

**INTERNATIONAL COURT OF JUSTICE**

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

**(REQUEST FOR ADVISORY OPINION)**

**Written Statement of the Republic of Mauritius**

**25 July 2023**

## INTRODUCTION

1. Pursuant to the Order of the Court dated 3 February 2023 in the proceedings concerning *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, the Republic of Mauritius submits this written submission which addresses certain aspects of the issues which have been referred to the Court by the General Assembly in resolution 77/247 of 30 December 2022.
2. The General Assembly has asked the Court to render an advisory opinion on the following questions:
  - “(a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?”
  - (b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?”
3. Mauritius’s submission focuses on “the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination” and, in particular, how the ongoing violation of that right affects the legal status of Israel’s occupation of the Palestinian territory occupied since 1967 (“OPT”) and the legal obligations of all States in relation to this.
4. This submission contains three parts. Part A addresses the right to self-determination in international law. Part B addresses Israel’s violation of that right in the context of its occupation of the OPT. Part C then addresses the legal consequences which arise from that ongoing violation.
5. Prior thereto, Mauritius expresses its confidence that the Court will issue the Advisory Opinion that the General Assembly has requested. Resolution 77/247 asks the Court to pronounce on questions of an eminently legal nature; and the questions plainly concern matters relating to the subject of Palestine on which the General Assembly in particular, and the United Nations as a whole, have exercised a special, enduring and ongoing responsibility since at least 1947, and upon which guidance from the Court is essential to both compliance with the rule of law and to international peace and security. There is thus no reason, let alone a compelling one, for the Court to decline to exercise its advisory jurisdiction.

## A. The Right to Self-Determination in International Law

6. In its 1950 advisory opinion concerning the *International Status of South West Africa*, the Court explained that, in the establishment of the mandate system, “two principles were considered to be of paramount importance: the principle of non-annexation and the principle that the well-being and development of such peoples form ‘a sacred trust of civilization’”.<sup>1</sup> In its subsequent 1970 advisory opinion on *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)* (“*Namibia Opinion*”) the Court explained that: “the ultimate objective” of the latter principle (i.e. the principle of “sacred trust”) was “the self-determination and independence of the peoples concerned”.<sup>2</sup>
7. Thus, from an early stage in the Court’s case law two core principles were identified: a State must not annex (or otherwise seek to appropriate) any part of the territory of a mandate and it must respect the self-determination of the people of that territory. These principles are closely linked: annexation of territory is incompatible with the right to self-determination of the people within that territory. The close connection between these principles is reflected in resolution 2649 (XXV), adopted by the General Assembly in November 1970, which states that: “the acquisition and retention of territory in contravention of the right of the people of that territory to self-determination is inadmissible and a gross violation of the Charter”.<sup>3</sup>
8. In its 1995 Judgment in the *East Timor* case, the Court described as “irreproachable” the submission that “the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an erga omnes character”. The Court added that the right to self-determination “is one of the essential principles of contemporary international law”.<sup>4</sup>
9. Twenty-four years later, in its advisory opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (“*Chagos Opinion*”), the Court once again confirmed that the right to self-determination is “a fundamental human right”.<sup>5</sup> In considering the application of that fundamental right in the context of decolonization, the Court once again highlighted the connection between respect for territorial integrity and the right to self-determination, referring to “the customary law character of the right to territorial integrity of a non-self-governing territory as a corollary of the right to self-determination”, and stressing that, “States have consistently

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<sup>1</sup> *International status of South-West Africa, Advisory Opinion, I.C.J. Reports 1950*, p. 131.

<sup>2</sup> *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*, p. 31, para. 53.

<sup>3</sup> General Assembly resolution 2649 (XXV), 30 November 1970.

<sup>4</sup> *East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995*, p. 102, para. 29.

<sup>5</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 131, para. 144.

emphasized that respect for the territorial integrity of a non-self-governing territory is a key element of the exercise of the right to self-determination under international law”.<sup>6</sup>

10. The profound importance of the right to self-determination is a recurring theme in the Court’s jurisprudence. In her concurring Declaration in the *Chagos* Opinion, Vice-President Xue stressed “[t]he paramount importance of the principle of self-determination” which “is reflected in its *erga omnes* character”, and which confers not only a right to self-determination “but also imposes an obligation on all States to see to it that this right is fully respected”.<sup>7</sup> Similarly, in their joint concurring Declaration Judges Cançado Trindade and Robinson described how the General Assembly had “emphasiz[ed] over the years the fundamental right of peoples to attain freedom and independence as a cardinal rule of international law”.<sup>8</sup> They added that General Assembly resolution 1514, adopted in 1960, was a “landmark” which constituted “an affirmation of the right to self-determination as a universally applicable norm from which there can thus be no derogation”.<sup>9</sup>
11. As that joint Declaration affirms, as well as constituting a rule of customary international law of *erga omnes* character, there is no doubt that the right of self-determination is a peremptory norm of international law. This is reflected, amongst other things, by the ILC’s Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*Jus Cogens*), which identify the right to self-determination as a norm of *jus cogens* character.<sup>10</sup>

## **B. Israel’s Ongoing Violation of the Palestinian People’s Right to Self-Determination**

12. The right of the Palestinian people to self-determination has been recognized by the General Assembly and the Court:
  - More than 50 years ago, in 1970, the General Assembly adopted resolution 2649 (XXV) on “The importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights”. After “[e]mphasizing the importance of the universal realization of the right of peoples to

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<sup>6</sup> *Chagos* Opinion, p. 134, para. 160.

<sup>7</sup> *Chagos* Opinion, p. 146, para. 19 (Declaration of Vice-President Xue).

<sup>8</sup> *Chagos* Opinion, p. 259, para. 6 (Joint Declaration of Judges Cançado Trindade and Robinson).

<sup>9</sup> *Chagos* Opinion, p. 258, para. 2 (Joint Declaration of Judges Cançado Trindade and Robinson).

<sup>10</sup> See *Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens)*, Report of the International Law Commission, 73<sup>rd</sup> Sess., A/77/10, para. 44. As long ago as 1980, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities observed that: “In present-day legal theory the idea that self-determination is a case of *jus cogens* is widely supported” (*The Right to Self-Determination, Implementation of United Nations Resolutions*, Study prepared by Héctor Gros Espiell, Special Rapporteur on Prevention of Discrimination and Protection of Minorities (1980), E/CN.4/Sub.2/405/Rev.1, p. 12, para 78).

self-determination”, the resolution “Condemn[ed] those Governments that deny the right to self-determination of peoples recognized as being entitled to it, *especially of the peoples of ... Palestine*”.<sup>11</sup>

- In 1981 the General Assembly adopted resolution 36/120D which “*Reaffirm[ed]* the inalienable rights in Palestine of the Palestinian people, including: (a) The right to self-determination without external interference, and to national independence and sovereignty”.<sup>12</sup>
- In 1994, the General Assembly adopted resolution 49/149 on “The right of the Palestinian people to self-determination”. This “*Reaffirm[ed]* the right of the Palestinian people to self-determination” and “*Urge[d]* all States, specialized agencies and organizations of the United Nations to continue to support the Palestinian people in their quest for self-determination”.<sup>13</sup>
- Similarly worded resolutions were adopted in the following years. In 2003, for example, the General Assembly adopted resolution 58/163 concerning “The right of the Palestinian people to self-determination”. The resolution both “*Reaffirm[ed]* the right of the Palestinian people to self-determination, including the right to their independent State of Palestine” and also “*Urge[d]* all States and the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their right to self-determination”.<sup>14</sup>
- In the *Wall* Opinion in 2004, the Court observed that the rights of the Palestinian people “include the right to self-determination, as the General Assembly has ... recognized on a number of occasions”.<sup>15</sup> The Court held that “Israel is bound to comply with its obligation to respect the right of the Palestinian people to self-determination”.<sup>16</sup>
- On 15 December 2022, the General Assembly adopted resolution 77/208 on “The right of the Palestinian people to self-determination”. This recalled the *Wall* Opinion, “noting in particular the reply of the Court, including on the right of peoples to self-determination, which is a right *erga omnes*”. The resolution “*Stress[ed]*” both “the urgency of achieving without delay an end to the Israeli occupation that began in 1967” and “the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem”. The resolution therefore once again “*Reaffirm[ed]* the

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<sup>11</sup> General Assembly resolution 2649 (XXV), 30 November 1970 (emphasis added).

<sup>12</sup> General Assembly resolution 36/120D, 10 December 1981.

<sup>13</sup> General Assembly resolution 49/149, 23 December 1994.

<sup>14</sup> General Assembly resolution 58/163, 22 December 2003.

<sup>15</sup> *Wall* Opinion, p. 183, para. 118.

<sup>16</sup> *Ibid.*, p. 197, para. 149.

right of the Palestinian people to self-determination, including the right to their independent State of Palestine” and once more “*Urge[d]* all States and the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their right to self-determination”.<sup>17</sup>

13. It is widely recognised that Israel is engaged in an “ongoing violation” of the right to self-determination of the Palestinian people. This is expressly reflected in the wording of resolution 77/247. It is also reflected in the *Wall* Opinion, in which the Court held that Israel’s construction of the Wall in the OPT “*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”.<sup>18</sup>
14. The Court’s finding in 2004 that Israel was “severely imped[ing]” the right to self-determination of the Palestinian people was based upon an assessment of the evidence concerning one specific factual facet of the occupation, namely the construction of the Wall to the east of the Green Line. The Court was not called upon to consider the impact of Israel’s formal annexation of Jerusalem, or the array of other ways in which it had purported to extend its sovereignty throughout the West Bank, on the right of the Palestinian people to self-determination. The Wall and its associated regime were sufficient in themselves however to constitute, in the views of the Court, a “severe[] imped[iment]” to the exercise that right. Had the Court been called upon to assess the position from a wider standpoint encompassing the whole of the occupation, then it is highly probable that it would have found innumerable further “severe[] imped[iments]” which collectively negate entirely the ability of the Palestinian people to exercise their right to self-determination.
15. The factual situation has developed further in the two decades since the *Wall* Opinion. Instead of complying with the Court’s demand that Israel desist from further construction and dismantle the parts of the Wall it had constructed, it is regrettable that Israel appears to have done the opposite, adding significantly to the barrier.<sup>19</sup> Rather than respecting the Court’s unequivocal conclusions regarding the settlements it had constructed throughout East Jerusalem and the West Bank, Israel appears to have established scores more settlements and implanted hundreds of thousands more Israeli settlers.<sup>20</sup> As a result, Israel’s domination of the OPT and its population is even deeper and more extensive than it was at the date of the *Wall* Opinion.

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<sup>17</sup> General Assembly resolution 77/208, 15 December 2022.

<sup>18</sup> *Wall* Opinion, p. 184, para. 122 (emphasis added).

<sup>19</sup> The *Wall* Opinion explains that, according to the Written Statement of the Secretary-General, “As at 25 January 2004...some 190 kilometres of construction had been completed” (see *Wall* Opinion, p. 169, para. 81). According to the United Nations, however, by 2021 Israel had constructed more than 65% (circa 462km) of the total planned length of 712km (see <https://www.un.org/unispal/in-facts-and-figures/>).

<sup>20</sup> For example, data published by the organisation Peace Now demonstrate that at the date of the *Wall* Opinion there were approximately 244,000 Israeli settlers in the West Bank. By 2021, the settler population of the West

16. Reports produced by various UN bodies have assembled compelling evidence that Israel has sought to annex large parts of the OPT and, in so doing, has violated the right to self-determination of the Palestinian people. To give just two recent examples:
- The UN's Independent International Commission of Inquiry, for example, concluded in September 2022 that Israel's occupation of the OPT is "unlawful under international law owing to its permanence and to actions undertaken by Israel to annex parts of the land *de facto* and *de jure*". The Commission of Inquiry further found that Israel had engaged in "evictions, deportations and the forcible transfer of Palestinians within the West Bank, the expropriation, looting, plundering and exploitation of land and vital natural resources, movement restrictions and the maintenance of a coercive environment with the aim of fragmenting Palestinian society, encouraging the departure of Palestinians from certain areas and *ensuring that they are incapable of fulfilling their right to self-determination*".<sup>21</sup> The Commission also found that Israel had been constructing new settlements which "further reduces the likelihood of ending the occupation and violates the right of Palestinians to self-determination".<sup>22</sup>
  - In the same month, the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 published a detailed report which concluded that "the imposition of settlers, settlements and settlement infrastructure in the topography and space of Palestinians has served *to prevent the realization of Palestinians' right to self-determination*, violating a number of peremptory norms of international law, absolutely prohibited under international law". The Special Rapporteur found that the evidence establishes that "the occupation is not merely belligerent, but is settler-colonial in nature" and that "Israel *has prevented the realization of Palestinian people's right to self-determination, violating each component of that right*, wilfully pursuing the 'de-Palestinianization' of the occupied territory". The Special Rapporteur stressed that, "the denial of the Palestinian people's self-determination" is both an "intentional and inherent" feature of the occupation of the OPT.<sup>23</sup>
17. Israel's occupation of the OPT, which began in 1967, has continued for more than half a century. This enduring occupation, and the ensuing denial of the Palestinian people's right to self-determination, stands in sharp contrast to the general trend that has prevailed since the 1960s. As the Court noted in the *Chagos* Opinion, "the decolonization process accelerated in 1960, with 18 countries ... gaining independence.

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Bank had increased to more than 465,000 – almost double the number at the date of the Wall Opinion. See <https://peacenow.org.il/en/settlements-watch/settlements-data/population>.

<sup>21</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, pp. 24-25, paras. 75 and 77 (emphasis added).

<sup>22</sup> *Ibid.*, p. 6, para. 15.

<sup>23</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 21 September 2022, A/77/356, paras 35-36, 76 (emphasis added).

During the 1960s, the peoples of an additional 28 non-self-governing territories exercised their right to self-determination and achieved independence.”<sup>24</sup> Indeed, whereas “in 1960 one-third or more of the world’s population lived under colonial domination”, by 2019 “the General Assembly ha[d] effected through its resolutions and their implementation an almost complete decolonization around the world”.<sup>25</sup> Yet, the decades between 1967 and the present have been characterized by increased incursions into the OPT, the implantation of hundreds of Israeli settlements and hundreds of thousands of Israeli settlers – in what amounts to the colonization of Palestinian territory by Israel – and the denial of Palestinian people’s right to self-determination throughout their own ancestral homeland.

### **C. The Legal Consequences of Israel’s Ongoing Violation of the Palestinian People’s Right to Self-Determination**

18. The Court’s earlier findings in the *Namibia* Opinion, the *Chagos* Opinion and the *Wall* Opinion demonstrate that whether a State is a Colonial Power, or a Mandatory Power, or an Occupying Power, if it remains in control of territory in violation of the rules on decolonization or other applicable rules of international law – especially in regard to the non-acquisition of territory – then its continued presence in and administration of the territory are illegal; they are international wrongs of an ongoing character; and they must be brought to an end as rapidly as possible in order for the people of the territory to enjoy their right of self-determination.
19. In the *Namibia* Opinion, in response to the question, “What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)?”, the Court’s answer was clear:

“the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory”

and:

“States Members of the United Nations are under obligation to recognize the illegality of South Africa’s presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of, or lending support or assistance to, such presence and administration”<sup>26</sup>

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<sup>24</sup> *Chagos* Opinion, p. 132, para. 150.

<sup>25</sup> *Chagos* Opinion, pp. 258-259, paras. 2 and 6 (Joint Declaration of Judges Cançado Trindade and Robinson).

<sup>26</sup> *Namibia* Opinion, p. 58, para. 133.



20. In the *Chagos* Opinion, the Court’s answer to the question “What are the consequences under international law ... arising from the continued administration by the United Kingdom of Great Britain and Northern Ireland of the Chagos Archipelago ...?” was equally clear:

“the process of decolonization of Mauritius was not lawfully completed when that country acceded to independence in 1968, following the separation of the Chagos Archipelago”

and therefore:

“the United Kingdom has an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible, and...all Member States must co-operate with the United Nations to complete the decolonization of Mauritius.”<sup>27</sup>

21. As noted above, in the *Wall* Opinion, the Court held that the construction of the Wall violated the right to self-determination of the Palestinian people. The Court held that the legal consequences of this violation included a duty on Israel “to terminate its breaches of international law”, including by ceasing constructing the Wall, dismantling what had already been constructed, and by “repeal[ing] or render[ing] ineffective forthwith” “[a]ll legislative and regulatory acts adopted with a view to its construction and to the establishment of its associated regime”.<sup>28</sup> The Court further held that all States had “an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction”.<sup>29</sup> In particular:

“It is [ ] for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end.”<sup>30</sup>

22. For the reasons summarized above, there is ample evidence to support the conclusion that Israel’s occupation of the OPT – including through its illegal annexation of Palestinian territory – is an enduring and comprehensive “impediment to the exercise by the Palestinian people of its right to self-determination”. Accordingly, Israel is under an obligation to immediately end its occupation of the OPT and “It is for all States ... to see to it” that the occupation “is brought to an end” without delay.

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<sup>27</sup> *Chagos* Opinion, pp. 139-140, paras. 182-183.


<sup>28</sup> *Wall* Opinion, pp. 198 and 201-202, paras. 151 and 163D.

<sup>29</sup> *Wall* Opinion, p. 201, para. 163D.

<sup>30</sup> *Wall* Opinion, p. 200, para. 159.

## CONCLUSION

23. For the reasons set forth in this submission, Mauritius submits that the Court should render an advisory opinion determining that:
- a. Through its illegal occupation of the OPT, Israel has violated, and is continuing to violate, the right of the Palestinian people to self-determination.
  - b. Israel is required to cease – immediately, completely and irreversibly – its occupation of the OPT.
  - c. All States have a duty to ensure that Israel complies with its obligation to respect the right of self-determination of the Palestinian people, and its concomitant obligation to end its unlawful occupation of the OPT.



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**25 July 2023**