

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
THE REPUBLIC OF COLOMBIA**

24 July 2023

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1. Introduction

1.1. The present Written Statement is filed pursuant to the Court's Order dated 3 February 2023, concerning the request for an advisory opinion made by the General Assembly of the United Nations in its Resolution 77/247 of 30 December 2022.

1.2. The questions on which the Court was requested by the General Assembly to render an advisory opinion are as follows:

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

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

1.3. Colombia considers that advisory proceedings should not be used as a means to submit to the Court bilateral affairs. However, the questions put before the Court in the present proceedings refer to a wide range of issues which are of general concern.

1.4. In this vein, it is worth recalling that General Assembly Resolution 71/292 was adopted by a recorded vote of 98 in favour to 17 against, with 52 abstentions. As can be seen, an important number of Member States decided it was important for the General Assembly to receive guidance on the questions put to the Court – including Colombia.

1.5. Henceforth, Colombia believes that submitting these questions to the Court via the advisory procedure will contribute to understanding the law concerning the matter presented to the Court.

2. Jurisdiction of the Court

2.1. By virtue of Article 65, paragraph 1, of the Statute of the Court,

“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.”

2.2. Under this provision, two requirements must be met for the Court to have jurisdiction to give the requested opinion: (i) there must be a formal request from a body duly authorised by the UN Charter, or in accordance to it, to make such a request, and (ii) the question put before the Court must be a legal question.

2.3. With regard to the first requirement, it is undisputed that the General Assembly of the United Nations is one of the “bod[ies] (...) authorized (...) to make such a request”, in

application of Article 96, paragraph 1, of the Charter, which reads as follows:

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

2.4. Additionally, it is also clear that the decision of the General Assembly to submit the questions contained in Resolution 77/247 was taken in accordance with its rules of procedure and by the required majority.

2.5. Therefore, the request of the General Assembly contained in Resolution 77/247 observes the first requirement of Article 65, paragraph 1, of the Statute of the Court.

2.6. The second requirement, i.e., that the question put before the Court be a legal one, is also complied with in the present case. In the *Legality of the Threat or Use of Nuclear Weapons* advisory opinion, the Court clarified that a question is a legal one when “the Court is asked to rule on the compatibility of the [request] with the relevant principles and rules of international law”¹. In other words, questions “framed in terms of law and raising problems of international law”², whereby the Court is asked to identify and apply principles and rules of international law, are “by their very nature susceptible of a reply based on law”³ and therefore qualify as questions of legal character.

¹ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 234, para. 13.

² *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 18, para 15

³ *Ibid.*

2.7. Colombia considers that the questions raised in Resolution 77/247 were put in legal terms, since they request the Court to decide what are the legal consequences arising from the actions carried out by the State of Israel, a Member State of the United Nations, and to confirm how the policies and practices of Israel affect the legal status of the occupation. Those questions are legal questions which could form the basis of a request for an advisory opinion.

2.8. Therefore, in the opinion of Colombia, the Court has jurisdiction to respond to the questions contained in Resolution 77/247.

3. The Question of Propriety

3.1. The finding that the Court has jurisdiction to respond to the questions contained in Resolution 77/247 is the first step in the Court's analysis in order to render the requested advisory opinion. After ascertaining that it *can* answer the questions submitted by the General Assembly, the second step is whether or not it *should*.

3.2. In advisory proceedings, Article 65, paragraph 1, of the Statute of the Court, cited above, states that "(t)he Court *may* give an advisory opinion"⁴. This provision gives the Court discretionary power to give or not an advisory opinion that has been requested from it.

3.3. In the advisory opinion regarding the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court asserted that,

⁴ Emphasis added.

“When seised of a request for an advisory opinion, the Court must first consider whether it has jurisdiction to give the opinion requested and whether, should the answer be in the affirmative, there is any reason why it should decline to exercise any such jurisdiction”⁵.

3.4. In the advisory opinion regarding the *Legality of the Threat or Use of Nuclear Weapons* the Court added the following:

“As the Court has repeatedly emphasized, the Statute leaves a discretion as to whether or not it will give an advisory opinion that has been requested of it, once it has established its competence to do so.”⁶

3.5. But the Court further added:

“that ‘The Court may give an advisory opinion ...’ (emphasis added), should be interpreted to mean that the Court has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 234-2115, para. 14). The Court however is mindful of the fact that its answer <<to a request for an advisory opinion>> represents its participation in the activities of the Organization, and, in principle, should not be refused” (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I. C. J. Reports 1950*, p. 71 : see also.. for

⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory Advisory Opinion, I.C.J. Reports 2004*, p. 144.

⁶ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, pp. 234-235, para. 14.

example, *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999 (I)*, pp. 78-79, para. 29.) Given its responsibilities as the ‘principal judicial organ of the United Nations’ (Article 92 of the Charter), the Court should in principle not decline to give an advisory opinion. In accordance with its consistent jurisprudence, only ‘compelling reasons’ should lead the Court to refuse its opinion (*Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I. C. J. Reports 1962*, p. 155; see also, for example:, *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999 (I)*, pp. 78-79, para. 29.)

3.6. In this regard, in Colombia’s view the issue of judicial propriety in the present proceedings requires that the Court analyses the following:

- (i) Whether the Court has to take into account the opposition of certain interested States to the request by the General Assembly, and,
- (ii) Whether, if rendered, the advisory opinion will be of assistance to the General Assembly for the proper exercise of its functions.

3.7. In relation to the first point, in the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*⁷, the Court had to face a similar situation. There, the

⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory Advisory Opinion, I.C.J. Reports 2004*, p. 9.

Court was asked to render its opinion on what were the legal consequences arising from the construction of the wall being built by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions.

3.8. The Court rendered its Advisory Opinion on 9 July 2004. In such Opinion, the Court stated that,

“As regards the request for an advisory opinion now before it, the Court acknowledges that Israel and Palestine have expressed radically divergent views on the legal consequences of Israel's construction of the wall, on which the Court has been asked to pronounce. However, as the Court has itself noted, ‘Differences of views . . . on legal issues have existed in practically every advisory proceeding’ (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1 970)*, *Advisory Opinion, I.C.J. Reports 1971*, p. 24, para. 34).

3.9. Consequently, Colombia considers that the Court can do the same exercise in the present proceedings, and thereafter reach the same conclusion, *i.e.*, that it can exercise jurisdiction.

3.10. Furthermore, the Court should bear in mind that advisory proceedings have been defined as an “opinion issued by an international court or tribunal at the request of a body authorized

to request it, *with a view to clarifying a legal question for that body's benefit*⁸.

3.11. The Court itself noted that the object of a request to render an advisory opinion is normally,

“to obtain from the Court an opinion which the requesting organ [the General Assembly in the present case] deems of assistance to it for the proper exercise of its functions. The opinion is requested on a question which is of particularly acute concern to the United Nations, and one which is located in a much broader frame of reference than a bilateral dispute.”⁹

3.12. The present request has been made in circumstances where the General Assembly has been actively considering the situation between the State of Palestine and the State of Israel in, among others, the context of decolonization.

3.13. Hence, the purpose of issuing an advisory opinion which would be “of assistance to [the General Assembly] for the proper exercise of its functions” will evidently be served in the instant case.

3.14. Colombia is, therefore, of the opinion that a pronouncement on the matters put in the request would be of assistance to the General Assembly “for the proper exercise of its functions” particularly in line with the situation faced in the *Construction of a Wall* opinion.

⁸ J Salmo (ed), *Dictionnaire the Droit International public*, Brussels, 2001, p. 116. (Unofficial translation). Emphasis added.

⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 158, para. 50

3.15. In addition to the foregoing, Colombia considers that an opinion rendered in this case will not interfere with ongoing efforts between the two countries to overcome through direct negotiations all the issues included in their bilateral agenda. On the contrary, a pronouncement of the Court on the legal consequences arising from the violation of the right of self-determination, from prolonged occupation, settlement, and annexation and on the legal status of an occupation in view of the policies and practices of the occupying State is of the utmost relevance to the General Assembly.

3.16. The Court's ultimate role, that is, to contribute to the settlement of legal disputes, would be delivered in the instant case and an answer from the Court on the merits to the questions submitted by the General Assembly could indeed contribute to the efforts of the international community in helping to improve the relations between two States of the United Nations.

3.17. Colombia, in line with its internal policy of Total Peace, calls upon the Court to avail itself of the opportunity to clarify aspects that have prevented the parties from entering and reaching a fruitful discussion. It is worth noting that Colombia has always maintained that a solution to the situation between both States can only be reached by a common understanding born out of peaceful and meaningful negotiations.

4. The position of Colombia on the situation between the State of Palestine and the State of Israel

4.1. The Government of the Republic of Colombia is deeply concerned about the events that regularly take place between the

State of Palestine and the State of Israel, which have unleashed a cycle of violence causing the death of civilians and dozens of wounded. In the same vein, it rejects any recourse to violence or unilateral acts that lead to a higher level of confrontation and tension, thus aggravating the humanitarian situation in the densely populated area and constituting obstacles to achieving peace and the viability of the two-State solution.

4.2. The Government of Colombia also notes with deep concern the *de facto* actions of Israeli settlers and the announcement by the Government of Israel to expand settlements in the West Bank. In addition, Colombia considers regrettable events such as attacks on Israeli civilians in Tel Aviv.

4.3. Colombia is a firm believer in and advocate for international law. As the Court itself stated in the *Construction of a Wall* opinion, Colombia notes that both Israel and Palestine have the obligation to comply with international law, and with international humanitarian law and human rights law, in particular, and both States need to implement in good faith all relevant Security Council and General Assembly resolutions.

4.4. Furthermore, Colombia has actively advocated for and contributed to efforts to achieve a long-lasting peace between the State of Palestine and the State of Israel, including those made by the Secretary General of the United Nations in 2010 when the Flotilla Incident occurred, whereby the Secretary General established a Panel of Inquiry on the 31 May 2010.

4.5. In this same vein, Colombia considers that the United Nations, and the General Assembly in particular, needs to duplicate efforts to encourage a negotiated solution to the

outstanding problems on the basis of international law and with the purpose of the establishment of a Palestinian State.

4.6. Indeed, Colombia reiterates the urgency of the cessation of acts of violence and hopes that Israel and Palestine will resume the dialogue that will lead to a definitive solution to their conflict, in accordance with international law and the resolutions issued by the United Nations, as well as on the basis of any advisory opinion rendered by the Court in the instant proceedings.

4.7. Colombia has expressed before and reiterates hereby that the occupation of the Palestinian territory is a violation of international law. Colombia also believes that the State of Israel must comply with the resolutions of the General Assembly and the Security Council and that the prolonged occupation of the territory of Palestine is contrary to the Principles enshrined in the Charter of the United Nations.

4.8. Certainly, the restrictions on movement of people and goods continue to collectively punish the civilian population, affecting every aspect of life in Gaza, undermining the local economy, and threatening the enjoyment of most human rights, in clear violation of Israel's legal obligations under international law. The blockade is increasing violence and conflict, worsening the socio-economic and psychosocial crisis in Gaza, a war-ravaged, poverty-stricken area, living under a tight illegal blockade on land, air, and sea.

4.9. For its part, Colombia considers that the Court has the opportunity, in these proceedings, to recommend specific actions to the General Assembly to ensure that all duty bearers respect

and protect the rights and freedoms of association, expression and opinion and peaceful assembly, and economic, social and cultural rights including health, housing and education, are respected and protected and that civil society actors, including human rights defenders, journalists and women human rights defenders, are able to conduct their activities safely, freely and without harassment or retribution in the Occupied Palestinian Territory.

4.10. In sum, our country believes that the Court can contribute to clarifying the law in this regard in the instant proceedings. The international community would further benefit from clarification on the consequences of violations to legal regimes under human rights and international humanitarian law as a consequence of the occupation.

4.11. Respect for international law and the ways of dialogue are the only possible route that would allow a peaceful solution to the conflict. The General Assembly needs to support and drive these efforts, and the guidance of the Court in response to the questions posed to it in the present request, regarding the legal consequences arising from violations to the principle of self-determination, from prolonged occupation, settlement and annexation of the Palestinian territory, and from adoption of discriminatory legislation and measures, will certainly shed light on all States and the United Nations, in particular, to support any and all negotiating efforts.

5. Conclusions

5.1. Colombia is of the view that, in the present case, the Court has jurisdiction to entertain the present request for an advisory opinion.

5.2. Colombia also considers that the Court should give such advisory opinion, and in reaching such conclusion Colombia invites the Court to take into account its own previous pronouncements, in particular the one expressed in the *Construction of a Wall Case*.

5.3. Furthermore, Colombia believes that the rendering of an advisory opinion by the Court would be of assistance to the General Assembly for the proper exercise of its functions, and thus the opinion from the Court can significantly contribute to preventing and solving disputes, which is, in the end, the main function of the Court as the principal judicial organ of the United Nations.

5.4. In rendering an advisory opinion in the present case, the Court has an opportunity to help advance a stable, just and mutually accepted settlement of the situation between the State of Israel and the State of Palestine. The Court also has the opportunity to clarify the law regarding occupation, by referring to the legal consequences of such occupation, and to shed light on the law regarding self-determination.

5.5. The Court could also be of invaluable guidance to the international community, and to the General Assembly of the United Nations, in particular, on how to support the two States reaching a mutually agreed settlement that will lead to a definitive solution to the Palestinian-Israeli conflict, in accordance with international law, in particular human rights law and international humanitarian law, and the resolutions issued by the United Nations' organs.

5.6. Henceforth, Colombia believes that an advisory opinion of the Court in the present case will contribute to understanding the law concerning the matters submitted to it.

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