



REPUBLIC OF NAURU

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

(REQUEST FOR ADVISORY OPINION)

ORDER OF THE INTERNATIONAL COURT OF JUSTICE

OF

3 FEBRUARY 2023

**WRITTEN STATEMENT OF THE GOVERNMENT OF THE REPUBLIC OF
NAURU**

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WRITTEN STATEMENT OF THE GOVERNMENT OF THE REPUBLIC OF NAURU

1. On 30 December 2022, the United Nations General Assembly adopted, at the 56th meeting of its Seventy-seventh Session, resolution 77/247, by which it decided, pursuant to Article 65 of the Statute of the International Court of Justice ('**Court**') to request 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:
 - (i) 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?
 - (ii) How do the policies and practices of Israel referred to in paragraph (i) 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. The following observations are submitted by the Government of the Republic of Nauru in response to the Order of the Court of 3 February 2023 fixing the time-limit within which written statements relating to the questions may be submitted to the Court by the United Nations and its Members States, as well as the observer State of Palestine.
3. Nauru is of the view that there is an established legal framework for the resolution of the Israeli-Palestinian conflict. It would therefore be improper for the Court, as the principal judicial organ of the United Nations, to condone or facilitate a deviation from the established legal framework, including a violation of binding bilateral agreements, by either Israel or Palestine, or to be seen as condoning or facilitating as such.
4. Nauru submits for the reasons set out below that a number of considerations lead inevitably to the conclusion that the Court should reaffirm the established legal framework for the resolution of the Israeli-Palestinian conflict. If the Court, in its discretion, finds it

appropriate to render an advisory opinion, then the advisory opinion should encourage and assist both parties to uphold their legal commitments under the bilateral agreements, including by re-engaging and continuing in credible and meaningful negotiations.

ESTABLISHED LEGAL FRAMEWORK

5. As previously mentioned, there is an established legal framework for the resolution of the Israeli-Palestinian conflict. The framework is reflected in a number of United Nations Security Council and General Assembly resolutions, as well as in international declarations. It is also laid down in binding Israeli-Palestinian agreements.

6. The established legal framework has also been recognised by the international community.

A. Principles of the established legal framework

7. There are two key principles that form the basis of the established legal framework.

8. The first principle is that the permanent status of the territory in question is to be resolved through good faith negotiations between the parties. It is through these negotiations that the parties will address their competing claims (see: *Declaration of Principles on Interim Self-Government Arrangements*, 13 September 1993, p. 5 at art V(3) which states that “*It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbours, and other issues of common interest*”; *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip*, 28 September 1995, p. 29 at art XXXI(5) which states that “*... It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbours, and other issues of common interest*”).

9. The second principle is that, during the interim period pending a negotiated outcome, the territory continues to be governed by the law of belligerent occupation and the terms of binding Israeli-Palestinian agreements. The terms of these agreements divide jurisdiction, authorities and responsibilities between the Israeli military government and the Palestinian Authority. Under this legal regime, Israel has the recognised right to maintain its presence in the territory, *inter alia*, in order to meet its security obligations (see: *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip*, 28 September 1995, p. 18 at art XIII(2)(a)).

B. United Nations Security Council and General Assembly resolutions

10. The established legal framework is reflected in United Nations Security Council and General Assembly resolutions. The framework dates all the way back to United Nations Security Council resolutions 242 (1967) and 338 (1973) which, *inter alia*, “*promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles of this resolution*” and which also decided that “*negotiations shall start between the parties concerned under appropriate auspices aimed*

at establishing a just and durable peace in the Middle East". Moreover, in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports of Judgments, Advisory Opinions and Orders 2004*, pp. 200 and 201, para. 162, the Court confirmed the continuing validity of the established legal framework by noting that "*illegal actions and unilateral decisions have been taken on all sides, whereas in the Court's view, this tragic situation can be brought to an end through implementation in good faith of all relevant Security Council resolutions, in particular resolutions 242 (1967) and 338 (1973)*".

11. Even in United Nations General Assembly resolution 77/247, which initiated the present advisory proceedings, the United Nations General Assembly stressed "*the need for full compliance with the Israeli-Palestinian agreements reached within the context of the Middle East process, including the Sharm el-Sheikh understandings, and the implementation of the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict*" (see: *United Nations General Assembly adopted resolution 77/247*, p. 3 at preambular para. 22).

C. Binding Israeli-Palestinian agreements

12. The United Nations Security Council resolutions 242 (1967) and 338 (1973) are incorporated in Israeli-Palestinian agreements as the terms of reference applicable for the resolution of the Israeli-Palestinian conflict (see: *Declaration of Principles on Interim Self-Government Arrangements, 13 September 1993*, p. 4 at art I which states that "...*It is understood that the interim arrangements are an integral part of the whole peace process and that the negotiations on the permanent status will lead to the implementation of Security Council resolutions 242 (1967) and 338 (1973)*"). These agreements also outline Israel's powers and responsibilities in the territory regarding security and other spheres, pending a negotiated outcome to the conflict (see: *Declaration of Principles on Interim Self-Government Arrangements, 13 September 1993*, p. 6 at art VIII which states "*In order to guarantee public order and internal security for the Palestinians of the West Bank and the Gaza Strip, the Council will establish a strong police force, while Israel will continue to carry the responsibility for defending against external threats, as well as the responsibility for overall security of Israelis for the purpose of safeguarding their internal security and public order*"; *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995*, p. 16 at art X(4) which states that "*Israel shall continue to carry the responsibility for external security, as well as the responsibility for overall security of Israelis for the purpose of safeguarding their internal security and public order*", and p. 18 arts. XII and XIII(2)(a)).
13. The agreements further stipulate the parties' commitment that the status of the territory would not be altered by unilateral measures undertaken by either side (see: *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995*, p. 30 at art XXXI(7) which states that "*Neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations*").

14. Israel and Palestine have both committed to resolving the conflict and their competing claims through good faith negotiations. They have also agreed to Israeli presence and responsibilities in the territory pending a negotiated outcome.
15. Israel and Palestine have also engaged in repeated efforts over the years to resolve their conflict based on the established legal framework and to determine the permanent status of the territory in question through negotiations. In a joint statement issued together with Egypt, Jordan and the United States of America on 19 March 2023, Israel and Palestine “reaffirmed their commitment to all previous agreements between them, and reaffirmed their agreement to address all outstanding issues through direct dialogue”. The parties further “reaffirmed their commitment to advancing security, stability and peace for Israelis and Palestinians alike, and recognised the necessity of de-escalation on the ground, the prevention of further violence, as well as of pursuing confidence building measures, enhancing mutual trust, creating political horizon, and addressing outstanding issues through direct dialogue”.

D. Recognition of the established legal framework by the international community

16. The international community has also recognised the established legal framework as the only way to achieving peace (see: *United Nations Secretary General’s observations, 22 March 2023*, available at Security Council Briefing on the Situation in the Middle East, Report of the Secretary-General UNSCO (unmissions.org) – “...there is no substitute for a legitimate political process that will resolve the core issues driving the conflict.....I urge Israelis, Palestinians, regional States and the broader international community to take steps to re-engage on meaningful negotiations and, ultimately, peace”; Council of the European Union, *Statement of the High Representative on behalf of the European Union on the latest developments, 8 March 2023*, available at Israel/Palestine: Statement of the High Representative on behalf of the European Union on the latest developments – Consilium (europa.eu) – “Only a negotiated agreement offers a chance of security and peace for all”; and *United Nations General Assembly resolution A/RES/77/25 on ‘Peaceful settlement of the question of Palestine’*, adopted on 6 December 2022, at para. 5 which “Calls upon both parties to act responsibly and in compliance with international law and their previous agreements and obligations, in both their policies and actions, in order to, with the support of the Quartet and other interested parties, urgently reverse negative trends, including all measures taken on the ground that are contrary to international law, and create the conditions necessary for a credible political horizon and the advancement of peace efforts”).

E. Established legal framework should be preserved and implemented

17. Nauru reiterates its support for the established legal framework and the importance of its preservation and implementation by both Israel and Palestine.
18. Nauru also reiterates its support for the efforts being undertaken to advance the process in accordance with the established legal framework and urges a negotiated resolution of the conflict that meets the legitimate needs and aspirations of both Israel and Palestine. By

rendering an advisory opinion that effectively seeks to negate the established legal framework, the Court may be seen as contradicting the efforts being undertaken by Israel and Palestine, as well as the recent efforts of Jordan, Egypt and the United States of America, to strengthen, preserve, and advance the implementation of that established legal framework.

19. In view of these considerations, Nauru finally submits that the Court may appropriately determine that there is a bilateral arrangement that governs the relations between Israel and Palestine and that bilateral agreements between Israel and Palestine are to be preserved and maintained to resolve any issues between the parties. The Court may also determine that any alleged violation is to be resolved through negotiations between the parties and not through the Court's involvement.