

INTERNATIONAL COURT OF JUSTICE

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

(REQUEST FOR AN ADVISORY OPINION)

**WRITTEN STATEMENT
OF MALAYSIA**

25 JULY 2023

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WRITTEN STATEMENT OF MALAYSIA

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I. INTRODUCTION

1. Malaysia submits this written statement in accordance with the Order of the Court of 3 February 2023 in response to the United Nations General Assembly's request for an Advisory Opinion contained in Resolution 77/247 of 30 December 2022.¹
2. In Resolution 77/247, the General Assembly requested an Advisory Opinion in the following terms:

“The General Assembly,

...

18. Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following questions, considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004:

- (a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?*
- (b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?”²*

3. This written statement focuses on one, central issue arising from the request – the ongoing breach by Israel of the right of the Palestinian people to self-determination and the legal consequences arising from that breach. In this respect, Malaysia submits that Israel's occupation as a whole, as well as Israel's policies and practices therein, violate the right to self-determination in international law. We respectfully ask the Court to make such a determination, and to set out the legal consequences that follow.
4. Malaysia submits this written statement for the following reasons:
 - a. First, it is Malaysia's view that the international legal framework governing the right to self-determination, and in particular the legal consequences *for all States* that follow from Israel's breach of the right, would benefit from clarification by the Court.
 - b. Second, Malaysia wishes to highlight the exceptional importance of the right to self-determination within the international legal order. This is demonstrated by its status as

¹ UNGA Res 77/247, 30 December 2022, A/Res/77/247.

² UNGA Res 77/247, 30 December 2022, A/Res/77/247, para. 18.

a peremptory norm, the reference to it in the Charter of the United Nations,³ and, as the Court put it in the *Case concerning East Timor*, its position as ‘one of the essential principles of contemporary international law.’⁴ Informed by its own experience of colonial rule, Malaysia is dedicated to ensuring that all peoples are able to realise their right to self-determination. This history has also informed Malaysia’s deep participation in the Non-Aligned Movement, which has long supported national liberation movements working towards the realisation of the right to self-determination. In this light, Malaysia is particularly concerned by Israel’s egregious violations of the right in the Occupied Palestinian Territory.

- c. Third, Malaysia has a strong foreign policy commitment to a just, comprehensive and lasting peace in the Middle East and the end of the Israeli occupation in Palestine. This commitment motivated Malaysia’s involvement as an additional sponsor to draft Resolution 77/247 in the General Assembly.⁵ Previously, Malaysia was also a co-sponsor of Security Council Resolution 2334 of 2016,⁶ which reaffirmed the unlawfulness under international law of Israeli settlements in the Occupied Palestinian Territory and called for the immediate cessation of settlement activities, as well as General Assembly Resolution ES-10/14⁷ requesting the *Wall Advisory Opinion*.⁸ As Malaysia stated in the plenary on Resolution 2334, it considers that the international community must take action to ‘reinforce the fact that the two-State solution is not merely an empty slogan’.⁹ Malaysia also continues to believe in the critical role of the Court in providing an independent and impartial pronouncement on the legal consequences arising from Israel’s actions in the Occupied Palestinian Territory.¹⁰
5. It is in the light of these considerations that Malaysia voted in favour of Resolution 77/247 in the General Assembly,¹¹ which included the General Assembly’s request for an Advisory Opinion. In this written statement, Malaysia reiterates its support for the General Assembly’s request and presents its views on the legal questions arising from it.
 6. This written statement is structured as follows:
 - a. Section II addresses the jurisdiction of the Court. It is Malaysia’s position that the Court has jurisdiction to issue this Advisory Opinion because the General Assembly is competent to request Advisory Opinions and has duly made such a request, which concerns a legal question.
 - b. Section III considers whether there are any ‘compelling reasons’ why the Court should decline to give an Advisory Opinion in this matter. Malaysia submits that no such reasons are present. In particular, this request does not concern a purely bilateral matter

³ Article 1(2), Charter of the United Nations, 1 UNTS XVI (1945).

⁴ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 90, at p. 102, para. 29.

⁵ UNGA Res 77/247, 30 December 2022, A/Res/77/247.

⁶ UNSC Res 2334 (2016), 23 December 2016, S/Res/2334(2016).

⁷ UNGA Res ES-10/14, 8 December 2003, A/Res/ES-10/14.

⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136.

⁹ UNSC, Seventy-first year, 7853rd meeting, 23 December 2016, S/PV.7843, p. 3 - <https://press.un.org/en/2016/sc12657.doc.htm>.

¹⁰ See UNGA, Emergency Special Session, 23rd meeting, 8 December 2003, A/ES-10/PV.23, p. 12.

¹¹ UNGA Res 77/247, 30 December 2022, A/Res/77/247.

between Israel and Palestine; the Court will have all the factual information necessary to give an Advisory Opinion; the right to self-determination of the Palestinian people is central to the functions and work of the General Assembly; and the request is of urgent contemporary relevance owing to the recent escalation of unlawful practices by Israel.

- c. Section IV outlines the principle of self-determination in international law. Sub-section A sets out the legal basis of the right in international law. Sub-section B notes the core aspect of self-determination as the right of the people to freely determine their political status, and then draws out four central, substantive elements encompassed within the right:
 - i. The right of the people to territorial integrity;
 - ii. The right of the people to national unity and the protection of their integrity as a people;
 - iii. The right of the people to permanent sovereignty over their natural wealth and resources; and
 - iv. The right of the people to freely pursue their economic, social and cultural development.

Finally, sub-section C discusses the right's status as a peremptory norm of general international law and its character as giving rise to an obligation owed *erga omnes*.

- d. Section V assesses Israel's treatment of the Palestinian people in relation to the right to self-determination. Malaysia submits that Israel's policies and practices in the Occupied Palestinian Territory breach each of the central, substantive elements of the right set out in Section IV. Malaysia also submits that the occupation as a whole is unlawful. The continued administration by Israel of the Occupied Palestinian Territory is preventing the Palestinian people from freely determining their political status. As such, the occupation, as a whole, breaches the right of the Palestinian people to self-determination.
- e. Section VI outlines the legal consequences arising from this conclusion for Israel and for all other States.
- f. Section VII summarizes Malaysia's submissions.

- 7. Malaysia reserves its right to make further submissions on other questions entailed by the request at a later stage.

II. THE JURISDICTION OF THE COURT

- 8. Malaysia submits that the Court has jurisdiction to issue this Advisory Opinion. The General Assembly is competent to make the request, and the request concerns a set of legal questions.

A. *The General Assembly is Competent to Make the Request*

- 9. Article 65(1) of the Statute of the Court provides:

“The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.”

- 10. Article 96(1) of the Charter of the United Nations provides:

“The General Assembly ... may request the International Court of Justice to give an advisory opinion on any legal question.”

11. Article 96(1) of the Charter of the United Nations accordingly authorizes the General Assembly to make a request within the meaning of Article 65(1) of the Statute of the Court.
12. The General Assembly has made such a request in this case. On 30 December 2022, the General Assembly adopted Resolution 77/247.¹² The Resolution was passed by 86 votes to 26, with 53 abstentions. It was accordingly adopted by a majority of Member States present and voting in accordance with the General Assembly’s Rules of Procedure.¹³ The request was subsequently transmitted to the Court in accordance with Article 65(2) of the Statute of the Court.¹⁴

B. The Request Concerns a Legal Question

13. The request is for an opinion on a ‘legal question’ – or a set of legal questions – as required by Article 96(1) of the Charter and Article 65(1) of the Statute of the Court. The Court has found that questions ‘framed in terms of law and rais[ing] problems of international law ... are by their very nature susceptible of a reply based on law ... [and] appear ... to be questions of a legal character.’¹⁵ Resolution 77/247 requests the Court to consider the rules and principles of international law in order to assess the legal consequences of a set of listed policies and practices by the State of Israel in the Occupied Palestinian Territory and their effect on the legal status of the occupation. These questions are framed in legal terms, raise issues of international law, and ask the Court to determine the legal consequences arising from a set of circumstances.
14. This conclusion is not altered by the fact that the issues raised by the request in Resolution 77/247 also have political salience. The Court has been clear that ‘the fact that a question has political aspects does not suffice to deprive it of its character as a legal question.’¹⁶ Moreover, the Court has also held that ‘the political nature of the motives which may be said to have inspired the request and the political implications that the opinion given might have are of no relevance in the establishment of its jurisdiction to give such an opinion.’¹⁷

III. NO COMPELLING REASONS TO REFUSE GIVING AN ADVISORY OPINION

15. The Court has interpreted Article 65(1) of the Statute of the Court as containing a discretionary power to decline to give an Advisory Opinion even where the conditions therein are met.¹⁸ However, the Court has never declined to give an Opinion in practice and has held consistently that it would only do so for ‘compelling reasons.’¹⁹

¹² UNGA Res 77/247, 30 December 2022, A/Res/77/247.

¹³ UNGA, Rules of Procedure.

¹⁴ Order of the Court, 3 February 2023.

¹⁵ *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p.12, at p. 18, para. 15; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p.226, at p. 234, para. 13.

¹⁶ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 403, p. 415, para. 27.

¹⁷ *Nuclear Weapons Advisory Opinion*, p. 234, para. 13; *Chagos Advisory Opinion*.

¹⁸ *Nuclear Weapons Advisory Opinion*, p. 234-235, para. 14; *Wall Advisory Opinion*, p. 156, para. 44; *Kosovo Advisory Opinion*, pp. 415-416, para. 29; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, at p. 113, para. 63.

¹⁹ *Wall Advisory Opinion*, p. 156, para. 44; *Kosovo Advisory Opinion*, p. 416, para. 30; *Chagos Advisory Opinion*, p. 113, para. 65.

16. In the present case, there are no compelling reasons which would demand that the Court should exercise its discretion to refuse to issue an Advisory Opinion.

A. *This Is Not a Purely Bilateral Matter Between Israel and Palestine*

17. First, Israel's lack of specific consent does not render the provision of an Advisory Opinion improper. Although the lack of consent of an interested State may bear on the propriety of giving an opinion in 'certain circumstances',²⁰ this is restricted to requests which 'would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent.'²¹ In this respect, the Court has in the past issued Advisory Opinions that relate to existing disputes between specific States.²² Notably, Israel argued in the *Wall Advisory Opinion* that the Court should decline to give an Opinion because the subject matter of the General Assembly's question was 'an integral part' of an Israeli-Palestinian dispute.²³ The Court rejected this argument, holding that the construction of a wall was not a purely bilateral matter but was 'directly of concern to the United Nations' because it related to issues of international peace and security.²⁴

18. In the present proceedings, the subject matter of the request similarly concerns areas of the General Assembly's competence. As the Court noted in the *Wall Advisory Opinion*,²⁵ the General Assembly has affirmed that the United Nations has 'a permanent responsibility towards the question of Palestine until the question is resolved in all aspects in a satisfactory manner in accordance with international legitimacy.'²⁶ The competence of the General Assembly in this area is related to its special historic responsibility in relation to Palestine as a result of the Mandate and Partition Resolution of 1947.²⁷ Obtaining an Advisory Opinion from the Court would accordingly assist the General Assembly in exercising its functions in discharging its special responsibility on this question.

B. *The Necessary Factual Information Will Be Before the Court*

19. Second, the Court will have all the factual information necessary to give the Opinion. The United Nations Secretariat has provided the Court with a dossier of relevant United Nations documents since the start of the occupation in 1967 through to today. This includes resolutions and documents of United Nations organs, and an extensive set of reports, including on factual questions.²⁸ As is commonplace in relation to Advisory Opinions raising complex factual issues,²⁹ the Court will also almost certainly receive a significant volume of additional written material and oral submission in the course of the present proceedings. There are accordingly no practical impediments to the Court in exercising its advisory jurisdiction in response to this request.

²⁰ See *Western Sahara Advisory Opinion*, pp. 24-25, paras. 32-33.

²¹ *Western Sahara Advisory Opinion*, p. 25, para. 33; *Chagos Advisory Opinion*, p. 117, para. 85.

²² For instance, *Interpretation of Peace Treaties, Advisory Opinion*, I.C.J. Reports 1950, p. 65; *Western Sahara Advisory Opinion*; *Chagos Advisory Opinion*.

²³ *Wall Advisory Opinion*, p. 157, para. 46.

²⁴ *Wall Advisory Opinion*, pp. 158-159, para. 49.

²⁵ *Wall Advisory Opinion*, pp. 158-159, para. 49.

²⁶ UNGA Res 57/107, 3 December 2002, A/Res/57/107, preamble para. 4.

²⁷ UNGA Res 181(II), 29 November 1947, A/Res/181(II).

²⁸ United Nations Secretariat, Introductory Note in relation to the Palestine Advisory Proceedings – Part I, 31 May 2023, para. 5.

²⁹ See similarly *Chagos Advisory Opinion*, p. 114-115, para. 73; *Wall Advisory Opinion*, p. 161-162, para. 57.

C. The Importance of Self-Determination

20. Third, there are compelling reasons *in favour of* issuing an advisory opinion. As noted above, the United Nations, and the General Assembly particularly, have a special responsibility in respect of the Palestinian territory and people. Moreover, the right of all peoples to self-determination has long been a central focus of the work of the General Assembly. The Assembly has been concerned with the self-determination of the Palestinian people at least since Resolution 2649 (XXV) of 1970.³⁰ The General Assembly has reaffirmed the right repeatedly,³¹ and most recently in Resolution 77/208 of 15 December 2022.³²

D. The Urgency and Contemporary Relevance of the Request

21. Finally, the questions contained in the request have a particular urgency and relevance in the light of the recent escalation of Israel's practices of settlement in the Occupied Palestinian Territory, as well as its continued implementation of legislation and measures discriminating against the Palestinian people. These practices are detailed in recent United Nations reports, including those of the Independent International Commission of Inquiry,³³ established by the Human Rights Council in May 2021.³⁴ Given that the Court's function is to give opinions on issues that are 'relevant and have a practical and contemporary effect',³⁵ this context renders this matter particularly appropriate for determination by the Court.

E. Conclusion – There Are No Compelling Reasons to Refuse to Issue This Advisory Opinion

22. Having regard to all of these considerations, Malaysia accordingly submits that the Court has jurisdiction in this case and there are no 'compelling reasons' why it should refuse to issue this Advisory Opinion.

IV. THE RIGHT TO SELF-DETERMINATION IN INTERNATIONAL LAW

23. This section addresses the right to self-determination in international law. Section A considers the legal basis of the right in international law. Section B sets out the key elements encompassed within the right. Section C discusses the right's status as a peremptory norm of general international law and its character as giving rise to an obligation owed *erga omnes*.

A. The Legal Basis of Self-Determination in International Law

24. There is universal agreement in the international community that the right to self-determination is protected by international law. As set out in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations of 1970:

³⁰ UNGA Res 2649 (XXV), 30 November 1970, A/Res/2649, para. 5.

³¹ See e.g. UNGA Res 3236 (XXIX), 22 November 1974, A/Res/3236 (XXIX); UNGA Res 55/87, 21 February 2001, A/Res/55/87.

³² UNGA Res 77/208, 15 December 2022, A/Res/77/208.

³³ Independent International Commission of Inquiry Report, 14 September 2022, A/77/328; Independent International Commission of Inquiry Report, 9 May 2023, A/HRC/53/22.

³⁴ HRC, Resolution S-30-1, 27 May 2021, A/HRC/Res/S-30/1.

³⁵ *Western Sahara Advisory Opinion*, p. 37, para. 73.

*By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.*³⁶

25. Judgments and opinions of the Court have also played an important role in the recognition and delineation of the right to self-determination. As noted previously, in the *Case concerning East Timor* the Court described it as ‘one of the essential principles of contemporary international law.’³⁷ In the *Wall Advisory Opinion*, the Court noted that:

*[T]he principle of self-determination of peoples has been enshrined in the United Nations Charter and reaffirmed by the General Assembly in resolution 2625 (XXV) cited above, pursuant to which ‘Every State has the duty to refrain from any forcible action which deprives peoples referred to [in that resolution] . . . of their right to self-determination.’ Article 1 common to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights reaffirms the right of all peoples to self-determination, and lays upon the States parties the obligation to promote the realization of that right and to respect it, in conformity with the provisions of the United Nations Charter.*³⁸

26. Finally, the *Chagos Advisory Opinion* further confirmed the customary status of the right to self-determination.³⁹

B. Central Elements of the Right to Self-Determination

27. As set out above, self-determination entails that ‘all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development.’⁴⁰ At the heart of the right is thus the people’s free choice of their political status. Drawn out further, there are four central, substantive elements of the right. The breach of any of these elements is in and of itself a breach of the right to self-determination.

28. First, the right to self-determination entails the right of the people to territorial integrity. UNGA Resolution 1514 declared 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.’⁴¹ In the *Chagos Advisory Opinion*, the Court confirmed 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.’⁴² Annexation, as well as infringing the prohibition on the acquisition of territory by force,⁴³ will breach the right to self-

³⁶ UNGA Res 2625 (XXV), 24 October 1970, A/Res/2625 (XXV), Annex. See also UNGA Res 1514 (XV), 14 December 1960, A/Res/1514 (XV) and, most recently, UNGA Res 77/207, 15 December 2022, A/Res/77/207.

³⁷ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 90, at p. 102, para. 29.

³⁸ *Wall Advisory Opinion*, p. 171-172, para. 88.

³⁹ *Chagos Advisory Opinion*, pp. 131-135, paras. 144-161.

⁴⁰ UNGA Res 2625 (XXV), 24 October 1970, A/Res/2625 (XXV), Annex. See also UNGA Res 1514 (XV), 14 December 1960, A/Res/1514 (XV) and, most recently, UNGA Res 77/207, 15 December 2022, A/Res/77/207.

⁴¹ UNGA Res 1514, 14 December 1960, A/Res/1514, para. 6. See also UNGA Res 2625 (XXV), 24 October 1970, A/Res/2625, Annex.

⁴² *Chagos Advisory Opinion*, p. 134, para. 160.

⁴³ See most recently UNGA Res ES-11/1, 2 March 2022, A/Res/ES-11/1.

determination. The same is true of *de facto* annexation⁴⁴ – where a State’s actions on the ground indicate an intention to integrate the territory into its own sovereign territory. Finally, the obligation to respect territorial integrity is infringed where a State creates pockets of land or enclaves within the territory that are disconnected from each other.

29. Second, the right to self-determination entails the right of the people to national unity and the protection of their integrity as a people.⁴⁵ Measures aimed at changing the demographic composition of the territory infringe the right to self-determination, as do measures that create enclaves or fragment or fracture the people. In many instances, other rules of international law bolster this aspect of the right. For instance, international humanitarian law imposes obligations that restrict the transfer of people into,⁴⁶ and movement of people out of,⁴⁷ occupied territory. More widely, as the Court held in the *Wall Advisory Opinion*, other practices that contribute to ‘alterations to the demographic composition’ of a territory, including those that cause the departure of members of the people, breach the right to self-determination.⁴⁸
30. Third, the right to self-determination entails the right of the people to permanent sovereignty over their natural wealth and resources. Resolution 1314 of 1958 described such permanent sovereignty as a ‘basic constituent of the right to self-determination.’⁴⁹ Thereafter, foundationally, Resolution 1803, which was adopted by the General Assembly in 1962, declared that ‘[v]iolation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations.’⁵⁰ Resolution 1803 of 1962 was adopted by 87 votes to 2, with 12 abstentions.⁵¹ As the Court confirmed in the *Armed Activities* case, the principle of permanent sovereignty over natural resources is a principle of customary international law.⁵²
31. Fourth, the right to self-determination entails the right of the people to ‘freely pursue their economic, social and cultural development.’⁵³ The three forms of development are related, and their content may be understood, in part, with reference to the rights protected by general international law, as well as other widely ratified instruments of international law. Economic development is connected to permanent sovereignty over resources, but also extends far beyond

⁴⁴ See *Wall Advisory Opinion*, p. 184, para. 121.

⁴⁵ UNGA Res 1514, 14 December 1960, A/Res/1514, para. 6. See also UNGA Res 2625 (XXV), 24 October 1970, A/Res/2625, Annex.

⁴⁶ Article 49(6), Fourth Geneva Convention: ‘The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.’ As Pictet notes in the Commentary to the Fourth Geneva Convention, p. 283 – this rule is:

intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories. Such transfers worsened the economic situation of the native population and endangered their separate existence as a race.

⁴⁷ Article 49(1), Fourth Geneva Convention: ‘Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.’

⁴⁸ *Wall Advisory Opinion*, p. 184, para. 122.

⁴⁹ UNGA Res 1314 (XIII), 12 December 1958, UNGA/Res/1314(XIII), para. 1.

⁵⁰ UNGA Res 1803 (XVII), 14 December 1962, UNGA/Res/1803(XVII), para. 7.

⁵¹ United Nations Digital Library, Voting Records, UNGA/Res/1803(XVII).

⁵² *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 168, at p. 251, para. 244.

⁵³ UNGA Res 2625 (XXV), 24 October 1970, A/Res/2625 (XXV), Annex.

it to encompass work, trade, investment, and wider economic activity. Social development includes improvements in education, health, housing, subsistence, and environmental protection. Finally, cultural development extends to artistic, scientific, religious, and related practices and expressions of a community. This aspect of the right to self-determination protects a people's entitlement to collectively pursue its development in each of these three spheres.

C. The Peremptory Status and Erga Omnes Character of the Right to Self-Determination in International Law

32. Two other features of the right to self-determination in international law ought to be emphasized. These concern its peremptory status and character as a right whose protection is owed *erga omnes*.

33. To start with the peremptory status of the right to self-determination in international law, in its Commentary to the Articles on State Responsibility the International Law Commission listed as 'peremptory norms that are clearly accepted and recognized ... the prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination.'⁵⁴ Similarly, in his 4th Report to the International Law Commission, Professor Dire Tladi, the Special Rapporteur on Peremptory Norms of General International Law, noted that the 'right to self-determination is a classical norm of *jus cogens* whose peremptory status is virtually universally accepted.'⁵⁵ This is further confirmed by its inclusion in the list of norms annexed to the ILC's Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law, adopted by the ILC in 2022.⁵⁶ Finally, in the *Wall Advisory Opinion*, in relation to Israel's breach of the right to self-determination the Court applied the distinctive consequences, as set out in general international law, for serious breaches of peremptory norms.⁵⁷

34. As to self-determination's *erga omnes* character, in the *Case concerning East Timor* the Court found that the assertion 'that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable.'⁵⁸ Similarly, in the *Wall Advisory Opinion*, the Court included in the category of 'obligations *erga omnes* violated by Israel ... the right of the Palestinian people to self-determination...'⁵⁹ On this basis, States owe the obligation to respect the right to all States, and all States have a legal interest in its protection.⁶⁰

V. ISRAEL'S BREACH OF THE RIGHT TO SELF-DETERMINATION OF THE PALESTINIAN PEOPLE

35. The previous section set out the legal basis and character of the right to self-determination and drew out four of its central, substantive elements. This section assesses Israel's treatment of the Palestinian people in relation to the right.

⁵⁴ Commentary to Article 26, para. 5, ILC, Responsibility of States for Internationally Wrongful Acts, UNGA Res 56/83, 12 December 2001, A/RES/56/83, Annex (emphasis added).

⁵⁵ ILC, 'Fourth Report on Peremptory Norms of General International Law (*Jus Cogens*) by Dire Tladi, Special Rapporteur', 31 January 2019, A/CN.4.727, para. 108.

⁵⁶ Conclusion 23, Annex, ILC, 'Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*jus cogens*)', A/77/10 (2022).

⁵⁷ *Wall Advisory Opinion*, p. 200, para. 159.

⁵⁸ *East Timor*, p. 102, para. 29.

⁵⁹ *Wall Advisory Opinion*, p. 199, para. 155.

⁶⁰ *Barcelona Traction, Light and Power Company, Limited, Second Phase, Judgment*, I.C.J. Reports 1970, p. 32, para. 33.

36. As a starting point, it may be noted that there is no doubt that the Palestinian people are protected by the right to self-determination. As the Court noted in the *Wall Advisory Opinion*:

*As regards the principle of the right of peoples to self-determination, the Court observes that the existence of a “Palestinian people” is no longer in issue.*⁶¹

37. This conclusion is consistent with the repeated practice of the United Nations and international community on this question. Thus, for instance, UNGA Resolution 2649 (XXV) of 1970 condemned ‘those Governments that deny the right to self-determination of peoples recognized as being entitled to it, especially of the peoples of southern Africa and Palestine.’⁶² Most recently, the General Assembly, in Resolution 77/208 reaffirmed ‘the right of the Palestinian people to self-determination, including the right to their independent State of Palestine.’⁶³ Resolution 77/208 was adopted by 167 votes to 6, with 9 abstentions.⁶⁴
38. Consistent with its long-held position,⁶⁵ Malaysia submits that Israel’s prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, as well as other practices and measures infringing the rights of Palestinians, breach the right to self-determination of the Palestinian people.
39. This section shows how such a breach is occurring with reference to each of the four central elements of the right to self-determination set out above in Section IV. These concern the right of the Palestinian people: (A) to territorial integrity; (B) to national unity and the protection of their integrity as a people; (C) to permanent sovereignty over their natural wealth and resources; and (D) to the free pursuit of their economic, social and cultural development. Finally, the section concludes by (E) emphasizing that the occupation as a whole is illegal under international law.

A. The Right of the People to Territorial Integrity

40. Israel’s practices within the Occupied Palestinian Territory breach the obligation to respect the integrity of the territory over which the Palestinian people are entitled to exercise their right to self-determination.
41. First, Israel’s purported annexation of East Jerusalem in July 1980 attempted to change the legal status of part of the territory of the Palestinian people.⁶⁶ The purported annexation was quickly condemned as unlawful by the General Assembly in December 1980.⁶⁷ In addition, in Resolution 478 of 1980, the Security Council censured ‘in the strongest terms the enactment by Israel of the “basic law” on Jerusalem’ and also determined that:

⁶¹ *Wall Advisory Opinion*, pp. 182-183, para. 118.

⁶² UNGA Res 2649 (XXV), 30 November 1970, A/Res/2649, para. 5. See, similarly, UNGA Res 2672 C (XXV), 8 December 1970, A/Res 2672(XXV), para. 1.

⁶³ UNGA Res 77/208, 15 December 2022, A/Res/77/208, para. 1.

⁶⁴ UN Digital Library, Voting Data, A/Res/77/208.

⁶⁵ See, most recently, Prime Minister of Malaysia, Message on the Commemorative Event of 75th Anniversary of Nakba, 15 May 2023: ‘Malaysia remains steadfast in its condemnation of Israel’s illegal settlements in the Occupied Palestinian Territory, and the oppression of the Palestinian people that prevents them from exercising their inherent inalienable right to self-determination’ – available at <https://www.un.org/unispal/nakba75/>.

⁶⁶ State of Israel, Basic Law: Jerusalem, Capital of Israel - 5740-1980.

⁶⁷ UNGA Res 35/169 E, 15 December 1980, A/Res/35/169E, paras. 2, 3.

[A]ll 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.⁶⁸

42. Second, Israel’s continued establishment and facilitation of settlements, as well as their associated infrastructure and regimes, amount to acts of *de facto* annexation. The scale of settlement activity continues to grow. In 2022, the Secretary General’s Report to the General Assembly noted that:

Advancements of plans for settlement construction increased, with plans for some 9,200 housing units in the occupied West Bank (7,200 in Area C, 2,000 in East Jerusalem), advanced or approved by the Israeli authorities, compared with 6,800 housing units in the previous reporting period. Of them, about 1,900 in Area C had reached the final stages of approval by 31 May 2022.⁶⁹

43. This includes the establishment of new settlements, as well as the expansion of existing settlements,⁷⁰ in both the West Bank and East Jerusalem.⁷¹ Connected to this expansion is the provision of basic services and infrastructure to settlers by Israel, as well as the extension of Israeli law to settlers living in the Occupied Palestinian Territory.⁷² The expansion has resulted in the proliferation and entrenchment of enclaves within the Territory which are entirely surrounded by land controlled by Israel.
44. The transfer of civilians into occupied territory itself entails a violation of international humanitarian law and is a war crime.⁷³ As reaffirmed by the Security Council in Resolution 2334 of 2016, co-sponsored by Malaysia, the establishment of settlements ‘constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace.’⁷⁴ In addition, Israel’s establishment of, and support for, the settlements constitutes an unlawful, *de facto* annexation. In the *Wall Advisory Opinion*, the Court found that the construction of the wall and its associated régime would be ‘tantamount to *de facto* annexation’, noting that it creates ‘a “fait accompli” on the ground that could well become permanent.’⁷⁵ This determination applies analogously to the settlements project as a whole in the Occupied Palestinian Territory.⁷⁶ The scale of the settlements, the duration of the occupation, the extension of Israeli law to settlers in the West

⁶⁸ UNSC Res 478, 20 August 1980, S/Res/478, paras. 1, 3. See also UNSC Res 2334 (2016), 23 December 2016, S/Res/2334(2016), para. 3.

⁶⁹ Report of the Secretary-General, ‘Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan’, 3 October 2022, A/77/493, para. 4.

⁷⁰ Independent International Commission of Inquiry Report, 14 September 2022, A/77/328, paras. 24-30; Fourth Report of Special Rapporteur Michael Lynk, 21 October 2019, A/74/507, paras. 15-16, 19; Fifth Report of Special Rapporteur Michael Lynk, 22 October 2020, A/75/532, para. 14.

⁷¹ Human Rights Committee, Concluding Observations on the Fifth Periodic Report of Israel, 5 May 2022, CCPR/C/ISR/CO/5, para. 14; Third Report of Special Rapporteur Michael Lynk, 22 October 2018, A/73/447.

⁷² Third Report of Special Rapporteur Michael Lynk, 22 October 2018, A/73/447, paras. 48-59.

⁷³ Article 49(6), Fourth Geneva Convention; Article 8(2)(b)(viii), Rome Statute.

⁷⁴ UNSC Res 2334 (2016), 23 December 2016, S/Res/2334(2016), para. 1.

⁷⁵ *Wall Advisory Opinion*, p. 184, para. 121.

⁷⁶ Third Report of Special Rapporteur Michael Lynk, 22 October 2018, A/73/447, paras. 29-60.

Bank,⁷⁷ and recent statements of senior Israeli leaders⁷⁸ demonstrate Israel's intention to indefinitely establish its authority over significant parts of Palestinian Territory.

45. Israel's practices of *de jure* and *de facto* annexation, as well as the connected creation of enclaves dividing the Occupied Palestinian Territory, violate the right to self-determination of the Palestinian people.

B. The Right of the People to National Unity and Protection of their Integrity as a People

46. The right to self-determination entails the right of the people to national unity and the protection of their integrity as a people.⁷⁹ In this respect, Israel has undertaken extensive practices aimed at changing the demographic composition of the Occupied Palestinian Territory, and has imposed policies that create enclaves of Palestinians, limit the movement of Palestinians, and fragment the Palestinian people.

47. First, a central consequence of the settlements project as a whole and Israel's unlawful annexation of the territory is the destruction of the unity and integrity of Palestinians as a people. The settlements alter, and are aimed at altering, the demographic composition of the Occupied Palestinian Territory. This has been repeatedly recognized by the General Assembly,⁸⁰ as well as by the Security Council.⁸¹ The settlements also cut Palestinian communities off from one another, and their associated infrastructure and security measures 'effectively dissect the West Bank into separate, fragmented and disconnected areas.'⁸² In these respects, in its Resolution of 4 April 2023, the Human Rights Council expressed grave concern:

at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are resulting from the continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall by Israel, 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, and emphasizes in this regard the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem...⁸³

⁷⁷ Independent International Commission of Inquiry Report, 14 September 2022, A/77/328, para. 46.

⁷⁸ Independent International Commission of Inquiry Report, 14 September 2022, A/77/328, para. 52; Third Report of Special Rapporteur Michael Lynk, 22 October 2018, A/73/447, paras. 58-59. See also UNGA Res 77/126, 15 December 2022, A/Res/77/126, para. 7: '...expresses its grave concern at recent statements calling for the annexation by Israel of areas in the Occupied Palestinian Territory'; UNGA Res 76/82, 15 December 2021, A/Res/76/82, para. 7.

⁷⁹ UNGA Res 1514, 14 December 1960, A/Res/1514, para. 6. See also UNGA Res 2625 (XXV), 24 October 1970, A/Res/2625, Annex.

⁸⁰ See e.g. UNGA Res 77/126, 15 December 2022, A/Res/77/126, para. 2; UNGA Res 76/82, 15 December 2021, A/Res/76/82, para. 2.

⁸¹ UNSC Res 2334 (2016), 23 December 2016, S/Res/2334(2016), preamble para. 4:

Condemning all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including, inter alia, the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant resolutions...

⁸² Fifth Report of Special Rapporteur Michael Lynk, 22 October 2020, A/75/532, para. 9.

⁸³ Human Rights Council, Resolution 52/34, Right of the Palestinian People to Self-Determination, 4 April 2023, A/HRC/RES/52/34, para. 5. See similarly Independent International Commission of Inquiry Report, 14 September

48. Second, and relatedly, Israel imposes a range of measures which affect the residency rights and freedom of movement of Palestinians, fragmenting the Palestinian people. In its Concluding Observations on Israel's Fifth Periodic Report, the Human Rights Committee expressed its deep concern over Israel's systematic practice of demolitions and forced evictions in the West Bank.⁸⁴ The blockade of Gaza restricts the movement of Palestinians into and out of the territory.⁸⁵ In East Jerusalem, residency rights have been diminished and revoked,⁸⁶ and there are extensive instances of forced eviction.⁸⁷ Moreover, as noted in Special Rapporteur Michael Lynk's Sixth Report to the General Assembly:

*Restrictions on freedom of movement continued throughout the Occupied Palestinian Territory as a method for Israel to enforce its regime of occupation. Restrictions were imposed on the movement of Palestinians between the West Bank, including East Jerusalem, the Gaza Strip and with regard to travelling abroad. Some 593 Israeli checkpoints and roadblocks continue to effectively obstruct Palestinians' access to rights and services, including health, education and work.*⁸⁸

49. Individually, and collectively, these measures and practices fracture the unity and integrity of the Palestinian people, violating their right to self-determination.

C. The Right of the People to Permanent Sovereignty Over Natural Wealth and Resources

50. Israel is undertaking a range of practices that impede the right of the Palestinian people to permanent sovereignty over their natural resources.

51. First, with respect to land, the factual record before the Court documents extensive practices of expropriation. In its Report of September 2022, the Independent International Commission of Inquiry detailed Israel's practice of declaring large areas of land 'State land',⁸⁹ and the expropriation of Palestinian land for use as settlements, as military zones, and as nature reserves.⁹⁰ Similarly, in its Concluding Observations on the Fifth Periodic Report of Israel in 2022, the Human Rights Committee urged Israel to '[p]ut an end to the practice of expropriating private land owned by Palestinians and the Syrian Arab population and declaring it as "State land" for settlement purposes.'⁹¹

2022, A/77/328, para. 30; Economic and Social Council, 'Resolution 2022/22, 22 July 2022, E/RES/2022/22, para. 2 stressing 'Stresses the need to preserve the territorial contiguity, unity and integrity of the Occupied Palestinian Territory, including East Jerusalem.'

⁸⁴ Human Rights Committee, Concluding Observations on the Fifth Periodic Report of Israel, 5 May 2022, CCPR/C/ISR/CO/5, para. 42.

⁸⁵ Independent International Commission of Inquiry Report, 14 September 2022, A/77/328, para. 20; Report of the United Nations High Commissioner for Human Rights, 13 February 2023, A/HRC/52/75, para. 13.

⁸⁶ Report of Special Rapporteur Michael Lynk to the Human Rights Council, 12 August 2022, A/HRC/49/87, para. 35; UNGA Res 77/126, 15 December 2022, A/Res/77/126.

⁸⁷ Report of the Secretary-General, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan', 3 October 2022, A/77/493, paras. 23-27.

⁸⁸ Sixth Report of Special Rapporteur Michael Lynk, 22 October 2021, A/76/433, para. 13. See also Committee on Economic, Social and Cultural Rights, Concluding Observations on the Fourth Periodic Report of Israel, 12 November 2019, E/C.12/ISR/CO.4, para. 11; *Wall Advisory Opinion*, pp. 189-194, paras. 133-137.

⁸⁹ Independent International Commission of Inquiry Report, 14 September 2022, A/77/328, para. 33.

⁹⁰ Independent International Commission of Inquiry Report, 14 September 2022, A/77/328, paras. 31, 32, 34.

⁹¹ Human Rights Committee, Concluding Observations on the Fifth Periodic Report of Israel, 5 May 2022, CCPR/C/ISR/CO/5, para. 15(b).

52. Second, with respect to water, the same Independent International Commission of Inquiry Report found that ‘Israel has taken control of all water resources in the West Bank and has been using much of the water for its own purposes.’⁹² Relatedly, the Committee on Economic, Social and Cultural Rights in its most recent Concluding Observations related to Israel urged Israel to ‘cease the destruction of Palestinian water infrastructure and ensure that Palestinians have access to sufficient quantities of safe and clean drinking water.’⁹³ Other recent reports have likewise detailed Israel practices in the Occupied Palestinian Territory that affect Palestinians’ access to water and use of water.⁹⁴
53. Third, other reports have drawn attention to a range of other practices of exploitation of natural resources. This includes the operation of quarries that produce rock, gravel, and other minerals,⁹⁵ as well as the granting of licences for oil and gas extraction.⁹⁶
54. The General Assembly has consistently recognized the illegality of Israel’s exploitation of natural resources in the Occupied Palestinian Territory. Resolution 3175 of 1973 reaffirmed that ‘all measures undertaken by Israel to exploit the human and natural resources of the occupied Arab territories are illegal’ and called upon Israel ‘to halt such measures forthwith.’⁹⁷ This was followed by a series of resolutions reiterating this call.⁹⁸ Most recently, in Resolution 77/87 of 14 December 2022, adopted by 159 for to 8 against, the General Assembly:
1. *Reaffirm[ed] the inalienable rights of the Palestinian people and of the population of the occupied Syrian Golan over their natural resources, including land, water and energy resources;*
 2. *Demand[ed] that Israel, the occupying Power, cease the exploitation, damage, cause of loss or depletion and endangerment of the natural resources in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan.*
55. Israel’s ongoing practices of this kind infringe the right of the Palestinian people to permanent sovereignty over their natural wealth and resources, and therefore violate the right of the Palestinian people to self-determination.

D. The Right of the People to Freely Pursue their Economic, Social and Cultural Development

56. Israel’s practices within the Occupied Palestinian Territory are also preventing the Palestinian people from freely pursuing their economic, social and cultural development.

⁹² Independent International Commission of Inquiry Report, 14 September 2022, A/77/328, para. 35.

⁹³ Committee on Economic, Social and Cultural Rights, Concluding Observations on the Fourth Periodic Report of Israel, 12 November 2019, E/C.12/ISR/CO.4, para. 47.

⁹⁴ See e.g. Report of the United Nations High Commissioner for Human Rights, Allocation of Water Resources in the Occupied Palestinian Territory, including East Jerusalem, 15 October 2021, A/HRC/48/43; First Report of Special Rapporteur Francesca Albanese, 21 September 2022, A/77/356, paras. 49, 51.

⁹⁵ Independent International Commission of Inquiry Report, 14 September 2022, A/77/328, para. 37.

⁹⁶ First Report of Special Rapporteur Francesca Albanese, 21 September 2022, A/77/356, paras. 50-51; Committee on Economic, Social and Cultural Rights, Concluding Observations on the Fourth Periodic Report of Israel, 12 November 2019, E/C.12/ISR/CO.4, paras. 14-15.

⁹⁷ UNGA Res 3175, 17 December 1973, A/Res/3175, para. 2; Report of the United Nations High Commissioner for Human Rights, Allocation of Water Resources in the Occupied Palestinian Territory, including East Jerusalem, 15 October 2021, A/HRC/48/43, para. 38.

⁹⁸ See e.g. UNGA Res 3336, 17 December 1974, A/Res/3336, para. 2; UNGA Res 51/190, 16 December 1996, A/Res/51/190, paras. 2, 3; UNGA Res 67/229, 21 December 2012, A/Res/67/229, paras. 1, 2.

57. First, as to economic development, the exploitation of natural resources discussed in the previous sub-section has had a direct, detrimental effect on the economic prospects of the Palestinian people and the strength of the economy. Beyond this, the administration of the occupation as a whole has also had catastrophic effects on the economic situation of Palestinians. This includes restrictive zoning and planning practices, which hamper development. For instance, the Independent International Commission of Inquiry Report of 2022 found that '[p]ermits are rarely given to Palestinians for building residential structures or structures for economic activities, or to develop infrastructure' in the West Bank.⁹⁹ The blockade of Gaza has severely inhibited its economy.¹⁰⁰ Finally, as affirmed by the General Assembly, the construction of the wall, as well as the settlements as a whole, have had a serious impact on the economic conditions and development.¹⁰¹

58. Second, the occupation as a whole has prevented the Palestinian people from freely pursuing their social development. It entails institutionalized and systemic practices that inhibit all aspects of social life. In the *Wall Advisory Opinion*, the Court found that the construction of the wall and its associated regime hampered the local inhabitants' 'access to health services, educational establishments and primary sources of water.'¹⁰² The conclusion in respect of the wall applies, in greater scope and severity, to the occupation as a whole. In its report of 2022, the Independent International Commission of Inquiry found that:

*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.*¹⁰³

59. Third, the fragmentation of the Palestinian people created by the occupation and settlements has inhibited their free pursuit of cultural development. The movement restrictions detailed above prevent Palestinians from visiting sites of religious and cultural importance in other parts of the Occupied Palestinian Territory.¹⁰⁴ The General Assembly has condemned acts of private

⁹⁹ Independent International Commission of Inquiry Report, 14 September 2022, A/77/328, para. 42.

¹⁰⁰ Fifth Report of Special Rapporteur Michael Lynk, 22 October 2020, A/75/532, para. 15:

Gazans have had virtually all their human rights undermined under the weight of the blockade as they continue to lack access to adequate housing, education, water and sanitation. Food insecurity is endemic. Gaza bears one of the world's highest unemployment rates (estimated to be around 45 per cent), with poverty levels that exceeded 53 per cent as of late 2019. The economy of Gaza is flat on its back, with growth in gross domestic product virtually at zero in 2019 and with an export sector that has nearly expired as a result of the closure and severe restrictions.

See also Fourth Report of Special Rapporteur Michael Lynk, 21 October 2019, A/74/507, para. 9; Third Report of Special Rapporteur Michael Lynk, 22 October 2018, A/73/447, para. 9.

¹⁰¹ UNGA Res 77/126, 15 December 2022, A/Res/77/126, preamble, para. 1.

¹⁰² *Wall Advisory Opinion*, pp. 189-192, paras. 133, 134.

¹⁰³ Independent International Commission of Inquiry Report, 14 September 2022, A/77/328, para. 55. See also Committee on the Elimination of Racial Discrimination, Concluding Observations on the Combined Seventeenth to Nineteenth Reports of Israel, 27 January 2020, CERD/C/ISR/CO/17-19, para. 22; Human Rights Council, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, 20 April 2023, A/HRC/RES/52/35, para. 7.

¹⁰⁴ Committee on Economic, Social and Cultural Rights, Concluding Observations on the Fourth Periodic Report of Israel, 12 November 2019, E/C.12/ISR/CO.4, paras. 70-71.

violence by settlers against Palestinians, including historic and religious sites.¹⁰⁵ Restrictions on freedom of association and expression severely inhibit Palestinians' cultural practices.¹⁰⁶

60. In sum, Israel's policies and practices unjustifiably infringe the right of the Palestinian people to freely pursue their economic, social and cultural development.¹⁰⁷ As such, they violate the right of the Palestinian people to self-determination.

E. An Illegal Occupation as a Whole

61. Israel's practices breach each of the central, substantive elements of the right to self-determination set out above. These concern the rights of the Palestinian people: to territorial integrity; to national unity and the protection of their integrity as a people; to permanent sovereignty over their natural wealth and resources; and to the free pursuit of their economic, social and cultural development.

62. In addition, Malaysia submits that the occupation *as a whole* is illegal. First, the occupation as a whole is constituted by these systemic practices in relation to territory, the unity and integrity of the people, the exploitation of resources, and the constraint on development. These practices are, as a matter of reality, the occupation itself. Second, the occupation as a whole has prevented and continues to prevent the Palestinian people from freely determining their political status, as protected by the right to self-determination. As the General Assembly has affirmed repeatedly for over fifty years,¹⁰⁸ the occupation continues to deny that right to the Palestinian people. Third, there exists no justification recognized by international law for Israel's occupation of the territory of the Palestinian people. As was the case in relation to South Africa's continued presence in Namibia after the termination of the Mandate by the General Assembly in 1966,¹⁰⁹ Israel's continued presence is illegal under international law.

63. In sum, the occupation as a whole is illegal under international law.

VI. LEGAL CONSEQUENCES

64. This section sets out the legal consequences arising from Israel's breach of the Palestinian people's right to self-determination.

¹⁰⁵ UNGA Res 77/126, 15 December 2022, A/Res/77/126, preamble. See also Report of the Secretary-General, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan', 1 October 2020, A/75/376, para. 22; On Israel's duties to prevent such violence, see Human Rights Committee, Concluding Observations on the Fifth Periodic Report of Israel, 5 May 2022, CCPR/C/ISR/CO/5, para. 24.

¹⁰⁶ Independent International Commission of Inquiry Report, 14 September 2022, A/77/328, para. 47.

¹⁰⁷ UNGA Res 2625 (XXV), 24 October 1970, A/Res/2625 (XXV), Annex.

¹⁰⁸ See e.g. UNGA Res 2649 (XXV), 30 November 1970, A/Res/2649, para. 5; UNGA Res 3236 (XXIX), 22 November 1974, A/Res/3236 (XXIX); UNGA Res 40/25, 29 November 1985, A/Res/40/25; UNGA Res 55/87, 21 February 2001, A/Res/55/87; UNGA Res 77/208, 15 December 2022, A/Res/77/208. See also Independent International Commission of Inquiry Report, 14 September 2022, A/77/328, paras. 75-84.

¹⁰⁹ UNGA Res 2145 (XXI), 27 October 1966, A/Res 2145, 27 October 1966. See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, I.C.J. Reports 1971, p. 58, para. 133; UNSC Res 301, 20 October 1971, S/Res/301.

65. For Israel itself, it is under an obligation to immediately cease¹¹⁰ each of the wrongful acts set out above and to provide full reparation¹¹¹ to the Palestinian people.

66. As to cessation, this obligation requires:

- a. That Israel immediately cease each of the practices set out above that breach the right to self-determination;
- b. That Israel immediately withdraw from the Occupied Palestinian Territory.

67. As to reparation, this obligation requires Israel to provide:

- a. Restitution – that is, to ‘re-establish the situation which existed before the wrongful act was committed.’¹¹² This will entail, at the least, the annulment and repeal of all legislative, regulatory, military, and other measures that individually and collectively constitute the breach of the right to self-determination,¹¹³ including those that infringe the right of the people to territorial integrity and their unity and integrity as a people. It will also entail the return of land and property unlawfully expropriated.
- b. Compensation, insofar as the damage is not made good by restitution.¹¹⁴ This will entail compensation for all material and moral damage¹¹⁵ caused by Israel’s breach of the right to self-determination, and will include compensation for damage caused to Palestinian land, property, and agriculture; compensation for loss of life, bodily integrity, liberty, freedom of movement, and other rights violations. It will also include compensation for the exploitation of natural resources, and for the systemic deprivation of the right of the Palestinian people to freely pursue their economic, social, and cultural development.

68. For all other States, the fact that Israel’s conduct entails a ‘serious breach’¹¹⁶ of a peremptory norm of international law entails particular consequences. Article 41 of the Articles on State Responsibility provides:

1. *States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.*
2. *No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.*¹¹⁷

¹¹⁰ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, I.C.J. Reports 1986, p. 14, at p. 146, para. 292; Article 30, Articles on State Responsibility.

¹¹¹ *Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9*, p. 21; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Reparations, Judgment*, I.C.J. Reports 2022, p. 13, at p. 43, para. 70; Article 31, Articles on State Responsibility.

¹¹² Article 35, Articles on State Responsibility.

¹¹³ As in *Wall Advisory Opinion*, pp.197-198, para. 151.

¹¹⁴ Article 36, Articles on State Responsibility.

¹¹⁵ Article 31(2), Articles on State Responsibility; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Reparations, Judgment*, I.C.J. Reports 2022, p. 43, para. 70.

¹¹⁶ Article 40(1), Articles on State Responsibility.

¹¹⁷ Article 41, Articles on State Responsibility; *Namibia Advisory Opinion*, pp. 54-56, paras. 119, 127;

69. The duty to cooperate requires institutionalized cooperation by all States, including through the United Nations¹¹⁸ and regional organizations, as well as *ad hoc*, non-institutionalized cooperation¹¹⁹ to bring to an end Israel's breach of the Palestinian people's right to self-determination.
70. The duty not to recognize the situation created by Israel's serious breach of the right to self-determination requires all States to refrain from any act that grants or implies recognition of the legality of the situation. As the ILC has noted:

*The obligation applies to 'situations' created by these breaches, such as, for example, attempted acquisition of sovereignty over territory through the denial of the right of self-determination of peoples. It not only refers to the formal recognition of these situations, but also prohibits acts which would imply such recognition.*¹²⁰

71. This requires that all States refrain from any acts that grant or imply recognition of Israel's illegal claims to territory, the previous and continued establishment of settlements, the exploitation of natural resources, and other economic activities connected with the breach of the Palestinian people's right to self-determination.¹²¹
72. The duty not to render aid or assistance requires all States to refrain from *any* form of support to Israel that sustains the unlawful occupation and ongoing breach of the right of the Palestinian people to self-determination. This includes the provision of equipment, weapons, technology, and financial aid. This duty also requires States to regulate corporate entities under their jurisdiction whose actions are contributing to the maintenance of Israel's breach of the right to self-determination.

VII. SUMMARY OF SUBMISSIONS

73. On the basis of the information and arguments set out in this written statement, Malaysia respectfully requests that the Court:
- a. Responds to the request of the General Assembly;
 - b. Reaffirms the right of the Palestinian people to self-determination;

¹¹⁸ See also *Chagos Advisory Opinion*, p. 139, para. 180.

¹¹⁹ As noted in the ILC's Commentary to Conclusion 19, para. 10, ILC, 'Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*Jus Cogens*)', A/77/10 (2022):

The obligation to cooperate to bring to an end serious breaches of peremptory norms of general international law (jus cogens) may also be implemented through noninstitutionalized cooperation, including through ad hoc arrangements by a group of States acting together to bring to an end a breach of a peremptory norm.

¹²⁰ Commentary to Article 41(5), Articles on State Responsibility, para. 5.

¹²¹ See also UNSC Res 2334 (2016), 23 December 2016, S/Res/2334(2016), paras. 1, 5:

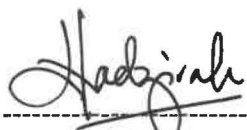
1. *Reaffirms that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace;*

...

5. *Calls upon all States, bearing in mind paragraph 1 of this resolution, to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967.*

- c. Decides that the occupation, as a whole, of the Occupied Palestinian Territory by Israel breaches the right of the Palestinian people to self-determination and is illegal under international law;
- d. Decides that Israel is in breach of each of the following elements of the right to self-determination:
 - i. The right of the Palestinian people to territorial integrity;
 - ii. The right of the Palestinian people to national unity and the protection of their integrity as a people;
 - iii. The right of the Palestinian people to permanent sovereignty over their natural wealth and resources; and
 - iv. The right of the Palestinian people to freely pursue their economic, social and cultural development.
- e. Decides that, consequently, Israel is under an obligation to immediately cease each of these wrongful practices and to immediately withdraw from the Occupied Palestinian Territory;
- f. Decides that, consequently, Israel is under an obligation to make full reparation to the Palestinian people;
- g. Decides that all States are under an obligation to cooperate in bringing to an end the ongoing violation of the right of the Palestinian people to self-determination, an obligation not to recognize as lawful that situation, and an obligation to refrain from rendering any aid or assistance in maintaining that ongoing violation.

I have the honour to submit this written statement to the Court on behalf of Malaysia.



DATO' NADZIRAH OSMAN
Ambassador of Malaysia to the Kingdom of The Netherlands



25 July 2023

The Hague,
The Netherlands