



**REQUEST BY THE UNITED NATIONS GENERAL ASSEMBLY FOR
AN ADVISORY OPINION ON
THE LEGAL CONSEQUENCES ARISING FROM
THE POLICIES AND PRACTICES OF ISRAEL IN THE OCCUPIED
PALESTINIAN TERRITORY, INCLUDING EAST JERUSALEM**

**WRITTEN STATEMENT
SUBMITTED BY THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
TO THE INTERNATIONAL COURT OF JUSTICE**

JULY 2023

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I. Introduction

1. This written statement is submitted pursuant to the International Court of Justice's Order of 3rd February 2023 that the United Nations ("UN") and its member states, as well as the observer State of Palestine, are considered likely to be able to furnish information on the questions submitted to the International Court of Justice (the "Court") for an advisory opinion.
2. The United Nations General Assembly ("UNGA") in its Resolution 77/247 (2023) requested an advisory opinion to the Court on the following questions:

“Considering the rules and principles of international law, including the Charter of the UN (“UN Charter”), international humanitarian law, international human rights law, relevant resolutions of the United Nations Security Council (“UNSC”), the UNGA 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?”
3. The Government of the Republic of Indonesia (“Indonesia”), in this written statement, would like to present that the Court has jurisdiction to render the requested advisory opinion. Indonesia respectfully submits to the Court that Israel has committed a series of systematic violations of international law in the Occupied Palestinian Territory (“OPT”), including East Jerusalem, and that the continued illegal policies and practices of Israel cannot alter the legal status of the OPT, including the status of East Jerusalem. Further, Indonesia maintains that the Court should establish legal obligations for all States and the UN not to recognize the illegal situation resulted from Israel's breach of international law, and not to render aid or assistance to Israel that would contribute to the maintenance of the unlawful circumstances which resulted from such breach of international law.
 4. This written statement is divided into 6 (six) parts. The first part provides an introduction of Indonesia's submission to the Court. The second part examines the issue of jurisdiction, and the third addresses Israel's policies and practices that violated the right of the Palestinian people to self-determination. The fourth discusses the unlawfulness of Israel's policies and practices. The fifth part articulates the legal consequences arising

out of Israel's policies and practices, and the last part furnishes the summary and submissions of this written statement.

II. The Court Has Jurisdiction to Give the Advisory Opinion Requested by the UNGA, and There Are No Grounds for Declining to Exercise Such Jurisdiction

5. Indonesia submits that this Court has jurisdiction to render the advisory opinion requested by the UNGA as (a) the UNGA has the competence to request for an advisory opinion; (b) the question posed are legal questions; and (c) the Court has no compelling reasons to decline to give the requested advisory opinion.

a. The UNGA Has the Competence to Request for an Advisory Opinion

6. Indonesia underlines that the UNGA has the competence to request for an advisory opinion. The express terms of Article 96 paragraph (1) of the UN Charter provides a solid basis that the UNGA is "...an organ duly authorized to seek an advisory opinion under the Charter...".¹ Therefore, it is a charter-based competence of the UNGA to request an advisory opinion from the Court. The Court has also provided its confirmation that the scope of this article reflects the liberty of the UNGA in requesting an opinion of the Court.²
7. Indonesia is also convinced that the UNGA does not act *ultra vires* when it requested the advisory opinion. Such request of an advisory opinion is not inconsistent with Article 12 paragraph (1) of the UN Charter.³ Various opinions and judgments of the Court affirmed that the interpretation of this article is evolving⁴ for the maintenance of international peace and security.
8. The existence of Article 12 paragraph (1) of the UN Charter⁵ does not bar the UNGA from submitting the present request for advisory opinion, irrespective of whether the UNSC remains seized of the matter. UN past practices consistently allow the UNGA to render a resolution irrespective of whether the UNSC is seized of the matter. The Court found that Article 12 paragraph (1) of the UN Charter should not be interpreted and applied in such a way that the UNGA is not able to deliver a recommendation on a question concerning the maintenance of international peace and security while the

¹ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports, 8 July 1996 [*Nuclear Weapons*], para 11.

² *Ibid.*

³ Charter of the United Nations, 26 June 1945, 7 CTS 1945 [UN Charter], art. 12.

⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004 [*Wall*], p. 149, para 27.

⁵ UN Charter, *supra n. 3*, art. 12.

matter is being discussed in the UNSC Agenda.⁶ The Court explained that there has been an increasing tendency over time for the UNGA and the UNSC to deal in parallel with the same matter concerning the maintenance of international peace and security,⁷ such as the issuance, in parallel, of UNGA resolution concerning the situation in Bosnia and Herzegovina, and of the UNSC resolution on the same matter.⁸

9. Indonesia is also of the view that the lack of unanimity of the UNSC on the legal consequences arising from Israel's practices could justify the UNGA's actions to adopt the request for advisory opinion. Pursuant to the Uniting for Peace Resolution, the UNGA may "...consider a matter immediately with a view to making appropriate recommendations... to maintain or restore international peace and security..." if the permanent members fail to exercise its primary responsibility for the maintenance of peace and security due to a lack of unanimity.⁹ This Resolution has been used as the basis for convening various emergency special sessions of the UNGA, including Resolution ES-10/14 (2003), pertaining to the advisory opinion on the legal consequences arising from the construction of the wall being built by Israel in the OPT.¹⁰ Resolution ES-10/14 (2003) was prompted by the veto of a permanent member against a UNSC draft resolution which attempted to declare that Israel's settlements were illegal.¹¹
10. Various draft resolutions of the UNSC intended to address the legality of Israel's actions and practices, including but not limited to the legal consequences of altering the character, status, or demographic composition of the Holy City of Jerusalem,¹² have been vetoed by a permanent member. As a result, there has been a lack of unanimity among the permanent members in exercising their primary responsibility for the maintenance of peace and security pertaining to the very questions posited under the current request. Therefore, the present request for an advisory opinion is justified.
11. In addition, the request for an advisory opinion should not be interpreted as a recommendation within the meaning of Article 12 paragraph (1) of the UN Charter. The Court in *Kosovo* has affirmed that "[a] request for an advisory opinion is not in itself a

⁶ *Wall, supra n. 4*, p. 149, para 27.

⁷ *Ibid.*

⁸ See United Nations General Assembly ("UNGA") Res. A/Res/47/121, 7 April 1993 and United Nations Security Council ("UNSC") Res. S/Res/781, 9 October 1992.

⁹ UNGA Res. 377 A (V), 3 November 1950.

¹⁰ UNGA Res. ES-10/14, 12 December 2003.

¹¹ The draft resolution (UNSC Res. S/1997/199, 7 March 1997) was tabled by France, Portugal, Sweden, UK.

¹² The draft resolution (UNSC Res. S/2017/1060, 18 December 2017) was tabled by Egypt.

‘recommendation’... with regard to [a] dispute or situation”.¹³ Presently, the UNGA Resolution 72/47 (2023) is a request for an advisory opinion and does not constitute as a recommendation within the meaning of Article 12 paragraph (1) of the UN Charter. The UNGA, therefore, has acted within the scope of its competence when it requested the advisory opinion.

b. The Questions Posed Are Legal Questions

12. Indonesia considers that the questions presented are legal questions within the meaning of Article 65 paragraph (1) of the Statute of the International Court of Justice (“ICJ Statute”) and Article 96 paragraph (1) of the UN Charter.
13. In *Western Sahara*, the Court stated that a legal question is “...framed in terms of law and [raises] problems of international law...”.¹⁴ Furthermore, “[a] question which expressly asks whether or not a particular action is compatible with international law certainly appears to be a legal question...”.¹⁵ Presently, Indonesia views that the questions made by the UNGA are formulated in legal terms, raise international law issues and ask the Court to consider the legal consequences arising from specific circumstances.
14. The Court is asked to identify, interpret and apply the relevant rules of principles of international law, including the UN Charter, international humanitarian law, international human rights law, relevant resolutions of the UNSC, the UNGA and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004. This task will result in an advisory opinion that is squarely in accordance with the law. Hence, the questions in this current case “...are by their very nature susceptible of a reply based on law”.¹⁶
15. Some may contest that the questions are ostensibly framed for they are related to a different topic. On several occasions, such as in *Wall* and *Chagos*, the Court confirmed that “lack of clarity in the drafting of a question does not deprive the Court of jurisdiction. Rather, such uncertainty will require clarification in interpretation, and such necessary clarifications of interpretation have frequently been given by the Court”.¹⁷

¹³ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010 [*Kosovo*], p. 15, para 24.

¹⁴ *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, p.18, para 15.

¹⁵ *Kosovo*, *supra n.* 13, p. 414-415, para 25.

¹⁶ *Ibid.*

¹⁷ *Wall*, *supra n.* 4, p. 153-154, para 38 and *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, p. 21, para 61.

16. To sum up, the request posed by the UNGA for an advisory opinion fulfills the elements of Article 65 of the Statute and Article 96 paragraph (1) of the Charter in which the UNGA has the competence to request for an advisory opinion and the questions presented are legal questions. Therefore, the Court has jurisdiction to render the advisory opinion requested by the UNGA Resolution 77/247 (2023).

c. The Court Has No Compelling Reasons to Decline to Give the Requested Advisory Opinion

17. This Court dictates that Article 65 paragraph (1) of the Statute "...leaves the Court 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...".¹⁸ Nevertheless, despite the discretionary character of its advisory jurisdiction, Indonesia highlights that the Court has never, in the exercise of this discretionary power, declined to respond to a request for an advisory opinion.¹⁹
18. Due to its responsibility as the principal judicial organ of the UN²⁰, the Court, in various cases, was of the view that the request for an advisory opinion should not be refused.²¹ Only "compelling reasons" may lead the Court to refuse to render its opinion in response to a request falling within this jurisdiction.²² In these regards, Indonesia does not find any compelling reason that will lead the Court to refuse to render the advisory opinion requested by the UNGA.
19. Indonesia takes note of some statements arguing that the request for an advisory opinion from the Court is highly political in nature. These statements could not be used as a compelling reason for the Court to decline the UNGA request. In *Certain Expenses of the United Nations*, the Court considered that even requests intertwined with political questions should not be declined as this Court "...cannot attribute a political character to a request which invites it to undertake an essentially judicial task...".²³ Besides, as shown in various cases²⁴, the political nature of the motives which may intertwine or have inspired the request and its implications is irrelevant and shall not compromise

¹⁸ *Nuclear Weapons*, *supra n. 1*, p. 234-335, para 14.

¹⁹ *Wall*, *supra n. 4*, p. 156-157, para 44.

²⁰ UN Charter, *supra n. 3*, art. 92.

²¹ *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (first phase)*, Advisory Opinion, I.C.J. Reports 1950, p. 71; *Wall*, *supra n. 4*, p. 156-157, para 44.

²² *Ibid.*; *Kosovo*, *supra n. 13*, p. 416, para 30.

²³ *Certain Expenses of the United Nations*, Advisory Opinion, I.C.J. Reports 1962, p. 155.

²⁴ *Ibid.*, p. 155; *Conditions of Admission of a State to Membership in the United Nations*, Advisory Opinion, I.C.J. Reports 1948, p. 61; *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, I.C.J. Reports 1980, p. 87, para 33; *Nuclear Weapons*, *supra n. 1*, p. 234, para 13.

Court's ability to render any advisory opinion.

20. Indonesia also highlights that the subject matter to the UNGA's request does not concern a bilateral issue between Palestine and Israel. Recognizing the powers and responsibilities of the UN concerning international peace and security, the Court found that the Israeli practices affecting the Palestinian people should be considered appropriate to be a concern of the UN.²⁵ The questions of the current advisory opinion have also been formulated in a broader frame of reference to international law.²⁶
21. Indonesia further submits that an advisory opinion from the Court would not obstruct the ongoing or future solutions to the Palestinian-Israel Conflict. In *Wall*, the Court rejected that its advisory opinion might adversely impact the ongoing negotiations and, hence, be contradictory to the interest of the UN as a compelling reason to decline to perform its jurisdiction.²⁷ This Court further emphasized that "no matter what might be its conclusions in any opinion it might give, they would have relevance for the continuing debate on the matter in the UNGA and would present an additional element in the negotiations on the matter..."²⁸
22. In addition, Indonesia would like to underline that the opinion of the Court would serve as a useful purpose for the UNGA. As mentioned by the Court, advisory opinions could provide the requesting organs the elements of law and guidance necessary for it in its action to address issues before it.²⁹

III. Israel Continuously Violates the Right to Self-determination of the Palestinian People Through the Imposition of Discriminatory Measures and Annexation

23. Indonesia recalls the view affirmed by this Court in *Wall*, whereby Israel has "severely impede[d] the exercise by the Palestinian people of its right to self-determination".³⁰ Indonesia further recalls the Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, whereby "Israel has wilfully and intentionally violated the self-determination of the Palestinians in the [OPT], by preventing their exercise of territorial sovereignty over natural resources, suppressing their cultural identity, and repressing Palestinian political character and resistance".³¹

²⁵ *Wall*, *supra* n. 4, p. 159, para 50.

²⁶ *Ibid.*

²⁷ *Ibid.*, p. 159, para 53.

²⁸ *Ibid.*

²⁹ *Ibid.*, p. 162-163, para 59-62.

³⁰ *Ibid.*, p. 184, para 122.

³¹ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, UNGA Res. A/77/356, 21 September 2022 [Report of Special

24. Indonesia submits that Israel continues to violate (a) the right to self-determination of the Palestinian people which is well-established under international law; through its continuous (b) discriminatory policies and measures; and (c) annexation in the OPT. Israel's flagrant violations is best expressed by the then Minister for Foreign Affairs, Yair Lapid in 2016, "Maximum Jews on maximum land with maximum security and with minimum Palestinians."³²

a. The Right of the Palestinian People to Self-determination is Well Established under International Law

25. Indonesia is of the view that under international law, the existence of the Palestinian people and their right to self-determination is undeniable. The Court in *Wall* confirmed that the existence of a "Palestinian people" is no longer in issue", and this people has legitimate rights which include the right to self-determination.³³ Various resolutions of UNGA³⁴ as well as the Human Rights Council³⁵ have also explicitly affirmed the existence of the right to self-determination for the Palestinian people. Indonesia is convinced that, according to the Court's opinion and those resolutions, self-determination is an "inalienable right" of the Palestinian people.³⁶

26. The right to self-determination of the Palestinian people has also been recognised as *erga omnes*, as this Court has unequivocally affirmed.³⁷ In other words, they are by their very nature "...the concern of all States"³⁸ and in view of the importance of the rights involved, should be respected by all States.

b. Israel Persistently Imposes Discriminatory Policies and Practices

27. Israel is continuously imposing discriminatory policies and practices in the OPT, including East Jerusalem. Such imposition of discriminatory policies and practices include the establishment of (1) a discriminatory bifurcated legal regime; and (2)

Rapporteur Albanese], p. 21, para 73.

³² Gil Stern Hoffman, The Jerusalem Post, January 26, 2016, "Lapid: US helped Iran fund its next war against Israel", <https://www.jpost.com/israel-news/politics-and-diplomacy/lapid-us-helped-iran-fund-its-next-war-against-israel-442791>, accessed on 11 February 2023.

³³ *Wall*, *supra n. 4*, p. 182-183, para 118.

³⁴ See UNGA Res. A/RES/77/187, 14 December 2022; 3246 (XXIX), 29 November 1974; 3236 (XXIX), 22 November 1974 [UNGA Resolutions on Self-Determination].

³⁵ Human Rights Council Res. A/HRC/RES/49/28, 1 April 2022.

³⁶ UNGA Resolutions on Self-Determination, *supra n. 34*.

³⁷ *Wall*, *supra n. 4*, p. 167, para 155; *Barcelona Traction, Light and Power Company, Limited, Second Phase*, Judgment, I.C.J. Reports 1970, p. 32, para 33.

³⁸ *Ibid.*

oppressive military rule; which (3) have evolved into an apartheid policy.

(1) Israel Has Imposed a Discriminatory Bifurcated Legal Regime

28. The institutionalization of discriminatory policies and practices in the OPT, including East Jerusalem have persisted for more than half a century, which provides greater enjoyment and livelihoods for Israelis at the expense of the right to self-determination of the Palestinian people. Since a *de facto* occupation began in 1967, a “bifurcated system of citizenship and a dual regime of legal rights have been applied, granting superior citizenship and legal status to Jewish Israeli settlers over Palestinians.”³⁹ In practice, these policies have been applied selectively to Palestinians, while at the same time Israeli law exclusively applies to Israeli settlers.⁴⁰
29. Presently, the institutionalisation of discriminatory measures through a regime of systematic racial oppression was aggravated by the imposition of the Basic Law: Israel – the Nation State of the Jewish People in 2018 (“Basic Law”). The Basic Law, which was upheld by the Israeli High Court in 2021⁴¹ has been entrenching systematic discrimination against Palestinians in two aspects.
30. First, the legitimization of state-endorsed discrimination against Palestinians. Considering its position within the Israeli legal order, the Basic Law provides a legislative framework for subsequent laws and regulations of the same nature promoting discriminatory measures against Palestinians. This is because the Basic Law distinguishes between Jewish Israelis and non-Jewish citizens of Israel and is applicable towards the OPT.⁴²
31. Secondly, the Basic Law also propagates discrimination through the *de facto* extraterritorial imposition of the law, which not only includes the whole territory of Israel, but also includes the OPT and East Jerusalem. In other words, the construction of Article 7 of the Basic Law paves the way for the *de jure* imposition of the Basic Law,

³⁹ International Human Rights Clinic at Harvard Law School and Addameer Prisoner Support and Human Rights Association, “Apartheid in the Occupied West Bank; A Legal Analysis of Israel’s Action”, <http://hrp.law.harvard.edu/wp-content/uploads/2022/03/IHRC-Addameer-Submission-to-HRC-COI-Apartheid-in-WB.pdf>, accessed on 12 March 2023, p. 7.

⁴⁰ Report on the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories, Michael Lynk, Human Rights Council Resolution A/HRC/49.87, 12 August 2022 [Report of Special Rapporteur Michael Lynk 2022], para 50.

⁴¹ Netael Bandel, Haaretz, 8 July 2021, “Israel’s top Court rules the Nation-State Law is Constitutional, Denies Petition against it”, <https://www.haaretz.com/israel-news/2021-07-08/ty-article/.premium/high-court-rules-nation-state-law-is-constitutional-denies-petitions-against-it/0000017f-e61d-d97e-a37f-f77da3210000>, accessed on 19 February 2023.

⁴² Knesset, “Basic-Law Israel the Nation State of the Jewish People, 2018”, <https://main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawNationState.pdf>, accessed on 18 March 2023 [Basic Law], art. 1 (b) and art. 6.

which may realistically affect the OPT.⁴³ Such imposition leads to a dual legal and political system in the OPT that differentiate between Israeli settlers and Palestinians in the OPT.

32. Indonesia notes that Knesset has adopted the Basic Law on East Jerusalem in 1980. The Basic Law illegally incorporates the “Complete and united Jerusalem” as the capital of Israel⁴⁴ and at the same time as “the seat of the President of the State, the Knesset, and the Supreme Court”, despite resolutions from the UNSC and the UNGA rendering the law null and void.⁴⁵ The adoption of this Basic Law has hardened the discriminatory policies and practices done by Israel in East Jerusalem.
33. Indonesia views that such enactment of the laws and regulation violates international law and disregards Jerusalem’s protected status under international law. UNGA Resolution 181(II) (1947) has expressly outlined Jerusalem’s status as a “*corpus separatum* under a special international regime [which] shall be administered by the UN”.⁴⁶

(2) Israel Has Imposed Oppressive Military Rule

34. While Israelis living in the settlements are governed by Israeli Laws, the lives of Palestinians in the West Bank are governed by more than 1.800 military orders since 1967, covering issues in wide aspects of life.⁴⁷
35. Certain narratives seek to justify Israeli’s imposition of such military orders due to the perception of Palestinians as “security risks”, thus justifying any measures or policies to limit their rights.⁴⁸ One example of the military order which exemplifies Israel’s oppressive nature is Military Order 1650 concerning the prevention of infiltration, which expands the definition of infiltration and could potentially allow for the arrest or deportation of any Palestinian residing in the OPT.⁴⁹ Such military order is in breach of Article 49 of the Fourth Geneva Convention which prohibits individual or mass forcible

⁴³ *Ibid.*, art. 7.

⁴⁴ *Ibid.*, art.1.

⁴⁵ For further reference, see; UNSC Res. 478, 20 August 1980, see also: UNSC Res. 2334, 23 December 2016.

⁴⁶ UNGA Res. 181(II), 29 November 1947.

⁴⁷ Report of Special Rapporteur Michael Lynk 2022, *supra n.* 40, para 40.

⁴⁸ B’Tselem, Forbidden Roads Israel Discriminatory Road Regime in the West Bank (Jerusalem: B’Tselem, 2004), p. 3.

⁴⁹ John Dugard and John Reynolds, Apartheid, International Law, and the Occupied Palestinian Territory, *European Journal of International Law*, Volume 24, Issue 3, August 2013, [Dugard and Reynolds, Apartheid, International Law], p. 868-869.

transfers or deportations from an occupied territory.⁵⁰

36. The above demonstrates that through the imposition of military orders, Israel has significantly impeded the freedom of the Palestinian people in their own lands, which contravenes the right to self-determination of the Palestinian people.

(3) Israel's Discriminatory Measures and Policies Have Evolved as an Apartheid Policy

37. Indonesia submits that Israel's discriminatory policies have evolved into an apartheid policy. Some commentators suggested that Israel's discriminatory policies resonate with the definition of apartheid provided by Article 2 of the Apartheid Convention as those acts constitute "[an] inhuman act committed for the purpose of establishing and maintaining domination over one racial group of persons over any other racial group of persons and systematically oppressing them".⁵¹ These discriminatory policies are prohibited under international law. Article 3 of the ICERD imposes a duty to prevent, prohibit, and eradicate, among others, apartheid.⁵² Such prohibition is also well-established under customary international law.⁵³ Numerous reputable scholars as well as organisations have concurred with this view.⁵⁴

⁵⁰ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287 [Fourth Geneva Convention], art. 49.

⁵¹ *Ibid.*, See also: Miles Jackson, Expert Opinion on the Interplay between the Legal Regime Applicable to Belligerent Occupation and the Prohibition of Apartheid under International Law; UNGA Res. A/RES/3068(XXVIII), International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 November 1973, entered into force July 18, 1976, art. 2; Diakonia International Humanitarian Law Centre, "Occupation and the Prohibition of Apartheid, 31 March 2021", <https://www.diakonia.se/ihl/news/expert-opinion-occupation-palestine-apartheid/>, accessed on 31 March 2023.

⁵² UNGA, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, art. 3.

⁵³ See Ariel Bultz, Redefining Apartheid in International Criminal Law. *Crim Law Forum* 24, 205–233 (2013); Dugard and Reynolds, Apartheid, International Law, *supra n.* 49, p. 867–913; Yaffa Zilbershats, Apartheid, International Law, and the Occupied Palestinian Territory: A Reply to John Dugard and John Reynolds, *European Journal of International Law*, Volume 24, Issue 3, 2013, p. 915–916; Paul A. Eden, The Role of the Rome Statute in the Criminalization of Apartheid, *Journal of International Criminal Justice*, 30 June 2013, p. 171.

⁵⁴ Report of Special Rapporteur Albanese, *supra n.* 31, p. 5, para 9-11. See also: Report of Special Rapporteur Michael Lynk 2022, *supra n.* 40; Amnesty International, "Israel's Apartheid against Palestinians: Cruel System of Domination and Crime against Humanity, 2022," <https://www.amnesty.org/en/documents/mde15/5141/2022/en/>, accessed on 21 February 2023; Human Rights Watch, "A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution, 27 April 2021," <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>, accessed on 21 February 2023; "B'Tselem, "A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: this is apartheid", 12 January 2021," https://www.btselem.org/publications/fulltext/202101_this_is_apartheid, accessed on 21 February 2023; Al-Haq and others, Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports, 10 November 2019; and Economic and Social Commission for Western Asia (ESCWA), Israeli Practices towards the Palestinian People and the

38. Israel's continuous consolidation of its discriminatory policies is a manifestation of its attempts to establish and maintain dominance over the Palestinian people. Israel maintains a political system that endows the settlers with substantial rights, benefit and privileges, whilst at the same time effectively and unavoidably placing the Palestinian population as subjugated aliens in their own lands. Palestinians are forced to live behind walls and checkpoints and under permanent military occupation *sans droit, sans égalité, sans dignité et sans liberté* (without rights, without equality, without dignity, and without freedom).⁵⁵
39. Furthermore, the Palestinian people are stripped of their self-sufficiency and hostage to a vicious cycle of dependency on both their economy and international aid, all due to the systematic Israeli restrictions.⁵⁶ In practice, such discriminatory policies and oppression may well effectively put the Palestinian people into perpetual domination. Therefore, the intensity and the systematic discrimination of Palestinians through policies and oppression amount to apartheid, which ultimately deprives the Palestinian people from the enjoyment of their economic, social, and cultural development, as the very basic tenets of the right to self-determination of the Palestinian people.

c. Israel Continues to Conduct Annexation

40. Since 1967, Israel has manifestly exhibited the intention to effectively annex the OPT as Israel's territory in contravention to international law. International law dictates that under no circumstances an occupying power is allowed to annex part or whole of the occupied territory. This uncontested principle⁵⁷ derives its rationale from the very norm that occupation in wartime is essentially a temporary, *de facto* situation, which deprives the occupied power of neither its statehood nor its sovereignty.⁵⁸
41. In *South West Africa*, the principle of non-annexation has been pronounced as a principle that is of "paramount importance".⁵⁹ This principle entails that an occupier "cannot, under any circumstances, acquire the right to conquer, annex or gain any legal

Question of Apartheid: Palestine and the Israeli Occupation, issue No. 1, E/ESCWA/ECRI/2017/1, 2017.

⁵⁵ Human Rights Council Resolution A/HRC/49/87, 12 August 2022, para 52.

⁵⁶ Report of Special Rapporteur Albanese, *supra n.* 31, p. 15, para 48.

⁵⁷ Yoram Dinstein, *The Law of Belligerent Occupation*, (Cambridge University Press: New York, 2009), p. 50.

⁵⁸ Fourth Geneva Convention, *supra n.* 50, art. 49 paragraph (6).

⁵⁹ 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 [*South West Africa*], p. 131.

or sovereign title over any part of the territory under its occupation.”⁶⁰

42. Israel is continuously encroaching the territory of Palestine, specifically subsequent to the Six Day War of 1967, by illegally occupying beyond what was intended under the UN Partition Plan⁶¹, including but not limited to the OPT and East Jerusalem.⁶² Such act of occupation, including the associated regime of establishment of settlement and imposition of discriminatory measures and policies, shows Israel’s intention to illegally annex the aforementioned territories.
43. Israel has continuously established illegal settlements in the OPT despite the illegal nature of such conduct, as proclaimed by this Court⁶³ and affirmed in various UN Resolutions.⁶⁴ The establishment of Israeli settlements are not only perpetrated with an intent to deprive Palestinian people from their homes, but also with an ulterior motive to eventually annex the territory. This is true in two respects.
44. First, based on the Legal Advisor for the Israeli Government’s own admission, the nature of the settlements was not temporary, but are indicative to eventually annex the territory.⁶⁵ The statement from the Legal Advisor for the Israeli Government went even further to conclude that “civilian settlement in the administered territories contravenes explicit provisions of the Fourth Geneva Convention”.⁶⁶
45. Secondly, the establishment of the settlements by Israel are followed with the imposition of certain discriminatory measures to consolidate its hold over the territory and hasten the process of driving out Palestinians from their homes and lands. These measures are manifested in the form of restricting and reducing civil-society activities and the illegal transfer of ownership of lands through a series of laws enacted in the OPT, including East Jerusalem.⁶⁷ Through its executive and judicial branches of

⁶⁰ *Ibid.*, para 29.

⁶¹ UNGA Res. 181(ii), 29 November 1947.

⁶² UNGA Res. ES-10/13, 27 October 2003.

⁶³ *Wall*, *supra n. 4*, p. 51, para 120.

⁶⁴ See UNSC Res. S/RES/446, 22 March 1979; S/RES/452, 20 July 1979; S/RES/252, 21 May 1968; UNGA Res. A/RES/77/126, 15 December 2022; A/RES/77/25, 6 December 2022; and Human Rights Council Res. A/HRC/RES/49/22, 11 April 2022.

⁶⁵ See Memorandum from Legal Adviser Theodore Meron to Mr. Adi Yafeh, Political Secretary to the Prime Minister, “Settlement in the Administered Territories”, 13 March 1968, <https://www.militarycourtwatch.org/files/server/file48485.pdf>, accessed on 14 July 2023, (*...in our settlement in Gush Etzion, evidence of intent to annex [West] Bank to Israel can be seen...*).

⁶⁶ *Ibid.*

⁶⁷ See Amendment No. 40 to the Budgets Foundation Law of 2011; Anti-Boycott Law of 2011; The Duty of Disclosure [for a Body] Supported by a Foreign Political Entity (Amendment) Law of 2016 as referenced in Written Statement submitted by BADIL Resource Center for Palestinian Residency and Refugee Rights, a non-governmental organization in the special consultative status, HRC Res. A/HRC/50/NGO/168, 13 June 2022,

government, Israel has attempted to authorise settlements outposts built on Palestinian lands, such as through the 2017 Regularisation Law. Indonesia views this law as a rubberstamp on the illegal construction of Israeli settlements on privately owned Palestinian lands.⁶⁸

46. In order to assert control over the land of East Jerusalem, Israel has undertaken concerted efforts through coercive measures with an end goal of driving away Palestinians, and replacing them with Israelis by establishing illegal Israeli settlements across the vicinity.⁶⁹ As it stands, more than one-third part of East Jerusalem has been expropriated for Israeli settlements, and only 13 percent of the territory accounts for zoned Palestinian construction.⁷⁰
47. The continued establishment of Israeli settlement that disproportionately affecting Palestinians is worsened by further practices. The existence of Israelis settlement as a result of the *de vide et impera* policies directly correlates with the existence of settler violence. Reports have suggested that there have been 398 cases of settler attacks in the West Bank during January – July 2022, signifying a dramatic increase in comparison to the whole year of 2021 (496 attacks) and 2020 (538 attacks).⁷¹ This increase of violence was exacerbated by the reports highlighting the absence of Israeli security forces to protect Palestinians from settler violence.⁷²
48. The aforementioned policies are operated under one basic assumption: the fragmentation of the Palestinian territory to physically disconnect one community to another. These policies enable Israel to closely monitor Palestinian communities and to ensure absolute isolation of Palestinians from the outside world⁷³, while at the same time solidifying Israel's illegal settlement and subsequently annexing the Palestinian territory.
49. The annexation by Israel over the OPT can also be viewed from a *de jure* and *de facto* basis. Israel's policies and practices amounted as a *de facto* annexation through its

p. 2; Land (Acquisition for Public Purposes) Ordinance in 1943, as amended in 1946; Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, HRC Res. A/HRC/53/CRP.1, 2 June 2023 [Report of the COI on the OPT]; Report of Special Rapporteur Albanese, *supra n.* 31.

⁶⁸ See The Judea and Samaria Settlement Regulation Law, 2017.

⁶⁹ Report of Special Rapporteur Michael Lynk 2022, *supra n.* 40, para 44.

⁷⁰ Report of the COI on the OPT, *supra n.* 67, para 15.

⁷¹ Office for the Coordination of Humanitarian Affairs, "Protection of Civilian Reports, 2 – 15 August 2022", 19 August 2022, <https://www.article49.paragraph.ochaopt.org/poc/2-15-august-2022>, accessed on 26 March 2023.

⁷² Report of the COI on the OPT, *supra n.* 67, para 66.

⁷³ *Ibid.*, para 30.

continued establishment of illegal settlements.⁷⁴ Further, Israel's *de jure* annexation is manifested from the plethora of complex military orders as well as imposition of discriminatory measures against the Palestinian people in the OPT, including East Jerusalem.⁷⁵

50. Indonesia further submits that Israel's purported attempts to annex the OPT shall not alter the status of the territory, which remains to be governed by the law of belligerent occupation.⁷⁶ As such, Israel does not have any title or claim of sovereignty over the territory.⁷⁷

IV. Israel's Occupation of the OPT is Unlawful Under International Law

51. Indonesia submits that an occupation can only be lawful subject to the fulfilment of three cumulative elements, namely (a) the occupying power cannot annex any of the occupied territory; (b) the occupation must be temporary; and (c) the occupying power must act in the best interests of the people under occupation, including acting in full compliance with its duties and obligations under international law.⁷⁸
52. Failure to fulfil even one of the abovementioned elements would result in Israel's prolonged occupation as unlawful and render Israel as an illegal occupant. For the present purposes, Indonesia will establish each element in turn.

a. Israel Consistently Violated the Principle of Non-annexation of Occupied Territory

53. Israel consistently violated the principle of non-annexation of occupied territory as previously discussed in this statement. Part III. c of this statement addressed Israel's violation of the principle of non-annexation of occupied territory. Based on those explanations, it is established that Israel consistently violated the principle of non-

⁷⁴ *Infra*, Part III. b.

⁷⁵ *Ibid.*

⁷⁶ James Crawford, "Third Party Obligations with respect to Israeli Settlements in the Occupied Palestinian Territories", <https://www.tuc.org.uk/sites/default/files/tucfiles/LegalOpinionIsraeliSettlements.pdf>, accessed on 14 July 2023 [James Crawford, Third Party Obligations], para 17.

⁷⁷ *Ibid.*; See also: ICRC, "Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907", <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907>, accessed on 29 March 2023 [Hague Regulation], art. 43.

⁷⁸ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, UNGA Res. A/72/556, 23 October 2017 [Report of Special Rapporteur Michael Lynk 2017], para 28-38; See also: Orna Ben-Naftali, Aeyal M. Gross & Keren Michaeli, "Illegal Occupation: Framing the Occupied Palestinian Territory", 2005 Berkeley Journal of International Law Berkeley Journal of International Law and Michael Lynk, "Prolonged occupation or illegal occupant?", 16 May 2018, European Journal of International Law.

annexation of the occupied territory.

b. Israel's Prolonged Occupation is Not Temporary

54. The very nature of occupation is temporary. This is because an occupation is a transitional period where the occupying power assumes the role of a *de facto* administrator until the release or return of the territory.⁷⁹ It is important to consider the element of temporariness during an occupation, as temporariness is the key element to distinguish between occupation and annexation which incorporates the occupied territory into the territory of the occupying power.⁸⁰
55. Israel's occupation over the OPT has continued for decades. The manner in which Israel maintains its occupation is also contributory to the unlawfulness of its prolonged occupation. Although currently there is no test pertaining to the duration of a lawful occupation, Israel's actions show its intention of seeking to transform its presence from a temporary one into a permanent one, based on three reasons.
56. First, Israel treats the occupation as a permanent fixture through continuous establishment of illegal settlements, extraterritorial applications of its laws, including the possible application of the Basic Law, and expropriation of lands and natural resources in the OPT.⁸¹
57. Second, Israel is unfazed by constant pressure from the international community,⁸² including UNSC Resolution 476 (1980) which "reaffirms the overriding necessity for ending the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem".⁸³ Despite such persistent conveyance of disapproval, Israel continues its measures to consolidate its hold over the OPT.
58. Third, Israel has not committed to any plan of ending its occupation despite the recourse of the international community to seek settlement of the conflict between Israel and Palestine. Taken together, the above reveals an indefinite occupation with no signs of stopping.

⁷⁹ Jean S. Pictet, *The Geneva Conventions of 12 August 1949: Volume IV Relative to the Protection of Civilians in time of War*, (Geneva: International Committee on the Red Cross, 1958) [Fourth Geneva Convention Commentary], p. 275.

⁸⁰ *Ibid.*

⁸¹ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UNGA Res. A/77/328, 14 September 2022, para 75-76.

⁸² See *Wall*, *supra* n. 4 and UNSC Res. 478, 20 August 1980.

⁸³ UNSC Res. 476, 30 June 1980.

c. Israel Fails to Perform its Duties and Obligations Under International Law as the Occupying Power

59. As an occupying power, Israel is obliged to honour and perform its duties under IHL, but it has not done so. The obligations as prescribed under IHL entails Israel to act for the best interests of the people under its occupation.⁸⁴ The substantive provisions of the Hague Regulation combined with the Fourth Geneva Convention have outlined various occupying power obligations under the ambit of IHL. Those obligations include the maintenance of “public order and safety, while respecting, unless absolutely prevented, the laws in force in the country”, and to treat protected persons humanely at all times, in particular against all acts of violence or threats thereof.⁸⁵ These obligations constantly apply in the occupied territory, even when the control over such territory is short-lived.⁸⁶
60. Indonesia submits that Israel has failed to fulfil those obligations owing to its act of prolonged occupation, settlement and annexation, including the imposition of discriminatory measures as well as failure to guarantee public order and safety, which have effectively deprived the Palestinians from their human rights, particularly their right to self-determination. These violations have been submitted under Part III of this written statement.⁸⁷

V. All States and the United Nations Must Not to Recognize the Illegal Situation Resulted from Israel’s Violation of the Right of the Palestinian People to Self-determination

61. Indonesia views that a violation of international law should not be left without consequence. As this Court has held in *Haya de La Torre* and *South West Africa*, any situation that is contrary to a rule of international law should entail a legal consequence, namely that of putting an end to an illegal situation.⁸⁸
62. Israel shall put an end of its annexation and flagrant violation of international law. In *Wall*, the Court clearly stated that Israel is under an obligation to terminate its breaches of international law.⁸⁹ Further, Israel is under an obligation to make reparation for all

⁸⁴ Report of Special Rapporteur Michael Lynk 2017, *supra n.* 78, p. 12, para 35; Hague Regulation, *supra n.* 77, art. 43.

⁸⁵ *Ibid.*

⁸⁶ Eritrea Ethiopia Claims Commission, Partial Award, Central Front Eritrea’s Claims 2, 4, 6, 7, 8 & 22, 28 April 2004, para 57.

⁸⁷ *Infra*, Section III. b.

⁸⁸ *Haya de La Torre Case (Colombia v. Peru)*, Judgment of 13 June 1951, I.C.J. Reports 1951, p. 82; *South West Africa*, *supra n.* 59, p. 16, para 11.

⁸⁹ *Wall*, *supra n.* 4, p. 201-202, para 163.

damaged done.⁹⁰

63. All states and the UN are also under obligation to end such violations, not to render aid and or assistance that would contribute to the maintenance of the unlawful circumstances, non-recognition of the illegal situation resulting from Israel's breach of fundamental rules and principles of international law, and to cooperate towards achieving the realization of the Palestinian people's right to self-determination.
64. The abovementioned duties are well-established under international law and customary international law. In *Wall*, such obligations arise as a result of the *erga omnes* character of the norms of the right to self-determination.⁹¹ The foregoing obligations are also imposed by the UN Charter and various human rights instruments as well as the Fourth Geneva Convention.
65. Various resolutions of the UNGA and UNSC, have persistently called on all states to take and refrain from committing policies or practices that would effectively acknowledge and recognize Israel's policies as referred above. The resolutions also encourage all members to cooperate towards a peaceful settlement of the Israel-Palestinian conflict.
66. In view of the above, Indonesia submits that all states are required not to render any assistance to aid the maintenance of such violation of international law, whether logistical, or political in nature. In addition, third states, and also its private entities, should cease to engage in trade or to refrain from investing in businesses located in the illegal settlements, as well as employ economic boycotts,⁹² should the economic activities be deemed to be one of the contributing factors to further the violation of the rights of Palestinian people. These efforts should aim "to bring the illegal situation to an end."⁹³
67. All states and the UN must also cooperate to actively end Israel's ongoing violation in the OPT, including East Jerusalem. Essentially, they may collectively support and assist the realization of the inalienable human rights of the Palestinian people.⁹⁴

⁹⁰ *Ibid.*

⁹¹ *Ibid.*, p. 68, para 159.

⁹² International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1 [ARSIWA], p. 138. See also: James Crawford. Third Party Obligation, *supra n.* 76.

⁹³ *South West Africa, supra n.* 59, p. 16, 52, para 111.

⁹⁴ See generally: ARSIWA, *supra n.* 92; Report of the COI on the OPT, *supra n.* 67; Report of Special Rapporteur Albanese, *supra n.* 31.

VI. Conclusion and Submission

68. For the reasons set out in this written statement, Indonesia herewith submits to the Court the following:
- a. The Court has jurisdiction to give the Advisory Opinion requested by the UNGA, and there are no grounds for the Court to decline to exercise such jurisdiction
 - b. Indonesia maintains that the Court is in the position to establish that Israel has committed a series of systematic violations of international law in the OPT, including East Jerusalem
 - c. Violations committed by Israel are manifested through the following policies and practices, including but not limited to:
 - (1) prolonged occupation
 - (2) settlement and annexation policies of the OPT since 1967
 - (3) measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem
 - (4) adoption of related discriminatory legislation and measures contrary to its obligation based on international human rights law, particularly ICERD
 - (5) breach of its obligations to respect the right of the Palestinian people to self-determination
 - (6) breach of its obligations as Occupying Power under the Fourth Geneva Convention
 - d. Israel's occupation of the OPT remains unlawful under international law. In this respect, Israel's continued illegal policies and practices, cannot alter the legal status of the OPT, including the status of East Jerusalem
 - e. Israel shall, including but not limited to:
 - (1) repeal or render ineffective forthwith all legislative and regulatory acts relating to its violation of the fundamental rules and principles of international law
 - (2) put an end of its violation of the fundamental rules and principles of international law, and shall not repeat such wrongful conduct
 - (3) respect the rights of the Palestinian people recognised by international law, especially the right to self-determination
 - (4) make reparation for all damages caused by its violations which deprive the Palestinians from their inalienable rights to self-determination
 - f. All States and the UN are under the following international obligations:
 - (1) not to recognize the illegal situation resulting from Israel's breach of fundamental rules and principles of international law, and not to render aid or assistance to

Israel that would contribute to the maintenance of the unlawful circumstances as resulted from such breach of fundamental rules and principles of international law

- (2) to ensure compliance by Israel with its obligations under international human rights law, international humanitarian law, as well as customary international law as embodied in, particularly, the Hague Regulation, Fourth Geneva Convention, and ICERD
- g. The United Nations, especially the UNGA and the UNSC, should consider further action required to bring to an end the illegal situation resulting from Israel's breach of fundamental rules and principles of international law



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