palestinians” (2022) (available [here](#)), p. 170.

²⁰⁴ See the UN inquiries into the 2008 assault (A/HRC/12/48 (2009)), the 2012 assault (Report of the UNHCHR on the implementation of Human Rights Council resolutions S-9/1 and S-12/1, UN Doc. A/HRC/22/35/Add.1, 4 July 2013), the 2014 assault (Report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, UN Doc. A/HRC/29/52, 24 June 2015), and the 2018 protests (A/HRC/40/CRP.2 (2019)). The Human Rights Council’s Commission of Inquiry which covers the 2021 assault (see A/HRC/RES/S-30/1) is yet to report. For a field report on the 2021 violations, see Al-Haq, “Field Report on Human Rights Violations in 2021” (available [here](#)). See also ICC Prosecutor, *Situation in Palestine*, Summary of Preliminary Examination Findings, December 2019 (available [here](#)), para. 2 (in respect of the 2014 hostilities).

²⁰⁵ A/77/90-E/2022/66 (2022), para. 47; Report of the UN Secretary-General, *Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/73/420, 10 October 2018, para. 9.

²⁰⁶ Palestinian Central Bureau of Statistics, “H.E. Dr. Awad, highlights the Palestinian children’s situation on the Occasion of the Palestinian Child Day”, 5 April 2022 (available [here](#)); “UN expert highlights ‘disproportionate effect on children of the prolonged Israeli occupation’”, 3 May 2011 (available [here](#)).

²⁰⁷ AP I, Article 51(5)(b); ICRC, *Customary Study* (2005), Rule 14; A/HRC/15/21 (2010), para. 59. A/HRC/12/48 (2009), para. 1944.

humanitarian law.²⁰⁸ The complete encirclement, enclosure, and cutting off from the outside world of part of another State, including through control and closure of its maritime areas, is unheard of in the modern world and, as noted above, is unlawful. It renders Gaza the world's largest prison, and is an integral part of Israel's policy of permanent domination and subjugation of the Palestinian people in denial of their fundamental human rights and right to self-determination.²⁰⁹

2. Israel's denial of the 'right of return' of the Palestinian people

57. Palestinians (and their descendants) who were displaced from their homes in what subsequently became Israel in 1948 or who have been and continue to be displaced from their homes in the Palestinian territory (that is, in the settlement areas or other restricted zones), have an internationally protected right of return.
58. The right of all persons not to be arbitrarily deprived of the right to return to their own country is well-established in international law. It is enshrined in a number of conventions, including Article 12(4) of the ICCPR,²¹⁰ Article 5(d)(ii) of CERD²¹¹ as

²⁰⁸ GC IV, Article 33; AP I, Article 75(2)(d); ICRC, *Customary Study* (2005), Rule 103; CCPR/C/ISR/CO/5 (2022), para. 38; Report of the UNHCHR, Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice, UN Doc. A/HRC/52/75, 13 February 2023, paras. 13, 69 and 72(d); Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, UN Doc. A/HRC/44/60, 15 July 2020, para. 60; Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, UN Doc. A/HRC/16/72, 10 January 2011 (*A/HRC/16/72 (2011)*), paras. 23-25, also finding the blockade unlawful on the basis of the "denial of material necessities to a civilian population living under occupation in violation of international humanitarian law"; A/HRC/15/21 (2010), para. 60; A/HRC/12/48 (2009), para. 1934. As noted above, under *jus ad bellum*, a naval blockade is also an unlawful use of force and act of aggression (A/RES/3314(XXIX) (1974)) contrary to Article 2(4) of the UN Charter.

²⁰⁹ See para. 24 above and **subsection C.3** below.

²¹⁰ ICCPR, Article 12(4): "No one shall be arbitrarily deprived of the right to enter his own country". Unlike other aspects of Article 12, the right of return is not subject to limitation on the basis of national security, public order, public health or morals, or the rights or freedoms of others. See also Article 2(1) prohibiting discrimination in the State's undertaking to respect and ensure the rights in the Covenant.

²¹¹ CERD, Article 5(d)(ii): "State parties undertake to prohibit and to eliminate racial discrimination on all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... the right to leave any country, including one's own, and to return to one's country". See also UN CERD Committee, General Recommendation No. 22: Article 5 and Refugees and Displaced Persons, UN Doc. A/51/18, Annex VIII(C), 24 August 1996 (stating that all "refugees and displaced persons have the right freely to return to their homes of origin" and to have property restored to them or to be compensated for property which cannot be restored to them). See also Article 5(d)(v): "The right to own property alone as well as in association with others".

well as Article 10(2) of CRC,²¹² to all of which Israel is a State Party.²¹³ It is also reflected in Article 13 of the Universal Declaration of Human Rights.²¹⁴ The meaning of returning to one's own 'country' is broader than entering one's State of nationality, as the Human Rights Committee has made clear:

“The scope of ‘his own country’ is broader than the concept ‘country of his nationality’. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law and of individuals whose country of nationality has been incorporated into or transferred to another national entity whose nationality is being denied them.”²¹⁵

59. This right of return has been repeatedly recognised by United Nations bodies,²¹⁶ including in the context of the return of Palestinians, with the General Assembly repeatedly referring to the “inalienable right” of displaced Palestinians to “return to their homes and property”.²¹⁷ It applies to both Palestinians that have been directly

²¹² Convention on the Rights of the Child, 20 November 1989, entered into force 2 September 1990, 1577 UNTS 3 (CRC), Article 10(2): “States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country”.

²¹³ See the UN Treaty Collection, Status of Treaties entries for the three treaties (available [here](#)). Israel ratified the CERD on 3 January 1979 and both the ICCPR and the CRC on 3 October 1991. Israel has no relevant derogation, reservation or interpretative declaration concerning the right to return under these instruments.

²¹⁴ Universal Declaration of Human Rights, 10 December 1948, Article 13: “Everyone has the right to leave any country, including his own, and return to his country”.

²¹⁵ UN HR Committee, General Comment No. 27 on Freedom of Movement (Article 12), UN Doc. CCPR/C/21/Rev.1/Add.9, 2 November 1999 (*UN HR Committee General Comment No. 27 (Article 12) (1999)*), para. 20. See also para. 21.

²¹⁶ See, as regards recognition of the right of return in general, UNGA Resolution 39/5, UN Doc. A/RES/39/5, 30 October 1984, preambular para. 9 (Kampuchea); UNGA Resolution 49/10, UN Doc. A/RES/49/10, 3 November 1994, para. 9 (the former Yugoslavia); UNGA Resolution 62/243, UN Doc. A/RES/62/243, 14 March 2008, para. 3 (Azerbaijan); UNGA Resolution 74/246, UN Doc. A/RES/74/246, 27 December 2019, preambular para. 22 (Myanmar).

²¹⁷ See, in particular, UNGA Resolution 194 (III), UN Doc. A/RES/194(III), 11 December 1948, para. 11 (“the [Palestinian] refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible”); UNGA Resolution 3089 (XXVIII) D, UN Doc. A/RES/3089(XXVIII)[D], 7 December 1973, para. 3 (“the enjoyment by the Palestine Arab refugees of their right to return to their homes and property, recognized by the General Assembly in Resolution 194 (III) of 11 December 1948, which has been repeatedly reaffirmed by the Assembly since that date, is indispensable for the achievement of a just settlement of the refugee problem and for the exercise by the people of Palestine of its right to self-determination”); UNGA Resolution 3236 (XXIX), UN Doc. A/RES/3236(XXIX), 22 November 1974, para. 2 (“Reaffirms also the inalienable right

displaced and to their descendants.²¹⁸ In particular, the General Assembly has declared in the context of displaced Palestinians that “any attempt to restrict, or to attach conditions to, the free exercise of the right of return by any displaced person is inconsistent with that inalienable right and inadmissible” and that “measures to settle Palestinian refugees in the Gaza Strip away from the homes and property from which they were displaced constitute a violation of their inalienable right of return”.²¹⁹

60. That Israel is violating this inalienable right has been repeatedly recognised by United Nations bodies.²²⁰ Discriminatory Israeli legislation is a key aspect of the exclusion of Palestinians. Following 1948, after being forced from their homes, Palestinians were barred from re-entering the land from which they had been driven, which had since been proclaimed as part of the State of Israel, whereas Jews (whether returning or arriving from anywhere in the world) were freely allowed to enter.²²¹ By virtue of being

of Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return”). See also UN Commission on Human Rights, Resolution 1987/4, UN Doc. E/CN.4/RES/1987/4, 19 February 1987, para. 2: “Reaffirms the inalienable right of the Palestinians to return to their homeland Palestine and their property, from which they have been uprooted by force”.

²¹⁸ UN HR Committee General Comment No. 27 (Article 12) (1999), para. 19: “may also entitle a person to come to the country for the first time if he or she was born outside the country”. This is consistent with the purpose of the right of return given that prohibiting return for descendants would be a disguised way of prohibiting return in general. In the *Chagos* Advisory Opinion, the Court’s treatment of the issue of return was not limited to those actually displaced. After noting that the “entire population of the Chagos Archipelago was either prevented from returning or forcibly removed and prevented from returning” (p. 110, para. 43), the Court referred generally to the resettlement of Mauritian nationals including those of Chagossian origin as an issue of the protection of their human rights (p. 136, para. 181). The UN HR Committee has stated that the United Kingdom should ensure that “Chagos islanders” can exercise their right to return and compensate them for the denial of that right over an extended period: UN HR Committee, Concluding Observations: United Kingdom, UN Doc. CCPR/C/GBR/CO/6, 30 July 2008, para. 22. Moreover, UN bodies treat Palestinian refugees entitled to repatriation as including descendants: see, e.g., UNGA Resolution 76/77, UN Doc. A/RES/76/77, 9 December 2021, preambular para. 4 and paras. 1 and 3; Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, UN Doc. A/32/13, 1 July 1976 – 30 June 1977, para. 2.

²¹⁹ UNGA Resolution 34/52 E, UN Doc. A/RES/34/52[E], 23 November 1979, para. 1; UNGA Resolution 34/52 F, UN Doc. A/RES/34/52[F], 23 November 1979, preambular para. 4.

²²⁰ UN CERD Committee, Concluding Observations: Israel, UN Doc. CERD/C/ISR/CO/13, 14 June 2007, para. 18; UN CERD Committee, Concluding Observations: Israel, UN Doc. CERD/C/304/Add.45, 30 March 1998, para. 18; Report of CERD Committee, UN Doc. A/42/18, 1987, para. 593; UN HR Committee, Concluding Observations: Israel, UN Doc. CCPR/C/79/Add.93, 18 August 1998, para. 22.

²²¹ Israel, Law No. 5710-1950: The Law of Return, 5 July 1950 (available [here](#)), section 1 (“Every Jew has the right to come to this country as an ‘Oleh’”), section 2(b) (“an Oleh’s visa shall be granted to every Jew who has expressed his desire to settle in Israel ...”) and section 4 (“Every Jew who has immigrated into this country before the coming into force of this Law, and every Jew who was born in this country, whether before or after the coming into force of this Law, shall be deemed to be a person who has come to this country as an Oleh under this Law”). On Palestinians being barred from entry after 1948, see Quigley, “Prohibition of Palestine Arab Return to Israel as a Crime Against Humanity” (2023) 34 *Criminal Law Forum* 1, p. 14. Israel also used its 1950 Absentee Property Law to seize Palestinians’ property by deeming

barred entry, displaced Palestinians were unable to qualify to acquire Israeli nationality under domestic law,²²² and their entry into Israel was then expressly criminalised.²²³ These exclusions continue. More recently, the 2022 Citizenship and Entry into Israel Law (Temporary Order) continued to extend long-standing temporary measures that make inhabitants of the West Bank and Gaza who marry Israeli citizens ineligible for the automatic grant of Israeli citizenship and residency permits usually available through marriage.²²⁴

61. Preventing Palestinians from returning to their homes in Israel or the Palestinian territory is one facet of the wider system of population control, demographic engineering and segregation that forms an integral part of Israel's overall policy for permanent domination over the Palestinian people. Preventing such return in a widespread or systematic manner constitutes the crime against humanity of persecution or other inhumane acts.²²⁵

them “absent” despite Israel preventing their return: see Relief Web, “Israeli Apartheid”, 15 May 2023 (available [here](#)).

²²² Israel, Law No. 5712-1952: Nationality Law, 14 July 1953 (available [here](#)), section 3, which extended Israeli nationality only to “Palestinian citizens” if they (i) remained in Israel from the moment Israel became a State (15 May 1948) to the coming into force of the nationality law, (ii) were registered as inhabitants on 1 March 1952, and (iii) were inhabitants of Israel on the day the law came into force. This excluded all Palestinians driven from their homes who were barred from returning. In contrast it conferred Israeli nationality on any Jew entering Israel under the Law of Return or coming to Israel to reside after the establishment of the State of Israel (section 2).

²²³ Israel, Law No. 5714-1954: Prevention of Infiltration (Offences and Jurisdiction) Law, 16 August 1954, section 1, which defined an “infiltrator” as any person who knowingly and unlawfully entered Israel after 29 November 1947 and who was a “resident or visitor” in any part of Palestine outside Israel, a Palestinian citizen or a Palestinian resident without nationality or citizenship or whose nationality or citizenship was doubtful “and who, during the said period, left his ordinary place of residence in an area which has become a part of Israel for a place outside Israel” (quoted in Quigley, “Prohibition of Palestine Arab Return to Israel as a Crime Against Humanity” (2023) 34 *Criminal Law Forum* 1, p. 25).

²²⁴ Israel, Law No. 5782-2022: Citizenship and Entry into Israel Law (Temporary Order), 10 March 2022 (available [here](#)), section 1 (defining an “area” as the West Bank and Gaza) and section 3 (prohibiting the grant of citizenship on the basis of the Citizenship Law — which permits the acquisition of citizenship through marriage — to an “inhabitant of an area” if they are under 35 years of age (for men) or under 25 years of age (for women)). Essentially the same measures have been extended as temporary orders since 2003: “Israel’s Knesset passes law barring Palestinian spouses”, *Reuters*, 10 March 2022 (available [here](#)).

²²⁵ See the ICC’s recognition that the denial of the right of return can amount to a crime against humanity: “preventing the return of members of the Rohingya people falls within article 7(1)(k) of the Statute [the crime against humanity of “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to bodily or to mental or physical health”]. Under international human rights law, no one may be arbitrarily deprived of the right to enter one’s own country. Such conduct would, thus, be of a character similar to the crime against humanity of persecution, which ‘means the intentional and severe deprivation of fundamental rights contrary to international law’” (ICC, Pre-Trial Chamber I, “Decision on the ‘Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute’

62. The right of Palestinians to return to their ‘country’ in Israel is consistent with the international law on State succession: when territory is transferred to or becomes part of a new State, nationals of the former sovereign having their habitual residence in the territory affected have a right to acquire the nationality of the new State, and the new State cannot arbitrarily or discriminatorily deny such nationality or exclude such persons from the territory it acquires.²²⁶ Nor can the new State refuse to respect the acquired rights to property of inhabitants of the transferred territory.²²⁷

3. Israel’s practices in respect of the Palestinian people constitute apartheid

63. The prohibition of apartheid is well-established in both conventional and customary international law,²²⁸ and is a *jus cogens* norm from which no derogation is permitted.²²⁹

(Bangladesh/Myanmar), ICC-RoC46(3)-01/18, 6 September 2018, para. 77). The Prosecutor subsequently found “a reasonable basis to believe” that the crimes against humanity of “other inhuman acts” and persecution were committed on the basis of the violation of the Rohingya’s “customary international law right to return” (ICC, Pre-trial Chamber III, “Request for authorisation of an investigation pursuant to article 15” (Bangladesh/Myanmar), ICC-01/19-7, 4 July 2019, paras. 124 and 172). That the Rohingyas are stateless confirms that the right to return is not limited to entry to one’s State of nationality. See also Quigley, “Prohibition of Palestine Arab Return to Israel as a Crime Against Humanity” (2023) 34 *Criminal Law Forum* 1; Kearney, “The Denial of the Right of Return as a Rome Statute Crime” (2020) 18 *JICJ* 985.

²²⁶ See, e.g., ILC, Draft Articles on Nationality of Natural Persons in relation to the Succession of States, with commentaries, *Yearbook of the ILC 1999*, vol. II, Part Two, draft Article 1 (“Right to Nationality”), draft Article 5 (“Presumption of Nationality”), draft Article 14 (“Status of Habitual Residents”), draft Article 15 (“Non-discrimination”), and draft Article 16 (“Prohibition on arbitrary decisions concerning nationality issues”). See in particular draft Article 14(2): “A State concerned shall take all necessary measures to allow persons concerned who, because of events connected with the succession of States, were forced to leave their habitual residence on its territory to return thereto”. Many authoritative jurists put the point even higher, contending that international law provides for the automatic acquisition of nationality of the new State at the moment of succession, which would only strengthen the right of Palestinians to return to their homes in Israel. See, e.g., Harvard Draft Convention on Nationality (1929) 23 *AJIL Special Supplement No. 2* 1, p. 15 (Article 18(2)); Mann, “The Effect of Changes of Sovereignty Upon Nationality” (1941-1942) 5 *Modern Law Review* 218, pp. 221-222; Brownlie, “The Relations of Nationality in Public International Law” (1963) 39 *BYIL* 284, pp. 319-326; Jennings and Watts, *Oppenheim’s International Law* (9th ed, 1996), pp. 683-684, 700-701 and 877; Crawford, *Brownlie’s Principles of Public International Law* (8th ed, 2019), pp. 419-421.

²²⁷ *German Settlers in Poland, Advisory Opinion, No. 6, 1923, P.C.I.J., Series B, No. 6*, pp. 36 and 42; *Certain German Interests in Polish Upper Silesia, Merits, Judgment No. 7, 1926, P.C.I.J., Series A, No. 7*, p. 22.

²²⁸ See, e.g., CERD, Article 3; International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 November 1973, entered into force 18 July 1976, 1015 UNTS 243 (the ***Apartheid Convention***); Rome Statute, Articles 7(1)(j) and 7 (2)(h); AP I, Article 85(4)(c); *Namibia Advisory Opinion*, p. 57, paras. 129-131; UNSC Resolution 473, UN Doc. S/RES/473, 13 June 1980, para. 2 (“*Reaffirms* that the policy of *apartheid* is a crime against the conscience and dignity of mankind and is incompatible with the rights and dignity of man, the Charter of the United Nations and the Universal Declaration of Human Rights, and seriously disturbs international peace and security”); A/HRC/49/87 (2022), para. 21 (considering the prohibition on apartheid to be customary).

²²⁹ ILC, Articles on Responsibility of States for Internationally Wrongful Acts with commentaries, *ILC Yearbook 2001*, vol. II, Part Two (***ILC, Articles on State Responsibility***), commentary to Articles 40-41; ILC, Draft articles on Crimes Against Humanity, commentary to the preamble, para. 5, and draft

Relevant conventional obligations include, in particular, the undertaking made by CERD States Parties — including Israel — to “condemn racial segregation and apartheid and ... to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction”.²³⁰

64. Apartheid is a crime against humanity for which both States and individuals can be internationally responsible that involves “inhumane acts ... committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime”.²³¹ No regime of systematic oppression and domination will be identical; each must be evaluated on its own facts by reference to the oppression and domination imposed by one racial group over another.
65. Article II of the Apartheid Convention specifies certain inhumane acts that will constitute apartheid when committed in the relevant context and for the relevant purpose. In that respect, Article II(c) refers to:

“Any ... measures calculated to prevent a racial group ... from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group..., in particular by denying to members of a racial group ... basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to peaceful assembly and association”.²³²

Articles 2(1)(k) and (2)(h); ILC, Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) with commentaries, *ILC Yearbook 2022*, vol. II, Part Two, Annex (*ILC, Draft conclusions on identification and legal consequences of peremptory norms*), conclusion 3 (definition of peremptory norm) and see also commentary to conclusion 23, para. 11, and Annex, para. (e) (on apartheid).

²³⁰ CERD, Article 3. Israel ratified CERD on 3 January 1979 (see [here](#)). The obligation of prevention implies a prohibition on the State engaging in apartheid: see by analogy *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, *I.C.J. Reports 2007 (Bosnia Genocide)*, p. 113, para. 166.

²³¹ See the ILC’s 2019 consideration of this definition in: ILC, Draft articles on Crimes Against Humanity, draft Article 2(h) adopting the definition from the Rome Statute; A/HRC/49/87 (2022), paras. 29-31, explaining that the small differences between the definition contained in the Rome Statute and the Apartheid Convention are “secondary and reconcilable”. See also Apartheid Convention, Article II.

²³² These acts are of a similar character to the crime against humanity of persecution, namely the “intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the

66. The evidence that Israel is committing apartheid is compelling.
67. First, Israeli Jews and Palestinian Arabs are distinct “racial groups” for the purpose of the definition of apartheid. The concept of “race” in international law is understood broadly, as evidenced by the definition of racial discrimination in Article 1 of CERD as extending beyond race and colour to “descent, or national or ethnic origin”. Jewish Israelis and Palestinian Arabs are groups “distinguished by their nationality, ethnicity, religion, ancestry and descent” and, importantly, it is Israel’s perception of Palestinian Arabs as a racial group distinct from Jews which underlies its targeted and discriminatory mistreatment of them.²³³
68. Second, Israel has implemented measures calculated to prevent Palestinians from participating in the political, social, economic and cultural life of Israel and of the Palestinian territory, and has deliberately created conditions seeking to prevent the full development of the Palestinian people. This is evidenced by Israel’s long-standing discriminatory laws, policies and practices that adversely affect only Palestinians and are designed to benefit exclusively, and maintain the dominance of, Israeli Jews, including in respect of: land rights; property rights; housing; access to natural resources including water; being subjected to the use of excessive (including lethal) force;²³⁴ being subjected to arbitrary arrest and detention;²³⁵ being subjected to unfair military courts; restrictions on freedom of movement (including by virtue of the separation wall, restrictive permit requirements, checkpoints, the segregation of roads in the West Bank, the exclusion from access-restricted areas and the imposition on Gaza of periods of total closure²³⁶); restrictions on access to healthcare, education, work, and basic goods and services; restrictions on participation in public affairs; restrictions on freedom of opinion, expression, association and assembly; restrictions on freedom to manifest religion; and the continuing denial since 1948 of the right of Palestinians and their

group or collectivity”: ILC, Draft articles on Crimes Against Humanity, draft Articles 1(g) and 2(g). See Amnesty International, “Israel’s Apartheid against Palestinians” (2022) (available [here](#)), p. 263.

²³³ A/HRC/49/87 (2022), para. 33.

²³⁴ In this respect, see also Apartheid Convention, Article II(a)(i) and (ii) (right to life and liberty of person).

²³⁵ In this respect, see also Apartheid Convention, Article II(a)(iii) (arbitrary arrest and detention).

²³⁶ In these respects, see also Apartheid Convention, Article II(d) (measures designed to divide the population along racial lines).

descendants to return to their country and property in Israel or in the Palestinian territory, which denial is maintained by discriminatory Israeli legislation on entry, nationality and property.²³⁷

69. These measures manifestly prevent the Palestinian people from participating in the political, social, economic and cultural life of Israel and of the Palestinian territory, and from developing fully.²³⁸ They are not isolated measures or discrete violations of basic human rights. Their breadth and consistency, in the Palestinian territory and in Israel itself, demonstrate that they form part of an institutionalised regime and are a means through which Israel seeks to control, oppress and dominate Palestinians and to maintain that domination. Such control, oppression and domination are also furthered by Israel's prolonged illegal occupation and annexation of Palestinian territory,²³⁹ and operate to deny the Palestinian people their collective right to self-determination.²⁴⁰
70. Moreover, Israel has also adopted measures designed to fragment the Palestinian people into separate and segregated territories and administrative regimes, seeking to prevent their full development as a people. In particular, different legal and administrative regimes govern Palestinians across different categories and territorial areas — 'permanent' residents in East Jerusalem with revocable residency permits, an occupied population under military rule in the remainder of the West Bank, a population of a 'hostile' territory in Gaza, Palestinian citizens of Israel, and Palestinian refugees and exiles, wherever they may be — and severe restrictions on the movement of Palestinians operate to territorially segregate the Palestinian people across these areas, or exclude

²³⁷ See **subsections B.2** and **C.1-2** above.

²³⁸ See also Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, UN Doc. A/HRC/25/67, 13 January 2014 (*A/HRC/25/67 (2014)*), para. 69 ("It is clear that Israeli measures, in the form of policies, laws and practices, have the effect of preventing Palestinians from full participation in the political, social, economic and cultural life of Palestine and arguably also prevent their full development in both the West Bank and the Gaza Strip"); A/HRC/RES/52/35 (2023), para. 6(c) ("*Expresses its grave concern* at and calls for the cessation of: ... Israeli measures in the form of policies, laws and practices that have the effect of preventing the full participation of Palestinians in the political, social, economic and cultural life of the Occupied Palestinian Territory, including East Jerusalem, and prevent their full development in both the West Bank and the Gaza Strip").

²³⁹ See **subsection B.1** and **B.3** above.

²⁴⁰ See **Section A** above, in particular para. 24.

Palestinians altogether.²⁴¹ Such legal fragmentation and territorial segregation — including into separate and virtually hermetically sealed areas in respect of Gaza, the West Bank and East Jerusalem — constitutes a key tool through which Israel implements and enforces its oppression and domination of Palestinians as a whole. This is because it allows Israel to more easily control and strip the Palestinian people of their rights, to separate and treat Palestinians differently from Israeli Jews, and to separate Palestinians from each other in order to weaken ties between Palestinian communities and suppress sustained dissent against Israel and its system of oppression.²⁴² These measures prevent the full development of the Palestinian people as a group and also contribute to the denial of their inalienable right to exercise fully their collective right of self-determination.²⁴³

71. Israel is accordingly committing apartheid against the Palestinian people in denial of their right to self-determination.
72. Successive United Nations Special Rapporteurs on the situation of human rights in the Palestinian territories occupied since 1967 agree with this assessment, and have for

²⁴¹ UN Economic and Social Commission for Western Asia, *Israeli Practices towards the Palestinian People and the Question of Apartheid*, UN Doc. E/ESCWA/ECRI/2017/1, 2017, pp. 37-48. On Gaza's designation as a "hostile" territory see: Ministry of Foreign Affairs of Israel, "Security Cabinet declares Gaza hostile territory", 19 September 2007 (available [here](#)).

²⁴² A/HRC/49/87 (2022), para. 42; Amnesty International, "Israel's Apartheid against Palestinians" (2022) (available [here](#)), pp. 17, 27, 38 and 61; The State of Palestine, "It is Apartheid" (2020) (available [here](#)), pp. 23-25; Joint Submission to the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Mr. Michael Lynk submitted by Al-Haq, Habitat International Coalition and Addameer, January 2022 (*Joint Submission of Al-Haq, Habitat and Addameer, January 2022*) (available [here](#)), pp. 3 and 7-9; Al-Haq, "Israeli Apartheid" (2022) (available [here](#)), pp. 111-112; B'Tselem, "A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid" (2021) (*B'Tselem, "This is Apartheid" (2021)*) (available [here](#)), p. 2; Human Rights Watch, "A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution" (2021) (*HRW, "A Threshold Crossed" (2021)*) (available [here](#)). On weakening ties between Palestinian communities specifically, see e.g., HRW, "A Threshold Crossed" (2022) (available [here](#)), p. 15, noting that Israel did not approve a single Gaza resident to resettle in the West Bank between 2009 and 2017 (apart from a handful that filed Supreme Court petitions) and that it permitted only several dozen West Bank residents to relocate to Gaza on the condition they signed a pledge not to return to the West Bank.

²⁴³ See, in this respect, **Section A**, paras. 22(c) and 24 above. See also A/HRC/RES/52/34 (2023): "*expresses grave concern* at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem ... stresses that this fragmentation, which undermines the possibility of the Palestinian people realizing their right to self-determination, is incompatible with the purposes and principles of the Charter of the United Nations".

more than a decade concluded that Israel's policies and practices in respect of the Palestinian people constitute apartheid.²⁴⁴ One such recent report concluded:

“the political system of entrenched rule in the Occupied Palestinian Territory that endows one racial-national-ethnic group with substantial rights, benefits and privileges while intentionally subjecting another group to live behind walls and checkpoints and under a permanent military rule *sans droits, sans égalité, sans dignité et sans liberté* (without rights, without equality, without dignity and without freedom) satisfies the prevailing evidentiary standard for the existence of apartheid.

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. ...

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. ...

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.

²⁴⁴ See Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, UN Doc. A/HRC/4/17, 29 January 2007, para. 50 (indicating that it cannot “seriously be denied that the purpose of such action is to establish and maintain domination by one racial group (Jews) over another racial group (Palestinians) and systematically oppressing them”); A/HRC/16/72 (2011), paras. 8 and 20 (the dual discriminatory structure of settler administration, security, mobility, and law as compared to the Palestinian subjugation seems to qualify the long Israeli occupation of the West Bank as an instance of apartheid” and “strongly believes that the wider infrastructure of occupation and in particular the dual system of roads represents a growing violation by Israel ... of apartheid as an instance of a crime against humanity”); A/HRC/25/67 (2014), para. 78 (referring to “prolonged occupation, with practices and policies which appear to constitute apartheid and segregation”); A/HRC/49/87 (2022), paras. 52-56; A/77/356 (2022), paras. 42 and 70.

This is apartheid.”²⁴⁵

73. These conclusions are shared by other United Nations bodies and leading international and regional human rights organisations, which have issued detailed reports analysing Israel’s policies and practices towards the Palestinian people, finding them to constitute apartheid.²⁴⁶ These reports focus on Israel’s discriminatory laws, policies and practices which, when viewed in totality, control virtually every aspect of the lives of Palestinians, systematically violate their rights, and are intended to maintain the oppression and domination of the Palestinian people for the benefit of Israeli Jews. These findings rightly concern the Palestinian people as a whole, and recognise that the treatment of Palestinians in Gaza — where Israel has barricaded and blockaded two million Palestinians in what is often referred to as the world’s largest “open-air prison”²⁴⁷ and as a “Bantustan”²⁴⁸ — forms an integral part of this system of separation and oppression.²⁴⁹ Israel is accordingly violating the prohibition of apartheid in relation to the Palestinian people as a whole.

D. LEGAL CONSEQUENCES

74. This Section addresses the legal consequences of the violations of international law identified above, with the exception of the legal consequences relating to Israel’s

²⁴⁵ A/HRC/49/87 (2022), paras. 52-56. See also para. 58, recommending that the “international community accept and adopt the findings by Palestinian, Israeli and international human rights organizations that apartheid is being practised by Israel in the Occupied Palestinian Territory and beyond”.

²⁴⁶ Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume, UN Doc. A/77/549, 25 October 2022, para. 29; A/77/190 (2022), para. 45; UN CERD Committee, Concluding Observations: Israel, UN Doc. CERD/C/ISR/CO/14-16, 3 April 2012, para. 24; CERD/C/ISR/CO/17-19 (2020), para. 23 (also referring to relevant conduct affecting the Palestinian population “in Israel proper” as well as in the Palestinian territory); Amnesty International, “Israel’s Apartheid against Palestinians” (2022) (available [here](#)); HRW, “A Threshold Crossed” (2022) (available [here](#)); Al-Haq, “Israeli Apartheid” (2022) (available [here](#)); Al Mezan, “The Gaza Bantustan” (2021) (available [here](#)); Joint Submission of Al-Haq, Habitat and Addameer, January 2022 (available [here](#)); B’Tselem, “This is Apartheid” (2021) (available [here](#)). See also The State of Palestine, “It is Apartheid” (2020) (available [here](#)).

²⁴⁷ A/HRC/49/87 (2022), para. 9; “Gaza as an Open-Air Prison”, *Middle East Research and Information Project* (2015) (available [here](#)).

²⁴⁸ Al Mezan, “The Gaza Bantustan” (2021) (available [here](#)), p. 18. A “Bantustan” is a term that was applied to former territories designated by the white-dominated apartheid regime of South Africa as quasi autonomous homelands to settle black Africans. They were accordingly political tools to exclude black Africans from South African society and formed an integral part of South Africa’s racial segregation, institutionalised discrimination and oppression that constituted apartheid.

²⁴⁹ This is also the case in respect of the Special Rapporteur’s report quoted above, which refers repeatedly to Gaza in the analysis: see A/HRC/49/87 (2022), paras. 42 and 45, and in concluding see paras. 50(a)-(c).

occupation of the Palestinian territory, which are addressed in **Chapter 2** below. The first question asked of the Court does not specify for whom the Court is to identify legal consequences. In these circumstances, it is for the Court to determine for whom any such consequences arise.²⁵⁰ In this Section, Belize will address the legal consequences: (a) for Israel (**subsection 1**); (b) for other States (**subsection 2**); and (c) for the United Nations (**subsection 3**).

1. Legal consequences for Israel

75. There are three key consequences of Israel’s violations of its obligations. First, Israel is obliged to comply immediately and unconditionally with the obligations of which it is in breach.²⁵¹ Second, Israel is obliged immediately and unconditionally to cease its continuing wrongful conduct in violation of those obligations.²⁵² Third, Israel is obliged immediately and unconditionally to make full reparation for the injury caused by its wrongful conduct.²⁵³ In addition to these consequences, Israel, like other States, also has an obligation to comply immediately and unconditionally with relevant Security Council decisions, pursuant to Article 25 of the Charter of the United Nations.
76. Regarding Israel’s violation of its obligation to respect the right of the Palestinian people to self-determination, Israel is required to cease its conduct in violation of that obligation and comply with the obligation “as rapidly as possible”,²⁵⁴ which requires it to take “[i]mmediate steps” to that end.²⁵⁵ This requires Israel to recognise the right of the Palestinian people to self-determination, and to cease denying their existence as a people entitled to that right.²⁵⁶ It also requires Israel to cease exercising any authority over the West Bank and Gaza (including the complete dismantling of all land and sea-based policies, practices and measures that constitute the blockade), those exercises of authority being the conduct that is preventing the Palestinian people from exercising

²⁵⁰ *Wall Advisory Opinion*, p. 155, para. 40.

²⁵¹ See ILC, Articles on State Responsibility, Article 29; *Wall Advisory Opinion*, p. 197, para. 149.

²⁵² See ILC, Articles on State Responsibility, Article 30(a); *Wall Advisory Opinion*, p. 197, para. 150.

²⁵³ See ILC, Articles on State Responsibility, Article 31; *Wall Advisory Opinion*, p. 198, para. 152.

²⁵⁴ *Chagos Advisory Opinion*, p. 139, para. 178.

²⁵⁵ A/RES/1514(XV) (1960), para. 5.

²⁵⁶ See para. 20 above.

their right to self-determination.²⁵⁷ All legislative and regulatory acts, policies and practices that Israel has adopted with a view to exercising authority over the Palestinian territory, including confining Gaza and separating it from the West Bank (including East Jerusalem), must forthwith be repealed or rendered ineffective.²⁵⁸

77. Regarding Israel's settlement practices, Israel is required to comply with, in particular, the prohibitions on transferring its own civilian population into the occupied Palestinian territory, on forcibly displacing Palestinians within the Palestinian territory, and on the appropriation and destruction of Palestinian property. This requires Israel to, among other things, immediately and completely cease its settlement practices, including by: (a) withdrawing its own civilian population and armed forces from the Palestinian territory; (b) ceasing forcibly to displace Palestinians within the West Bank, including East Jerusalem; (c) ceasing the appropriation and destruction of private and public property in the West Bank, including East Jerusalem; and (d) repealing or rendering ineffective all legislative and regulatory acts, policies and practices that it has adopted that facilitate or support the transfer of Israelis into the West Bank, including East Jerusalem, that seek forcibly to displace Palestinians within that territory, and that permit the appropriation or destruction of Palestinian property. This latter step requires, among other things, Israel to: (i) immediately cease construction of the separation wall in the Palestinian territory, dismantle forthwith the structure situated therein, and repeal or render ineffective all legislative and regulatory acts relating thereto;²⁵⁹ (ii) immediately cease construction of new settlements and expansion of existing settlements, including so-called natural growth and related activities, and abandon all plans to install settlers in Palestinian territory, including East Jerusalem, and policies that incentivise settlers to install themselves in the Palestinian territory;²⁶⁰ (iii) immediately cease the exploitation of natural resources in the Palestinian territory, including by ceasing to encourage or aid or assist private companies to pillage the natural resources of the West Bank, and take appropriate measures to prevent such pillaging of natural resources; and (iv) immediately cease facilitating settler violence

²⁵⁷ See paras. 22 and 24 above.

²⁵⁸ See also *Wall Advisory Opinion*, p. 198, para. 151.

²⁵⁹ A/HRC/RES/52/3 (2023), para. 8.

²⁶⁰ A/HRC/RES/52/35 (2023), paras. 7(a) and (d).

against Palestinians in the West Bank, take all appropriate measures to prevent any further such violence, and ensure accountability for attacks that have taken place.²⁶¹ The Security Council has also demanded that Israel “immediately and completely cease all settlement activities”.²⁶² This is a binding decision that Israel is obliged to comply with.

78. Regarding Israel’s annexation of the Palestinian territory and its violation of the prohibition of the acquisition of territory by force, Israel is required to cease its conduct in violation of that prohibition. Israel’s wrongful conduct is composed of its exercise of effective control over the Palestinian territory combined with its intention to hold that territory permanently. Thus, Israel’s obligation to cease its wrongful conduct requires it to: (a) completely withdraw from the West Bank, including East Jerusalem; (b) repeal or render ineffective all legislative and regulatory acts, policies and practices that contribute to its exercise of effective control over Gaza, including those that constitute the blockade; (c) repeal or render ineffective all legislative and regulatory acts, policies and practices that it has adopted formally annexing East Jerusalem;²⁶³ and (d) repeal or render ineffective such acts, policies and practices that it has adopted in relation to the remainder of the West Bank and Gaza with a view to holding those territories permanently. Even leaving to one side the illegality of Israel’s occupation of the Palestinian territory, by virtue of Israel’s annexation of the territory and its attempt to acquire the territory by force, the same conduct giving rise to the existence of the occupation is in any event unlawful on a different basis: because it violates the prohibition of the acquisition of territory by force. The Security Council has also determined that Israel must rescind all measures that alter or purport to alter the status of Jerusalem.²⁶⁴ This is a binding decision that Israel is obliged to comply with.
79. Regarding Israel’s related discriminatory practices, Israel is required to cease its conduct in violation of, in particular, its international human rights and humanitarian

²⁶¹ A/HRC/RES/52/35 (2023), para. 7(f).

²⁶² S/RES/2334 (2016), para. 2. See also S/RES/465 (1980), para. 6, calling upon Israel to rescind measures, dismantle settlements and cease construction of new settlements.

²⁶³ See also A/RES/2253(ES-V) (1967), para. 2: “*Calls upon* Israel to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem”. See also the references in fn. 264.

²⁶⁴ S/RES/478 (1980), para. 3. See also UNSC Resolution 252, UN Doc. S/RES/252, 21 May 1968, para. 3; UNSC Resolution 267, UN Doc. S/RES/267, 3 July 1969, para. 5; S/RES/476 (1980), para. 4.

law obligations, including the right of return and the prohibition of apartheid. This requires Israel to, among other things, (a) repeal or render ineffective all legislative and regulatory acts, policies and practices that it has adopted that violate Israel's human rights obligations, including those which are discriminatory in their application or effect, and to forthwith comply with all its human rights obligations; (b) to repeal or render ineffective all legislative and regulatory acts, policies and practices that deny the right of displaced Palestinians and their descendants to return to their homes and property in Israel or in the Palestinian territory, and (c) repeal or render ineffective all legislative and regulatory acts, policies and practices that it has adopted that constitute apartheid against the Palestinian people.

80. Regarding reparation, Israel is under an obligation to make full reparation for all the damage caused by its internationally wrongful acts.²⁶⁵ Israel is obliged to make restitution and, to the extent that the damage caused by its acts is not made good by restitution, to pay compensation.²⁶⁶ Such compensation must cover all financially assessable damage, including loss of profits.²⁶⁷ Such compensation must include interest as necessary to ensure full reparation.²⁶⁸ UNCTAD estimates that, as a result of Israel's occupation of the West Bank, in the period 2000-2019 — during the whole of which period Israel's occupation was unlawful²⁶⁹ — the Palestinian people have lost USD\$57.7 billion.²⁷⁰ In compliance with its obligation to provide full reparation, Israel is also required to do the following: (a) in relation to Israel's appropriation and destruction of private and public Palestinian property in execution of its settlement policies and practices,²⁷¹ to return the property that it has appropriated (or pay compensation where that is materially impossible) and to pay compensation for the

²⁶⁵ See ILC, Articles on State Responsibility, Article 31; *Wall Advisory Opinion*, p. 198, para. 152.

²⁶⁶ See ILC, Articles on State Responsibility, Articles 35-36; *Wall Advisory Opinion*, p. 198, para. 153.

²⁶⁷ See ILC, Articles on State Responsibility, Article 36(2).

²⁶⁸ See ILC, Articles on State Responsibility, Article 38.

²⁶⁹ See para. 33 above.

²⁷⁰ UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: Arrested Development and Poverty in the West Bank* (2021) (available [here](#)), p. vi.

²⁷¹ See para. 39 above.

property that it has destroyed;²⁷² (b) regarding the pillage of the natural resources of the West Bank²⁷³ and Gaza,²⁷⁴ at a minimum, to pay Palestine the royalties that Israel has received in addition to compensation assessed on the basis of the value of the natural resources extracted;²⁷⁵ (c) in relation to Israel's violation of the right of return,²⁷⁶ to return to displaced Palestinians, and their descendants, their homes and property in Israel and in the Palestinian territory (or pay compensation where that is materially impossible).

81. Given that Israel's conduct has breached some of the most important norms of international law, spanned more than half a century and adversely affected successive generations of Palestinians, this is a case in which restitution and compensation are inadequate to fully repair the injury suffered, in particular the moral damage occasioned to Palestine and its people.²⁷⁷ Satisfaction is accordingly a necessary form of reparation.²⁷⁸ Israel should therefore acknowledge that its conduct violates international law and issue a formal apology to the Palestinian people.

2. Legal consequences for other States

82. There are four key legal consequences for other States. They relate to: (a) Israel's violations of peremptory norms (see *a*); (b) Israel's violations of obligations *erga omnes* (see *b*); (c) Israel's violations of international humanitarian law (see *c*); and (d) violations giving rise to individual criminal responsibility (see *d*). In addition to these consequences, Member States of the United Nations are obliged by Article 25 of

²⁷² This property includes "land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall": *Wall Advisory Opinion*, p. 198, para. 153.

²⁷³ See para. 40 above.

²⁷⁴ See para. 56(e)(ii) above.

²⁷⁵ See, e.g., *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Reparations, Judgment, I.C.J. Reports 2022*, p. 104, para. 275, pp. 105-106, para. 278 (referring to the expert's methodology set out at pp. 102-103, paras. 271-272), p. 110, para. 296, p. 111, para. 298 and p. 127, para. 366 (when considering the reparation owed in respect of the plundering of natural resources in occupied territory, including by private persons, the Court relied on an approach that assessed the value of the resources extracted through exploitation in the relevant area over the relevant period of time).

²⁷⁶ See paras. 57-62 above.

²⁷⁷ See ILC, Articles on State Responsibility, Article 31(2) (obligation to make reparation for damage includes moral damage).

²⁷⁸ See ILC, Articles on State Responsibility, Article 37.

the Charter of the United Nations to comply with mandatory decisions of the Security Council.

a. Violations of peremptory norms

83. The first key legal consequence relates to Israel's violations of obligations having the status of peremptory norms. The obligations violated by Israel that have this status are: (a) the obligation to respect the right of the Palestinian people to self-determination;²⁷⁹ (b) the prohibition of the use of force and of aggression, which Israel has breached in relation to its unlawful occupation and annexation of East Jerusalem, the remainder of the West Bank and Gaza;²⁸⁰ (c) basic rules of international humanitarian law;²⁸¹ and (d) the prohibition of racial discrimination and apartheid.²⁸² Israel's breaches of these obligations are serious breaches, in that they involve both a gross, and also a systematic, failure by Israel to fulfil its obligations.²⁸³ As a result of Israel's serious breaches of these peremptory norms, other States are obliged: (a) to cooperate to bring Israel's serious breaches to an end; (b) not to recognise as lawful the situations created by Israel's breaches; and (c) not to render aid or assistance in maintaining those situations.²⁸⁴

²⁷⁹ *East Timor (Portugal v. Australia)*, I.C.J. Reports 1995, p. 102, para. 29; ILC, Articles on State Responsibility, commentary to Article 26, para. 5 and commentary to Article 40, para. 5; ILC, Draft conclusions on identification and legal consequences of peremptory norms, Annex, para. (h); Crawford, *Brownlie's Principles of Public International Law* (9th ed, 2019), p. 582.

²⁸⁰ *Military and Paramilitary Activities*, p. 100, para. 190; ILC, Articles on the Law of Treaties with commentaries, *ILC Yearbook 1966*, vol. II, commentary to Article 50, para. 1; ILC, Articles on State Responsibility, commentary to Article 26, para. 5 and commentary to Article 40, para. 4; ILC, Draft conclusions on identification and legal consequences of peremptory norms, Annex, para. (a); Crawford, *Brownlie's Principles of Public International Law* (9th ed, 2019), p. 581. The naval blockade of Gaza also constitutes an act of aggression: see fn. 84 above.

²⁸¹ ILC, Articles on State Responsibility, commentary to Article 40, para. 5; ILC, Draft conclusions on identification and legal consequences of peremptory norms, Annex, para. (d); *Nuclear Weapons Advisory Opinion*, p. 257, para. 79 ("a great many rules of humanitarian law ... are so fundamental" that "the Hague and Geneva Conventions have enjoyed a broad accession" and "these fundamental rules ... constitute intransgressible principles of international customary law" binding all States).

²⁸² ILC, Draft conclusions on identification and legal consequences of peremptory norms, Annex, para. (e); ILC, Articles on State Responsibility, commentary to Article 26, para. 5 and commentary to Article 40, para. 4; Crawford, *Brownlie's Principles of Public International Law* (9th ed, 2019), pp. 581-582.

²⁸³ ILC, Articles on State Responsibility, Article 40.

²⁸⁴ ILC, Articles on State Responsibility, Article 41.

84. In relation to these obligations arising for other States, the following points should be highlighted:

- (a) Regarding the duty of cooperation, this is a positive duty to cooperate (as opposed to the duties of non-recognition and non-assistance, which are duties of abstention).²⁸⁵ What is called for is a “joint and coordinated effort by all States to counteract the effects of [the relevant] breaches”.²⁸⁶ Such cooperation can be organised within the framework of a competent international organisation, such as the United Nations.²⁸⁷ Such cooperation could include suspending Israel from membership in specific United Nations bodies.²⁸⁸
- (b) Regarding Israel’s annexation of the Palestinian territory, States are obliged not to recognise the situation created by such annexation as lawful. That is, States have an obligation not to recognise, formally or implicitly,²⁸⁹ any part of the Palestinian territory as forming part of Israel. This duty of non-recognition of the acquisition of territory through the use of force is reflected in the Friendly Relations Declaration: “No territorial acquisition resulting from the threat or use of force shall be recognized as legal”.²⁹⁰ In relation to the present situation, in General Assembly Resolution 77/25, after calling on States “[n]ot to recognize any changes to the pre-1967 borders, including with regard to Jerusalem”, the General Assembly clarified that this obligation includes “ensuring that agreements with Israel do not imply recognition of Israeli sovereignty over the territories occupied by Israel in 1967”.²⁹¹ Regarding Jerusalem specifically, in Resolution 478 (1980), after determining that Israel’s measures that alter or

²⁸⁵ ILC, Articles on State Responsibility, commentary to Article 41, paras. 2 and 4.

²⁸⁶ ILC, Articles on State Responsibility, commentary to Article 41, para. 3.

²⁸⁷ ILC, Articles on State Responsibility, commentary to Article 41, para. 2. See also *Chagos* Advisory Opinion, pp. 139-140, para. 182.

²⁸⁸ See, e.g., UNGA Resolution ES-11/3, UN Doc. A/RES/ES-11/3, 7 April 2022 (regarding Russia).

²⁸⁹ ILC, Articles on State Responsibility, commentary to Article 41, para. 5.

²⁹⁰ Friendly Relations Declaration, first principle, tenth para. See also ILC, Articles on State Responsibility, commentary to Article 41, paras. 6-7.

²⁹¹ UNGA Resolution 77/25, UN Doc. A/RES/77/25, 30 November 2022 (*A/RES/77/25 (2022)*), para. 13(a). See also UNGA Resolution ES-11/4, UN Doc. A/RES/ES-11/4, 12 October 2022 (regarding Russia and Ukraine), para. 4; UNSC Resolution 662, UN Doc. S/RES/662, 9 August 1990 (regarding Iraq and Kuwait), para. 2.

purport to alter the status of Jerusalem are null and void, and deciding not to recognise actions by Israel that seek to change the status of Jerusalem, the Security Council called on States to refrain from establishing or withdraw diplomatic missions in Jerusalem.²⁹² In addition, in Resolution 2334 (2016), after underlining that it would “not recognize any changes to the 4 June 1967 lines”, the Security Council called upon States to “distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967”.²⁹³ These are binding decisions that the Member States of the United Nations are obliged to comply with.²⁹⁴

- (c) Regarding Israel’s practices amounting to apartheid, States are obliged not to recognise as lawful the situations created by Israel in breach of the prohibition of apartheid. States that are parties to CERD have a *positive duty to condemn* Israel’s practices amounting to apartheid.²⁹⁵ The Belize House of Representatives did so in October 2021.²⁹⁶
- (d) Regarding the duty of non-assistance, the Security Council has repeatedly called on States “not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories”, as one particular aspect of Israel’s conduct violating the above-mentioned peremptory norms.²⁹⁷ In October 2021, Belize’s House of Representatives identified actions that States can take to comply with this general duty of non-assistance, including: adopting targeted sanctions; putting an end to any kind of military, police training or security exchange or trade with Israel; and adopting measures to ensure that

²⁹² S/RES/478 (1980), paras. 3 and 5(b). See also UNGA Resolution ES-10/19, UN Doc. A/RES/ES-10/19, 21 December 2017, para. 1.

²⁹³ S/RES/2334 (2016), paras. 3, 5. See also A/RES/77/25 (2022), para. 13(b); A/HRC/RES/52/35 (2023), para. 11(a).

²⁹⁴ UN Charter, Article 25.

²⁹⁵ CERD, Article 3.

²⁹⁶ “Belize House of Representatives Resolution on Palestine Motion”, 26 October 2021 (available [here](#)). This motion was also passed by the Senate of Belize on 28 October 2021.

²⁹⁷ S/RES/465 (1980), para. 7; S/RES/471 (1980), para. 5. See also *Wall* Advisory Opinion, pp. 191-192, para. 134 (and cross-referring to pp. 183-184, para. 120), referring to UNSC Resolution 465 as a mandatory resolution capable of being “contravene[d]”.

businesses operating in their jurisdiction do not engage in or profit from the human rights violations committed by Israel against the Palestinian people.²⁹⁸

b. Violations of obligations erga omnes

85. The second key legal consequence relates to the obligations of States regarding the right to self-determination. The right to self-determination is an obligation *erga omnes*.²⁹⁹ As stated in the Friendly Relations Declaration, “[e]very State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples”.³⁰⁰ States are obliged, not only through joint action but also *through individual action*, to see to it that “any impediment” to the exercise by the Palestinian people of their right to self-determination resulting from Israel’s wrongful conduct “is brought to an end”.³⁰¹

c. Violations of international humanitarian law

86. The third key legal consequence relates to Israel’s violations of its obligations under conventional and customary international humanitarian law. Common Article 1 of the Geneva Conventions and Additional Protocols enshrines the customary obligation on all States to “ensure respect for” international humanitarian law “in all circumstances”.³⁰² This obligation involves negative obligations (a) not to encourage breaches of and interferences with the Conventions or Protocols in circumstances where such violations and interferences are likely or foreseeable, and (b) not to knowingly aid or assist such violations and interferences.³⁰³ It also involves (c) a positive obligation

²⁹⁸ “Belize House of Representatives Resolution on Palestine Motion”, 26 October 2021 (available [here](#)), paras. 5-7. See also, as regards measures States should undertake, e.g., OHCHR, *Guiding Principles on Business and Human Rights* (2011) (available [here](#)).

²⁹⁹ See *Chagos Advisory Opinion*, p. 139, para. 180; *Wall Advisory Opinion*, p. 199, paras. 155-156.

³⁰⁰ Friendly Relations Declaration, fifth principle, second para.

³⁰¹ See *Wall Advisory Opinion*, p. 199, para. 156 and p. 200, para. 159.

³⁰² Article 1 common to the Geneva Conventions and Additional Protocols contains duties to respect and to ensure respect for international humanitarian law: “The High Contracting Parties undertake to respect and to ensure respect for this [Convention/Protocol] in all circumstances”. The Court held the provision to be customary in *Military and Paramilitary Activities*, p. 114, para. 220. See also ICRC, *Customary Study* (2005), Rule 139, confirming that it applies in respect of the entire body of international humanitarian law by which a State is bound. The comments made here concern in particular the duty to ensure respect. See further *Wall Advisory Opinion*, p. 200, para. 159.

³⁰³ *Military and Paramilitary Activities*, p. 114, para. 220 and pp. 129-130, paras. 255-256; ICRC, *Commentary on the First Geneva Convention* (2nd ed, 2016), commentary to Article 1, para. 158. These negative duties are not limited to not encouraging or aiding or assisting parties to the conflict to violate

to take appropriate actions directed to preventing and ending violations of and interferences with international humanitarian law.³⁰⁴ This positive obligation is an obligation of conduct, which requires that States “employ all means reasonably available to them” to stop and prevent violations as far as possible.³⁰⁵ Such an obligation is triggered in circumstances where the State knows or should normally have learned of the existence of a serious risk that a violation or interference will be committed.³⁰⁶ What will be required to comply with this positive obligation in any given case will necessarily vary depending on the circumstances, but factors guiding the assessment include the seriousness of the violation, the State’s capacity to influence the perpetrator and the means reasonably available to the State.³⁰⁷ This obligation will be breached where a State “manifestly failed to take all measures to prevent ... which were within its power, and which might have contributed to preventing” the violation of international humanitarian law.³⁰⁸

87. Every State has notice of the unlawfulness of Israel’s settlements practices in the West Bank (including East Jerusalem), of its blockade of Gaza, and of its discriminatory

international humanitarian law; they extent to not encouraging or aiding or assisting private actors to commit acts that are prohibited by international humanitarian law (here referred to as ‘interferences’ owing to the fact that private actors are not themselves directly bound by conventional or customary international humanitarian law). This is necessarily implied in the duty to ensure respect for international humanitarian law “in all circumstances” in Common Article 1. Indeed, it would be “paradoxical” if States were prohibited from engaging in certain conduct, and from encouraging or aiding or assisting parties to a conflict to engage in such conduct, but were free to encourage or aid or assist private actors to engage in that very same conduct. See *Bosnia Genocide*, p. 113, para. 166.

³⁰⁴ Report of the UNHCHR, Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/HRC/46/22, 15 February 2021 (*A/HRC/46/22 (2021)*), para. 37; Report of UNHCHR, Integrity of the judicial system, UN Doc. A/HRC/43/35, 24 July 2020, para. 34; ICRC, 30th International Conference 2007, Resolution 3 (available [here](#)), para. 2.

³⁰⁵ See *Bosnia Genocide*, p. 221, para. 430 (regarding the analogous obligation of due diligence to prevent genocide). The Court also observed that “it is irrelevant whether the State whose responsibility is in issue claims, or even proves, that even if it had employed all means reasonably at its disposal, they would not have sufficed to prevent the commission of genocide. As well as being generally difficult to prove, this is irrelevant to the breach of the obligation of conduct in question, the more so since the possibility remains that the combined efforts of several States, each complying with its obligation to prevent, might have achieved the result — averting the commission of genocide — which the efforts of only one State were insufficient to produce”. The same reasoning is equally applicable to violations of international humanitarian law. See also *Armed Activities (Merits)*, p. 253, para. 248: “to take appropriate measures to prevent” the pillage of natural resources in occupied territory by private persons.

³⁰⁶ *Bosnia Genocide*, pp. 221-222, para. 431.

³⁰⁷ *Bosnia Genocide*, p. 221, para. 430.

³⁰⁸ *Bosnia Genocide*, p. 221, para. 430.

frameworks of oppression designed to support such measures. These measures have been repeatedly declared to be violations of international humanitarian law by multiple United Nations organs and bodies over a long period of time. The duty to ensure respect for international humanitarian law in relation to these illegal practices is therefore triggered for all States. In particular, as regards the positive duty to adopt measures directed towards stopping continuing and preventing further violations as far as possible,³⁰⁹ this requires the regulation of otherwise lawful conduct of private actors that supports and maintains Israel's illegal practices.³¹⁰ In many cases, the connection between third States and the conduct constituting the violation of or interference with international humanitarian law will be indirect. Similarly, the connection between any particular private actor and such conduct may be indirect, for example by way of forming part of a supply chain for goods or services. A third State may have influence over only one of many aspects of a chain of activities ultimately constituting or supporting such conduct. Exercising jurisdiction to regulate or prohibit even one such aspect may be sufficient to stop or prevent violations of or interferences with international humanitarian law. The failure or refusal to exercise any jurisdiction over such an aspect would qualify as a "manifest failure to take all measures to prevent ... which were within its power and might have contributed to preventing" the international humanitarian law violations.³¹¹ States should therefore: (i) diligently inform themselves of which private actors operating in or subject to their jurisdiction³¹² are engaged in conduct connected to Israel's illegal practices,³¹³ (ii) take appropriate steps to regulate

³⁰⁹ See, for illustrations of some measures States may take, A/HRC/46/22 (2021), paras. 39-45.

³¹⁰ States are on notice of such conduct of private actors. See the Human Rights Council's recognition of businesses having "directly and indirectly, enabled, facilitated and profited from the construction and growth of Israeli settlements in the Occupied Palestinian Territory": A/HRC/RES/52/35 (2023), preambular para. 23. See also preambular para. 25: "*Concerned* that economic activities facilitate the expansion and entrenchment of settlements, aware that the conditions of harvesting and production of products made in settlements involve, inter alia, the exploitation of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, *and calling upon all States to respect their legal obligations in this regard, including the obligation to ensure respect for the Fourth Geneva Convention*" (emphasis added). See further para. 6(a) and para. 9.

³¹¹ *Bosnia Genocide*, p. 221, para. 430.

³¹² This includes private actors operating on the State's territory and those operating abroad but subject to the State's extraterritorial jurisdiction.

³¹³ A number of public reporting resources already identify various companies and their activities connected to the illegal Israeli settlements. The database created pursuant to UNHRC Resolution 31/36 (2016) lists business enterprises involved in activities relating to the illegal Israeli settlements in the Palestinian territory (see Report of the UNHCHR, Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate

or prohibit conduct that supports or maintains such practices; and (iii) impose appropriate consequences under their domestic law for any breach of such regulations or prohibitions.

88. Appropriate steps should include the adoption of measures that target specific activities likely to give rise to a serious risk of international humanitarian law violations in the Palestinian territory,³¹⁴ such as, for example, prohibiting or rendering unenforceable contracts for the provision of construction work, materials, equipment, finance, insurance/re-insurance or other services relating to the construction of the separation wall, or the construction or maintenance of the illegal settlements, and prohibiting the purchase or conversion of natural resources extracted from the Palestinian territory by or under the purported authority of Israel as well as products produced therefrom. Other measures could involve the expansion of existing or adoption of new mandatory reporting requirements imposed on companies incorporated or operating in a State's jurisdiction to disclose any occupation-connected conduct, and to oblige the taking of steps to ensure that such conduct does not maintain or facilitate Israel's violations of international humanitarian law.³¹⁵ States should moreover cooperate with one another,

the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/HRC/43/71, 28 February 2020 and the 2023 update (available [here](#)). Similarly, Whoprofits.org identifies companies which are said to have profited from Israel's settlement enterprise, economic exploitation and population control activities regarding Palestinian people and territory (available [here](#)).

³¹⁴ On "serious risk", see *Bosnia Genocide*, pp. 221-222, para. 431. See also, adopting a "clear risk" standard: A/HRC/RES/52/3 (2023), para. 18 ("Urges all States to refrain from transferring arms when, in accordance with applicable national procedures and international obligations and standards, they assess that there is a clear risk that such arms might be used to commit or facilitate serious violations or abuses of international human rights law or serious violations of international humanitarian law").

³¹⁵ Some States already require similar types of non-financial disclosures which could be expanded to take account of occupation-connected activities, such as the Companies Act 2006 (UK) and EU Non-Financial Reporting Directive, which require certain listed, large and/or banking and insurance companies to disclose annually certain non-financial information, including relating to human rights and the environment (see Companies Act 2006 (UK), sections 414A, 414C(7) and 414CB; EU, Directive 2014/95/EU, Article 19a). See also Companies Act 2006 (UK), section 414A(3), which stipulates that parent company reports must include information for the entire corporate group, including foreign subsidiaries. See also the name-and-shame requirement under US law that require publicly-traded companies purchasing certain minerals from the DRC or its neighbours to file an annual disclosure report detailing the due diligence they exercise to prevent sourcing conflict minerals (Frank-Dodd Act 2010 (USA), section 1502 and 17 Code of Federal Regulations, section 240.13p-1). This legislation extends to any company publicly listed on a stock exchange in the United States, irrespective of its place of incorporation or headquarters. A similar example is the Modern Slavery Act 2015 (UK), which requires commercial organisations carrying on a business in the United Kingdom with a turnover of at least £36 million to publish an annual slavery and human trafficking statement that outlines the steps taken to ensure modern slavery is not taking place in their business or supply chains (Modern Slavery Act 2015 (UK), section 54).

and relevant international organisations (including the International Criminal Court) to share information in relation to occupation-connected private actors. This sharing of information is particularly important in situations involving the conduct of a corporate group when different entities within the group are incorporated in different States and so are subject to the regulatory control of those different States. As so few obligations at the international level are imposed directly on private actors, the onus on States to regulate private actors through legislative and enforcement measures is of central importance to removing incentives and commercial relationships that sustain and further violations of international humanitarian law in the Palestinian territory.³¹⁶

d. Violations giving rise to individual criminal responsibility

89. The fourth key legal consequence relates to violations that also give rise to individual criminal responsibility. As noted above, Israel has committed acts that constitute grave breaches of the Fourth Geneva Convention in unlawfully deporting or transferring Palestinians, by its extensive unlawful appropriation of property not justified by military necessity, and by wilfully killing Palestinian civilians and depriving them of the right to a fair trial.³¹⁷ States parties to the Fourth Geneva Convention are obliged to search for persons who have committed, or ordered, these grave breaches and to prosecute or extradite them.³¹⁸ As also noted above, Israel's conduct also involves war crimes, crimes against humanity and the crime of aggression for which customary international law imposes individual criminal responsibility.³¹⁹ States that are party to the Rome Statute are obliged to cooperate fully with the International Criminal Court

³¹⁶ The importance of holding corporate actors to account for their involvement in the commission of international crimes has long been recognised, including before the Nuremberg Tribunal: e.g., *U.S. v. Carl Krauch et al. (I.G.Farben)*, US Military Tribunal sitting at Nuremberg, 30 July 1948, in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No.10, Vol. VII* (1953), pp. 1081-1210 (the German chemical company that supplied the gas used in Nazi extermination camps).

³¹⁷ GC IV, Article 147 and see paras. 37, 39, 56(b), 56(d), 56(e)(i) and 56(e)(ii) above.

³¹⁸ GC IV, Article 146(2). The above-listed acts are also grave breaches of AP I (see Article 85) which States Parties to that treaty are obliged to repress and suppress. State Parties are also obliged to cooperate with one another — and, in cases of serious violations, with the United Nations — in their repression and suppression of grave breaches (Articles 86, 88 and 89).

³¹⁹ See paras. 33-34, 36-40, 44, 56(b), 56(d), 56(e)(i), 56(e)(ii), 56(e)(v), 61 and 64 above.

in its investigations of such crimes.³²⁰ Further, States parties to the Apartheid Convention are obliged to prosecute the crime against humanity of apartheid.³²¹

3. Legal consequences for the United Nations

90. The United Nations, especially the General Assembly and the Security Council, should consider what further action is required to bring the illegal situation resulting from Israel's breaches of its obligations to an end, conscious that existing measures have so far failed to bring that situation to an end and to secure the rights of the Palestinian people.³²²
91. This should include, for example in relation to the issue of apartheid, the reconstitution of the United Nations Special Committee on Apartheid and the United Nations Centre against Apartheid. These bodies could keep under review Israel's practice of apartheid against the Palestinian people and third States' related conduct, report to the United Nations General Assembly and/or Security Council, and produce reports and studies to educate and raise awareness about apartheid.³²³

³²⁰ Rome Statute, Articles 86, 89 and 93. On the jurisdiction of the Court over the crime of aggression (and the implications for the duty in Article 86 to cooperate with the Court in respect of crimes within its jurisdiction), see Rome Statute, Articles *15bis* and *15ter*.

³²¹ Apartheid Convention, Article IV(b). Apartheid is also a grave breach under Article 85 of AP I.

³²² See *Wall* Advisory Opinion, p. 200, para. 160 and p. 202, para. 163(3)(E).

³²³ For a summary of these bodies' previous activities in relation to South Africa, and the role they could play as regards Israel's apartheid in Palestine, see: Housing and Land Rights Network, "Tools to Remedy Israeli Apartheid: Reconstituting the UN Special Committee against Apartheid and the UN Centre against Apartheid", 4 August 2020 (available [here](#)). See also, making the same recommendation as to the reconstitution of the Special Committee against Apartheid: A/HRC/49/87 (2022), para. 59.

CHAPTER 2. THE SECOND QUESTION

92. The second question asked of the Court is:

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

93. This Chapter addresses: (a) the effect of the violations of international law discussed in **Chapter 1** of this Written Statement on the legal status of Israel’s occupation of the Palestinian territory (**Section A**); and (b) the legal consequences arising from that status (**Section B**).

A. THE LEGAL STATUS OF THE OCCUPATION

94. This Section addresses two key aspects of the legal status of Israel’s occupation of the Palestinian territory: first, Israel’s conduct in violation of international law addressed in **Chapter 1** has no legal validity and creates no rights for Israel as a matter of international law (**subsection 1**); and second, the legal status of Israel’s occupation of the Palestinian territory is one of illegal presence (**subsection 2**).

1. No legal validity and no rights for Israel as a matter of international law

95. No rights can arise for Israel out of its policies and practices that violate international law. This position reflects the general maxim *ex injuria jus non oritur* (no right can arise from a wrong).³²⁴ It has been authoritatively recognised in relation to each aspect of the policies and practices addressed in **Chapter 1** above:

(a) As regards the denial of the right of a people to self-determination: the Court in the *Namibia* Advisory Opinion confirmed that international law “bar[s] *erga omnes* the legality of a situation which is maintained in violation of international law” and highlighted the duty on all States not to recognise the “validity or

³²⁴ See Lauterpacht, referring to “when the act alleged to be creative of a new right is in violation of an existing rule of customary or conventional International Law. In such cases the act in question is tainted with invalidity and incapable of producing legal results beneficial to the wrongdoer in the form of a new title or otherwise”: Lauterpacht (ed), *International Law, a Treatise (Oppenheim’s International Law)*, Vol 1 – Peace (8th ed, 1955), pp. 141-142.

effects” of such a situation in their relationship with South Africa vis-à-vis Namibia.³²⁵ The position is the same as regards Israel’s violation of the right of the Palestinian people to self-determination.³²⁶

- (b) As regards the prolonged occupation: it is a long-standing principle of international law that the use of force not justified by self-defence or Security Council authorisation — including occupation — is illegal, continues to be illegal for so long as it continues, and cannot create title to the territory occupied opposable to other States.³²⁷ As early as 1977, the United Nations General Assembly declared the Israeli occupation to be “illegal” and “in violation of the Charter of the United Nations, the principles of international law and repeated resolutions of the United Nations”.³²⁸ In 1980 the United Nations Security Council recognised the “overriding necessity” for Israel to end its occupation.³²⁹ In 2022 and 2023 the Human Rights Council demanded that Israel withdraw from the Palestinian territory and end its occupation, and declared that all measures and actions taken by Israel contrary to “relevant resolutions of the Security Council are illegal and have no validity”.³³⁰
- (c) As regards the establishment of settlements in the West Bank (including East Jerusalem), and related measures that also contribute to altering the demographic composition of such occupied territory: various United Nations bodies have repeatedly declared such conduct to be “illegal”, “null and void”, and “invalid”, to have “no legal validity” and to be incapable of changing the status of the relevant territory.³³¹ In particular, such settlements, and Israel’s occupation more

³²⁵ *Namibia* Advisory Opinion, p. 56, para. 126.

³²⁶ See also para. 83 above regarding the duty on all States of non-recognition; ILC, Articles on State Responsibility, Article 41(2) and commentary to Article 41, paras. 5 and 8.

³²⁷ Friendly Relations Declaration, first principle, tenth para (“No territorial acquisition resulting from the threat or use of force shall be recognized as legal”); Brownlie, *International Law and the Use of Force by States* (1963), p. 410 (referring to this position as “an obvious application of the principle *ex iniuria jus non oritur*”); ILC, Articles on State Responsibility, Article 41(2) and commentary to Article 41, paras. 5-7. Nor could the lawful use of force create title to territory: see paras. 44 and 46 above.

³²⁸ A/RES/32/20 (1977), preambular para. 4 and para. 1. See also the references in fn. 90 above.

³²⁹ S/RES/471 (1980), para. 6; S/RES/476 (1980), para. 1.

³³⁰ A/HRC/RES/52/3 (2023), paras. 1 and 4; A/HRC/RES/49/4 (2022), paras. 1 and 3.

³³¹ S/RES/446 (1979), para. 1; S/RES/452 (1979), preambular para. 3; S/RES/465 (1980), para. 5; S/RES/471 (1980), preambular para. 4; S/RES/2334 (2016), para. 1; S/12233 (1976), paras. 3-4; A/RES/34/90 C

generally, do not give rise to any rights for Israel in respect of the land or resources of the occupied territory.³³²

- (d) As regards annexation: the purported acquisition of territory by force gives rise to no legal effects in international law,³³³ and the United Nations Security Council and General Assembly have repeatedly reiterated this principle in the context of Israel's annexation of East Jerusalem, declaring Israel's conduct in that respect to be "null and void" and "invalid", as having "no legal validity" and as being incapable of affecting the application of the Fourth Geneva Convention and incapable of changing the status of East Jerusalem.³³⁴ The same assessment applies in relation to the *de facto* annexation by Israel of the remainder of the West Bank and Gaza.
- (e) As regards Israel's related discriminatory policies and practices: such conduct (i) constitutes violations of basic principles of international human rights and humanitarian law, and (ii) as regards the denial of the right of return and the commission of apartheid, amounts to crimes against humanity.³³⁵ Both categories of conduct involve serious breaches of peremptory norms,³³⁶ and international law does not recognise the legality of any situation resulting from

(1979), preambular para. 2 and paras. 1-2; A/RES/ES-7/6 (1982), para. 4(a); A/RES/ES-10/14 (2003), preambular para. 13; A/RES/77/126 (2022), para. 1; A/HRC/RES/52/3 (2023), para. 7. See also Report of the Security Council Commission Established Under Resolution 446 (1979), UN Doc. S/14268, 25 November 1980, para. 235 ("the Commission wishes to reiterate that Israel's policy of settlement, by which, as an example, 33.3 per cent of the West Bank has been confiscated to date, has no legal validity"); Report of the UNHCHR, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, UN Doc. A/HRC/49/85, 28 April 2022, para. 12.

³³² A/HRC/RES/52/3 (2023), para. 4 (declared that "all measures and actions taken by Israel" in the Palestinian territory in violation of the Fourth Geneva Convention "are illegal and have no validity").

³³³ See the same sources cited in fn. 327 above.

³³⁴ S/12233 (1976), para. 4; S/RES/476 (1980), preambular para. 2 and paras. 3-4; S/RES/478 (1980), preambular para. 2 and paras. 2-3; A/RES/2253(ES-V) (1967), paras. 1-2; A/RES/ES-10/14 (2003), preambular para. 13.

³³⁵ See paras. 61 and 64 above.

³³⁶ See para. 83 above.

a serious breach of a peremptory norm.³³⁷ Such acts are “illegal and have no validity”³³⁸ and can accordingly give rise to no rights for Israel.

2. Illegal presence

96. Further to Israel’s policies and practices having no legal validity and giving rise to no rights for Israel (addressed in **Chapter 1**), the legal status of Israel’s occupation of the Palestinian territory is one of illegal presence. This conclusion follows by analogy with the situation of Namibia.
97. South Africa remained in occupation of Namibia following the termination of the “C” Mandate for South West Africa by the United Nations General Assembly in 1966. In Resolution 276 (1970), the Security Council described South Africa’s “continued occupation” of Namibia as being “in defiance ... of the Charter of the United Nations”.³³⁹ There was no lawful justification for South Africa’s continued occupation of Namibia following the termination of the Mandate. As the Court noted, South Africa was “occupying the Territory without title”.³⁴⁰ In these circumstances, South Africa’s continued occupation of Namibia was illegal. The Security Council “[d]eclare[d] that the continued presence of the South African authorities in Namibia is illegal”,³⁴¹ and the Court found that South Africa’s occupation was “validly declared illegal”.³⁴² In these circumstances, the status of South Africa’s occupation of Namibia was one of “illegal presence”.³⁴³
98. In the case of Palestine, as explained in **Chapter 1** of this Written Statement, even if the Court were not to reach a view on the legality of Israel’s initial use of force against Egypt and Jordan which resulted in it occupying the Palestinian territory, the occupation is now unlawful because any conditions for self-defence against Egypt and Jordan that

³³⁷ See ILC, Articles on State Responsibility, Article 41(2).

³³⁸ See, e.g., in relation to the breaches of international humanitarian law: A/HRC/RES/52/3 (2023), para. 4 (reiterated that “all measures and actions taken by Israel” in the Palestinian territory in violation of the Fourth Geneva Convention “are illegal and have no validity”).

³³⁹ UNSC Resolution 276, UN Doc. S/RES/276, 30 January 1970 (*S/RES/276 (1970)*), para. 4.

³⁴⁰ *Namibia Advisory Opinion*, p. 54, para. 118.

³⁴¹ S/RES/276 (1970), para. 2.

³⁴² *Namibia Advisory Opinion*, p. 54, para. 118.

³⁴³ See, e.g., *Namibia Advisory Opinion*, p. 56, para. 127.

might have existed (which is denied) would have ceased to have been met a very long time ago. Israel was obliged to take steps towards ending, and ultimately to end, its occupation and to extricate itself from the territory it occupied. It did not do so and has instead remained in occupation. Israel's occupation of the Palestinian territory is, and for a long time has been, an unlawful use of force and an unlawful occupation. As was the situation in relation to Namibia, Israel's continued occupation of the Palestinian territory is a breach of the Charter of the United Nations and has no lawful justification. As was the case with Namibia, Israel's continuing occupation of the Palestinian territory is therefore illegal and Israel's presence in the territory is an illegal presence.

99. The illegality of Israel's presence in the Palestinian territory also follows from the fact that Israel's occupation is a flagrant violation of the purposes and principles of the Charter of the United Nations. As explained in **Chapter 1**, for a long period of time:
- (a) Israel has been violating its obligation to respect the right of the Palestinian people to self-determination, respect for which is reflected in the purposes of the United Nations set out in the Charter.³⁴⁴
 - (b) Israel has been in unlawful occupation of the Palestinian territory, in violation of Article 2(4) of the Charter of the United Nations.
 - (c) Israel has been in violation of the prohibition of the acquisition of territory by force, reflected in Article 2(4).
 - (d) Israel has illegally established, maintained and extended its settlement and systemic discrimination practices, in violation of the human rights of the Palestinian people. Respect for human rights is also reflected in the purposes of the United Nations,³⁴⁵ and the enforcement of "distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent

³⁴⁴ UN Charter, Article 1(2). See also A/RES/1514(XV) (1960), para. 1 ("The subjection of peoples to alien subjugation, domination and exploitation ... is contrary to the Charter of the United Nations"); Friendly Relations Declaration, fifth principle, first and second paras.

³⁴⁵ UN Charter, Article 1(3).

or national or ethnic origin” is recognised as a flagrant violation of the purposes and principles of the Charter of the United Nations.³⁴⁶

100. Not only is Israel bound by the Charter of the United Nations but, when applying for admission to membership of the United States, Israel declared that it “unreservedly accept[ed] the obligations of the United Nations Charter and undertakes to honour them from the day when it becomes a Member of the United Nations”.³⁴⁷

B. LEGAL CONSEQUENCES

101. Israel’s policies and practices that violate international law cannot, as noted in **Section A**, give rise to any rights for Israel nor do they have any validity as a matter of international law. As such violations constitute serious breaches of peremptory norms, all States accordingly have duties not to recognise as lawful the situations arising from such conduct, not to render aid or assistance in the maintenance of those situations, and to cooperate in bringing those breaches to an end.³⁴⁸
102. Israel’s illegal presence in and exercise of control over the Palestinian territory, in flagrant violation of the Charter of the United Nations (discussed in **Section B**), also gives rise to legal consequences for Israel, other States and the United Nations.
103. In the *Namibia* Advisory Opinion, the Court found that South Africa was “under obligation to withdraw its administration from the Territory of Namibia”.³⁴⁹ In the present case, and as noted above, Israel is obliged to end its occupation and to extricate itself from the occupied territory. This requires Israel, consistently with the *Namibia* Advisory Opinion, physically to withdraw from East Jerusalem and the remainder of the West Bank, and to withdraw all legislative and regulatory acts, policies and practices that it has adopted that contribute to its exercise of control over the Palestinian territory,

³⁴⁶ *Namibia* Advisory Opinion, p. 57, para. 131.

³⁴⁷ See UNGA Resolution 273 (III), UN Doc. A/RES/273(III), 11 May 1949, preambular para. 5; Letter dated 29 November 1948 from Israel’s Foreign Minister to the Secretary-General concerning Israel’s Application for Admission to the United Nations and Declaration Accepting Obligations under the Charter, UN Doc. S/1093, 29 November 1948.

³⁴⁸ See paras. 83-84 above.

³⁴⁹ *Namibia* Advisory Opinion, p. 54, para. 118.

including Gaza.³⁵⁰ This includes the total dismantling of all land and sea-based policies, practices and measures that constitute the blockade of Gaza.

104. Other States are, first, under an “obligation to recognize the illegality” of Israel’s continued presence in and exertion of control over the Palestinian territory.³⁵¹ This goes beyond the obligation of non-recognition discussed above.³⁵² It requires States not only to abstain from recognising the legality of Israel’s presence and exertion of control, but also to positively recognise the illegality of that presence and control. Second, other States are also under an obligation “to refrain from lending any support or any form of assistance” to Israel with reference to its presence in and exertion of control over the Palestinian territory.³⁵³ In the *Namibia* Advisory Opinion, the Court elaborated on the types of conduct required of States. By analogy:

- (a) States are under an obligation to refrain from entering into treaty relations with Israel in cases where Israel purports to act concerning any part, or all, of the Palestinian territory.³⁵⁴
- (b) States must abstain from invoking or applying existing bilateral treaties with Israel, which Israel has concluded concerning the Palestinian territory.³⁵⁵
- (c) States are under an obligation to abstain from sending diplomatic or special missions to Israel where such missions include the Palestinian territory within their jurisdiction (including East Jerusalem).³⁵⁶

³⁵⁰ While Israel’s initial occupation of the Palestinian territory resulted from a use of force against Egypt and Jordan, it is the State of Palestine to which the territory reverts. As explained above, when the territory was occupied by Egypt and Jordan in 1948, and by Israel in 1967, sovereignty over the territory was in abeyance. But that sovereignty revived and vested in Palestine when it became a State. See para. 46 above.

³⁵¹ *Namibia* Advisory Opinion, p. 54, para. 119.

³⁵² See para. 83 above.

³⁵³ *Namibia* Advisory Opinion, p. 54, para. 119. See also para. 83 above, discussing the obligation of non-assistance.

³⁵⁴ *Namibia* Advisory Opinion, p. 55, para. 122.

³⁵⁵ *Namibia* Advisory Opinion, p. 55, para. 122.

³⁵⁶ *Namibia* Advisory Opinion, p. 55, para. 123.

- (d) States should make it clear to the Israeli authorities that the maintenance of diplomatic or consular relations with Israel does not imply any recognition of its authority with regard to the Palestinian territory.³⁵⁷
- (e) States are obliged to abstain from entering into economic and other forms of relationship with Israel or dealings with Israel concerning the Palestinian territory (or resources extracted or to be extracted from it) which may entrench Israel's authority over that territory.³⁵⁸
105. The United Nations, especially the General Assembly and the Security Council, should consider what further action is required to bring Israel's illegal presence to an end,³⁵⁹ conscious that existing measures have so far failed to bring that presence to an end and to secure the rights of the Palestinian people. Belize, in particular, urges these bodies to take urgent action to bring about an immediate, complete and unconditional cessation of Israeli policies and practices in and which constitute an assertion of authority over Palestinian people and the Palestinian territory, such measures being illegal and having no validity in international law. Belize furthermore urges the General Assembly to have particular regard to the "inalienable, permanent and unqualified right of the Palestinian people to self-determination"³⁶⁰ in respect of the entirety of their territory, a matter with respect to which the General Assembly has particular responsibilities.³⁶¹

³⁵⁷ *Namibia* Advisory Opinion, p. 55, para. 123.

³⁵⁸ *Namibia* Advisory Opinion, pp. 55-56, para. 124.

³⁵⁹ See also *Wall* Advisory Opinion, p. 200, para. 160 and p. 202, para. 163(3)(E).

³⁶⁰ A/HRC/RES/52/34 (2023), para. 1.

³⁶¹ *Chagos* Advisory Opinion, p. 131, para. 146 and p. 139, paras. 179-180 (the latter quoting the Friendly Relations Declaration).

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