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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 DJIBOUTI

25 July 2023

[Translation by the Registry]

1. By its resolution 77/247 of 30 December 2022, the United Nations General Assembly requested the Court to give an advisory opinion on the following questions:

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

2. The legal framework applicable to the request for an advisory opinion is specified in the resolution itself, which refers to

“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”².

3. In its Order of 3 February 2023, the Court decided that “the United Nations 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 Court for an advisory opinion”³. The date of 25 July was fixed as “the time-limit within which written statements on the questions may be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute”⁴.

4. The Republic of Djibouti, which expresses its solidarity with the Palestinian people and its support for their inalienable rights, as well as its commitment to international law, wishes to avail itself of the aforementioned possibility, and will focus its written statement on three specific aspects of the request for an advisory opinion. In this regard, it will begin by establishing the illegality of Israel’s occupation of Palestinian territory (I), before addressing the questions relating to Israel’s compliance with its obligations under international humanitarian law and international human rights law (II) and, finally, identifying the legal consequences arising from the violations of international law committed by Israel, in particular for third States (III).

I. THE PROLONGED OCCUPATION OF PALESTINIAN TERRITORY IS, AS SUCH, CONTRARY TO INTERNATIONAL LAW

5. Since 1967, Israel has imposed a military occupation on the territory and population of Palestine. The settlement policy implemented by successive Israeli Governments, and the measures that have accompanied it, have the purpose and effect of making it impossible for the Palestinian people to exercise their right to self-determination (A). The adoption by the Israeli occupation

¹ A/RES/77/247 of 30 Dec. 2022, para. 18.

² *Ibid.*

³ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Order of 3 February 2023*, para. 1.

⁴ *Ibid.*, para. 2.

authorities of measures and policies that have as an effect the *de jure* or *de facto* annexation of portions of Palestinian territory is a breach of their duty to respect the integrity of that territory and violates the principle of non-acquisition of territory by force (B). Finally, the régime of occupation put in place by Israel has the effect of systematically discriminating against the Palestinian population, in favour of the Jewish population living in the settlements, in violation of the prohibition on racial segregation and apartheid (C).

A. The prolonged occupation of Palestinian territory breaches the Palestinian people's right to self-determination

6. As the International Court of Justice (ICJ) recalled in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (hereinafter the "Advisory Opinion on the Wall")⁵, the right of peoples to self-determination is a peremptory norm (*jus cogens*) whose application to the Palestinian people is "no longer in issue". This right predated the League of Nations Mandate for Palestine and was recognized under that same Mandate, Palestine being considered to fall within category A, which included peoples ready for independence. Article 22, paragraph 4, of the Covenant of the League of Nations states:

"Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory."

7. However, the Mandate was diverted from its original purpose since the Palestinian people were unable to exercise their right to self-determination, and, at the end of the Mandate, the Palestinian people were effectively deprived of that ability as a result of being dispossessed and two thirds of them having been forcibly displaced. The denial of that fundamental right continues to this day. The General Assembly reaffirms annually "the right of the Palestinian people to self-determination, including the right to their independent State of Palestine" and "urges all States and the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their right to self-determination"⁶.

8. It is established in numerous reports and resolutions that Israel's settlement policy is aimed at "altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem", in particular through measures such as "the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians", to quote the language of resolution 2334 adopted by the Security Council in December 2016⁷. In that same resolution, the Security Council states that "the establishment by Israel of settlements in the [occupied] Palestinian territory . . . constitutes a flagrant violation under international law".

9. In its 2004 Advisory Opinion, the Court found that the construction of the wall, "along with measures taken previously, thus severely impedes the exercise by the Palestinian people of its right

⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 172, para. 88, and pp. 182-183, para. 118.

⁶ A/RES/77/208, The right of the Palestinian people to self-determination, 15 Dec. 2022.

⁷ S/RES/2334, 23 Dec. 2016.

to self-determination, and is therefore a breach of Israel's obligation to respect that right"⁸. The Court referred in particular to the establishment of settlements, the annexation of East Jerusalem and demographic changes. The policy pursued since 2004 by the Israeli occupation authorities has further aggravated the scope and effects of the foregoing. Israel has continued work on the construction of the wall and has already completed 65 per cent of it⁹; the number of Jewish settlers in the West Bank, including East Jerusalem, has increased greatly; and measures violating the rights of the Palestinian population — including wilful killings and indiscriminate attacks, arbitrary arrests and detentions, the destruction of homes, and restrictions on freedom of movement — have continued¹⁰. The settlement and annexation policy is unanimously acknowledged to be a major obstacle to the exercise by the Palestinian people of their right to self-determination, which includes the right to their independent State of Palestine and the effective exercise of its sovereignty¹¹.

10. In view of the foregoing, it is clear that Israel's occupation and settlement of Palestinian territory, and the measures that accompany them, constitute a blatant violation of the right to self-determination of the Palestinian people and of the United Nations Charter, in particular its Article 1, paragraph 2.

B. The prolonged occupation of Palestinian territory violates the right to territorial integrity and the principle of non-acquisition of territory by force

11. The principle of non-acquisition of territory by force is a peremptory norm of general international law¹². Nevertheless, the prolonged occupation of Palestinian territory has been accompanied by measures of *de jure* and *de facto* annexation of large portions of that territory. Israel has annexed Jerusalem in violation of its international status and the relevant resolutions of the Security Council and the General Assembly; this annexation was reaffirmed in Israel's basic law of 30 July 1980, which makes Jerusalem its "undivided and reunited" capital. The annexation has been roundly condemned by the United Nations. The Security Council has thus disapproved "in the strongest terms the enactment by Israel of the 'basic law' on Jerusalem", which "constitutes a violation of international law", is "null and void" and must be "rescinded forthwith"¹³. Similarly, the General Assembly regularly recalls that "all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purported to alter the character and status of the Holy City of Jerusalem, in particular the so-called 'Basic Law' on Jerusalem and the proclamation of Jerusalem as 'the capital of Israel', [are] null and void"¹⁴.

12. The rest of the West Bank has also undergone *de facto* annexation. This includes, in particular, the territories designated for settlements and their accompanying infrastructures, as well

⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 184, para. 122.

⁹ Office for the Co-ordination of Humanitarian Affairs (OCHA), Fact sheet: the Humanitarian Impact of 20 Years of the Barrier, Dec. 2022, www.ochaopt.org/sites/default/files/Barrier_Factsheet_Dec2022.pdf.

¹⁰ See, in particular, Report of the United Nations High Commissioner for Human Rights, "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan", A/HRC/52/76, 15 Mar. 2023.

¹¹ See, in particular, S/RES/2334, 23 Dec. 2016, para. 1; Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN doc. A/77/328, 14 Sept. 2022; Human Rights Council, resolution 52/35, "Israeli Settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan", A/HRC/RES/52/35, 20 Apr. 2023.

¹² Report of the International Law Commission (ILC), 73rd Session (18 Apr.-3 June and 4 July-5 Aug. 2022), A/77/10, pp. 86-87.

¹³ Security Council, resolution 478 (1980) of 20 Aug. 1980.

¹⁴ See, in particular, resolution 76/12 adopted by the General Assembly on 1 Dec. 2021.

as military and security zones, to which all Palestinian populations are denied access. In its September 2022 report, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel noted that,

“[s]ince the start of the occupation, Israel has extended its legal domain in the West Bank, which has resulted in far-reaching changes to the applicable law and, in practice, two sets of applicable law: military law and Israeli domestic law, which has been extended extra-territorially to apply only to Israeli settlers.”¹⁵

13. In its resolution 2334 (2016), the Security Council noted the fact that “negative trends on the ground . . . are steadily . . . entrenching a one-State reality”, thereby acknowledging the annexationist dimension of Israel’s settlement policy.

14. In its 2013 report, the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, found:

“The establishment of the settlements in the West Bank, including East Jerusalem . . . , is a mesh of construction and infrastructure leading to a creeping annexation . . . and undermines the right of the Palestinian people to self-determination.”¹⁶

15. In its 2004 Advisory Opinion on the Wall, the Court recalled that “both the General Assembly and the Security Council have referred, with regard to Palestine, to the customary rule of ‘the inadmissibility of the acquisition of territory by war’”, mentioning in particular resolution 242 (1967) of 22 November 1967. It considered that “the construction of the wall and its associated régime create a ‘fait accompli’ on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to *de facto* annexation”. Since 2004, no steps have been taken to dismantle the wall; quite the contrary, its construction has continued, the settlement policy has gained momentum, and measures imposing Israeli law on large swaths of Palestinian territory that have been taken over by settlements and military zones have expanded. From this point of view, the Israeli occupation unquestionably presents a “permanent” effect aimed at the appropriation of as much Palestinian territory as possible for the benefit of Israel’s Jewish population, resulting in *de facto* annexation. Such was the conclusion reached by the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel in its report of September 2022:

“Israel treats the occupation as a permanent fixture and has — for all intents and purposes — annexed parts of the West Bank, while seeking to hide behind a fiction of temporariness. Actions by Israel constituting *de facto* annexation include expropriating land and natural resources, establishing settlements and outposts, maintaining a

¹⁵ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 2022, paras. 46-47.

¹⁶ Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 Feb. 2013, A/HRC/22/63, para. 101.

restrictive and discriminatory planning and building regime for Palestinians and extending Israeli law extraterritorially to Israeli settlers in the West Bank.”¹⁷

16. The General Assembly itself has underlined the difference between occupation, which is supposed to be temporary, and annexation, which is intended to be permanent, and has effectively criticized Israel for using the former as a means of obtaining the latter. The General Assembly has explicitly stressed the fact that

“the occupation of a territory is to be a temporary, *de facto* situation, whereby the occupying Power can neither claim possession nor exert its sovereignty over the territory it occupies, [and has] recall[ed] in this regard the principle of the inadmissibility of the acquisition of land by force and therefore the illegality of the annexation of any part of the Occupied Palestinian Territory, including East Jerusalem, which constitutes a breach of international law, undermines the viability of the two-State solution and challenges the prospects for a just, lasting and comprehensive peace settlement, and [has] expresse[d] its grave concern at recent statements calling for the annexation by Israel of areas in the Occupied Palestinian Territory”¹⁸.

17. Owing to the effect of annexation that it produces, Israel’s occupation and settlement policy violates the principle of non-acquisition of territory by force which derives from Article 2, paragraph 4, of the United Nations Charter and which is a cardinal principle of international relations in the post-Second World War era.

18. This policy also contravenes the principle of respect for territorial integrity, an essential corollary of the right to self-determination¹⁹. In its Advisory Opinion on the Chagos Archipelago, the Court established that respect for territorial integrity is “a key element of the exercise of the right to self-determination under international law”²⁰. This principle can, *mutatis mutandis*, be extended to other instances involving the application of the right of peoples to self-determination, including, in the present case, the right of the Palestinian people. As already recalled, the Palestinian people have a recognized right to self-determination. In its resolution 67/19, which grants Palestine non-member observer State status in the United Nations, the General Assembly reaffirmed “the right of the Palestinian people to self-determination and to independence in their State of Palestine on the Palestinian territory occupied since 1967”²¹.

¹⁷ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/77/328, 14 Sept. 2022, para. 76.

¹⁸ A/RES/77/126, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 12 Dec. 2022.

¹⁹ See, in particular, General Assembly resolutions 1514 (XV) and 2625 (XXV).

²⁰ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 134, para. 160.

²¹ Resolution adopted by the General Assembly on 29 Nov. 2012, A/RES/67/19.

19. Palestinian territory is thus protected by the principle of respect for territorial integrity, which fully applies to Israel in so far as it is conducting a foreign occupation of this territory. Therefore, by engaging in a “prolonged occupation”, which is intended to be permanent, by actively pursuing a policy of settlement, appropriation and fragmentation of the territory, and by adopting laws and measures that have the effect of *de jure* or *de facto* annexation, Israel is violating the principle of respect for the integrity of Palestinian territory and severely impeding the exercise by the Palestinian people of their right to self-determination.

C. Israel’s régime of occupation systematically discriminates against the Palestinian population in a manner akin to apartheid

20. The occupation and settlement policy pursued by Israel is accompanied by a régime of systematic discrimination against the Palestinian population which is intended to give preference to Israeli Jewish settlers living in the West Bank, including East Jerusalem. This situation is described in numerous international reports.

21. In its “Concluding observations on the combined seventeenth to nineteenth reports of Israel”, the Committee on the Elimination of Racial Discrimination states the following:

“As regards the specific situation in the Occupied Palestinian Territory, the Committee remains concerned . . . at the consequences of policies and practices that amount to segregation, such as the existence in the Occupied Palestinian Territory of two entirely separate legal systems and sets of institutions for Jewish communities in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand.”²²

22. The Committee also notes “the discriminatory effect of planning and zoning laws and policies on Palestinians and Bedouin communities in the West Bank, the continued demolitions of buildings and structures, including water wells, and as a consequence, further displacement of Palestinians”, and states that “the process of applying for building permits is prolonged, complicated and expensive and that few such applications are approved, while a preferential treatment continues for the expansion of Israeli settlements, including through the use of ‘State land’ allocated for settlements”²³.

23. The same types of observations have been made by other United Nations bodies. For instance, the United Nations High Commissioner for Human Rights, for instance, states that his 2023 report:

“documents patterns of systematic discrimination in law, policy and practice, encompassing almost every sphere of life, and examines, in particular, housing, land and property rights and the right to life, security of person and access to justice. These violations have created a coercive environment which is forcing Palestinians to leave

²² Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventeenth to nineteenth reports of Israel, CERD/C/ISR/CO/17-19, 12 Dec. 2019, para. 22.

²³ *Ibid.*, para. 42. See also Human Rights Committee, Concluding observations on the fifth periodic report of Israel, CCPR/C/ISR/CO/5, 22 Mar. 2022, paras. 36, 42-43.

their homes and their lands in possible forcible transfer . . . and [are] the ultimate result of the cumulative effect of the settlement enterprise”²⁴.

24. This assessment has also been made in various reports of the special rapporteurs on the situation of human rights in the Palestinian territories occupied since 1967²⁵, as illustrated by the description provided in a report published in 2021:

“Human rights violations against Palestinians arising from the Israeli settlements are widespread and acute, and settler violence has created a coercive environment. There is an apartheid-like two-tier legal system granting full citizenship rights for the Israeli settlers while subjecting the Palestinians to military rule. Access to the natural resources of the occupied territory, especially to water, is disproportionately allocated to the settlements and the fragmented territory left to the Palestinians has resulted in a highly dependent and strangled economy, mounting impoverishment, daily impositions and indignities, and receding hope for a reversal of fortune in the foreseeable future.”²⁶

25. Taken as a whole, these elements led the Human Rights Council to consider that “numerous Israeli policies and practices relating to settlement activity in the Occupied Palestinian Territory, including East Jerusalem, amount to blatant discrimination, including through the creation of a system privileging Israeli settlements and settlers against the Palestinian people, and in violation of their human rights”²⁷.

26. It can thus be concluded that Israel’s policy towards the Palestinian population constitutes a clear violation of peremptory norms²⁸, namely the prohibition of racial discrimination and of racial segregation and apartheid. Article 3 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, to which Israel is a party, provides:

“States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”

²⁴ Report of United Nations High Commissioner for Human Rights, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, A/HRC/52/76, 15 Mar. 2023, para. 2.

²⁵ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, A/77/356, 21 Sept. 2022; Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, A/HRC/49/87, 12 Aug. 2022; Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, A/HRC/16/72, 10 Jan. 2011; Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, A/HRC/4/17, 29 Jan. 2007.

²⁶ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, “Situation of human rights in the Occupied Palestinian Territory, including East Jerusalem, with a focus on the legal status of the settlements”, A/HRC/47/57, 29 July 2021, para. 58. See also Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/HRC/50/21, 9 May 2022, paras. 49-50.

²⁷ Human Rights Council, resolution 52/35, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, A/HRC/RES/52/35, 20 Apr. 2023.

²⁸ Report of the ILC, 73rd Session (18 Apr.-3 June and 4 July-5 Aug. 2022), A/77/10, pp. 86-87.

27. In this regard, in its aforementioned concluding observations, the Committee on the Elimination of Racial Discrimination urged Israel “to give full effect to article 3 of the Convention to eradicate all forms of segregation between Jewish and non-Jewish communities and any such policies or practices which severely and disproportionately affect the Palestinian population in Israel proper and in the Occupied Palestinian Territory”²⁹.

28. In light of the aggravation observed in recent years, it would appear that in so far as the Israeli policy of occupation and settlement establishes a system of domination of the population of Israeli Jewish settlers, who are living in Palestinian territory illegally, over the Palestinian population in that territory, it may be characterized as a régime of apartheid, which practices are prohibited by customary law, as reflected in the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (Article 3), the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid, the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (Article 85, para. 4 (c)), and the 1988 Statute of the International Criminal Court (Article 7, para. 1 (j), and para. 2 (h)).

29. Three special rapporteurs on the human rights situation in the Palestinian territories occupied since 1967 have found that Israel has engaged in practices of apartheid in occupied Palestinian territory³⁰. In a report submitted in August 2022, for instance, the special rapporteur stated in his conclusions:

“Applying each of the three steps of the amalgamated test from the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute, the Special Rapporteur has concluded that the political system of entrenched rule in the Occupied Palestinian Territory that endows one racial-national-ethnic group with substantial rights, benefits and privileges while intentionally subjecting another group to live behind walls and checkpoints and under a permanent military rule *sans droits, sans égalité, sans dignité et sans liberté* (without rights, without equality, without dignity and without freedom) satisfies the prevailing evidentiary standard for the existence of apartheid.”³¹

Finally, it should be noted that several international reports show a situation of apartheid on both sides of the Green Line, the Armistice Line of 1949.

²⁹ Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventeenth to nineteenth reports of Israel, CERD/C/ISR/CO/17-19, 12 Dec. 2019, para. 23.

³⁰ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, A/HRC/4/17, 29 Jan. 2007; Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, A/HRC/16/72, 10 Jan. 2011; Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, A/HRC/49/87, 12 Aug. 2022.

³¹ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, A/HRC/49/87, 12 Aug. 2022, para. 52.

30. This characterization, which is in keeping with the analyses of various human rights NGOs³², warrants special legal examination by the ICJ in the context of these advisory proceedings.

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31. In light of the foregoing, it can be concluded that the occupation of Palestinian territory is, as such, illegal under international law, and has been from the outset, because it gives rise to violations of peremptory norms of international law, namely by posing a fundamental obstacle to the exercise by the Palestinian people of their right to self-determination, because it is aimed at and results in annexation contrary to the principles of territorial integrity and non-acquisition of territory by force, and because it leads to the establishment of a régime of segregation, if not apartheid. It follows that Israel is under an obligation to put an immediate end to its occupation and to the settlement and annexation policies that accompany it. This obligation previously emerged from resolution 242 adopted by the Security Council in 1967, which called for the “[w]ithdrawal of Israel armed forces from territories occupied in the recent conflict” and the “[t]ermination of all claims or states of belligerency”³³. It was recalled by the Security Council in its resolution 476 (1980), in which the Council reaffirmed “the overriding necessity for ending the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem”³⁴. More recently, the Security Council reiterated its call for the Israeli occupation to be brought to an end “without delay”³⁵. The General Assembly, for its part, has regularly stressed “the urgency of achieving without delay an end to the Israeli occupation that began in 1967”³⁶.

II. ISRAEL’S POLICIES AND PRACTICES IN PALESTINIAN TERRITORY VIOLATE INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW

32. In this second chapter of its written statement, the Republic of Djibouti will begin by recalling the existence of military occupation of the entire Occupied Palestinian Territory as well as the law applicable to this occupation, which includes not only the rules of international humanitarian law (IHL) but also the rules of international human rights law (IHRL) (A). In view of the prolonged nature of this occupation, the latter rules are of fundamental importance for the protection of the occupied civilian population (B). On this basis, we will discuss more specifically the fact that the settlement of the Occupied Palestinian Territory and the measures aimed at altering its demographic

³² Amnesty international, “Israel’s apartheid against Palestinians. Cruel System of Domination and Crime against Humanity”, Feb. 2022; Human Rights Watch, “A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution”, Apr. 2021; B’Tselem, “A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid”, 12 Jan. 2021; Yesh Din, “The Occupation of the West Bank and the Crime of Apartheid: Legal Opinion”, Sept. 2020; Al-Haq and others, report on Israeli apartheid entitled “Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel’s Seventeenth to Nineteenth Periodic Reports”, Nov. 2019.

³³ Security Council resolution 242 (1967) of 22 Nov. 1967.

³⁴ Security Council resolution 476 (1980) of 30 June 1980.

³⁵ Security Council resolution 2334 (2016) of 23 Dec. 2016.

³⁶ See, in particular, General Assembly resolution 77/208, “The right of the Palestinian people to self-determination”, adopted 15 Dec. 2022.

composition (C), as well as Israel's adoption of discriminatory legislation and measures (D), constitute violations of the rules of both IHL and IHRL.

A. The military occupation of all the occupied Palestinian territories and the law applicable to this occupation

33. Under Article 42 of the 1907 Regulations Respecting the Laws and Customs of War on Land (hereinafter "the Hague Regulations of 1907"), the concept of occupation is defined as follows:

"Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised."³⁷

The adoption of the 1949 Geneva Conventions did not alter this definition.

34. There is no question that the occupied Palestinian territories are under military occupation by Israel. This occupation covers all the occupied Palestinian territories.

35. The legal régime applicable to this military occupation includes, *inter alia*, the conventional and customary rules of IHL by which Israel is bound, in particular the relevant provisions of the Hague Regulations of 1907, all provisions of the Fourth Geneva Convention of 1949³⁸, the applicable rules of Additional Protocol (I) and the rules of IHRL. Indeed, the extraterritorial application of IHRL in situations of armed conflict and occupation is no longer in any doubt. The ICJ has thus confirmed on several occasions the extraterritorial application of the rules of IHRL in situations of armed conflict, including in particular the situation in the Occupied Palestinian Territory³⁹. As is clear from the jurisprudence of the Court in both the Judgment in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* and the Advisory Opinion on the Wall, in the situation of military occupation of Palestinian territories by Israel, the rules of IHL and IHRL apply concomitantly and in a complementary manner⁴⁰. Their interpretation and application must be guided in particular by the rule set out in Article 31, paragraph 3 (c), of the 1969 Vienna Convention on the Law of Treaties, which provides for the interpretation of a treaty to take into account "[a]ny relevant rules of international law applicable in the relations between the parties".

³⁷ 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 Oct. 1907, Art. 42, available at: ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907 (consulted 18 July 2023).

³⁸ A/RES/60/107 of 8 Dec. 2005, para. 2: the General Assembly demands that Israel "comply *fully with the provisions* of the Fourth Geneva Convention of 1949" (emphasis added).

³⁹ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 240, para. 25; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 178, para. 106; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, pp. 242-243, para. 216.

⁴⁰ See references in previous fn; see also Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 11: "both spheres of law are complementary, not mutually exclusive"; Human Rights Committee, General Comment No. 36: Art. 6: right to life, UN doc. CCPR/C/GC/36, 3 Sept. 2019, para. 64: "both spheres of law are complementary, not mutually exclusive".

36. The application of the rules of IHL and IHRL in situations of military occupation also does not preclude the application of other rules of international law, such as those relating to the prohibition of the use of force or to environmental protection. Resolution 77/247, which is the source of the request for an advisory opinion of the Court, moreover explicitly acknowledges this by referring to “the rules and principles of international law, including the Charter of the United Nations, international humanitarian law[and] international human rights law”⁴¹ as the relevant legal framework for assessing the lawfulness of Israel’s conduct in the occupied Palestinian territories. In this instance, violations of international humanitarian law and international human rights law are indissociable from violations of the Charter and of peremptory norms of international law, in the sense that the former in fact beget the latter.

37. Finally, it is important to note that the occupied territory also includes the Gaza Strip, despite the disengagement of the Israeli military forces. Indeed, as noted in the updated commentary of the International Committee of the Red Cross (ICRC) on common Article 2 of the four Geneva Conventions of 1949:

“in some specific and exceptional cases — in particular when foreign forces withdraw from occupied territory (or parts thereof) while retaining key elements of authority or other important governmental functions that are typical of those usually taken on by an Occupying Power — the law of occupation might continue to apply within the territorial and functional limits of those competences.

Indeed, although the foreign forces are not physically present in the territory concerned, the authority they retain may still amount to effective control for the purposes of the law of occupation and entail the continued application of the relevant provisions.

. . . [T]echnological and military developments have made it possible to assert effective control over all or parts of a foreign territory without a continuous military presence in the area concerned. In such situations, it is important to take into account the extent of authority retained by the foreign forces rather than focusing exclusively on the means by which it is actually exercised.”⁴²

38. In the same vein, the Office of the Prosecutor of the International Criminal Court has affirmed that:

“While Israel maintains that it is no longer occupying Gaza, the prevalent view within the international community is that Israel remains an occupying power under international law, based on the scope and degree of control that it has retained over the territory of Gaza following the 2005 disengagement.”⁴³

39. In view of these considerations, it is important to keep in mind that the actions of the Israeli occupation authorities in the Gaza Strip, in particular the blockade imposed on more than two million Palestinians in this battered territory, which has continued for 16 years, also constitute violations of the rules of IHL and IHRL.

⁴¹ See above, fn 2.

⁴² ICRC, Commentary on the First Geneva Convention, 2016, T. Ferraro and L. Cameron, “Article 2: Application of the Convention”, paras. 307-309 (fn references omitted).

⁴³ International Criminal Court, Office of the Prosecutor, *Situation on Registered Vessels of Comoros, Greece and Cambodia, Article 53(1) Report*, 6 Nov. 2014, p. 5, para. 16, available at: [www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-COM-Article_53\(1\)-Report-06Nov2014Eng.pdf](http://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-COM-Article_53(1)-Report-06Nov2014Eng.pdf).

B. The prolonged nature of the occupation and the heightened importance of the rules of IHRL

40. Israel's occupation of Palestinian territories was characterized by the Security Council as "prolonged" as far back as 1980, in its resolution 476⁴⁴.

41. The prolonged character of an occupation must be taken into account in the interpretation of the applicable rules of IHL and IHRL. As a general matter, the rules of IHRL gain importance in such situations of occupation, as the International Law Commission notes in its Draft principles on protection of the environment in relation to armed conflicts, with commentaries:

"While the nature and duration of occupation do not affect the applicability of the law of occupation, the obligations of the Occupying Power under the law of occupation are, to a certain extent, context specific . . . [T]he responsibilities falling on the Occupying Power are 'commensurate with the duration of the occupation'. Furthermore, while protracted occupations remain governed by the law of occupation, other bodies of law, such as human rights law and international environmental law, gain more importance as time goes by and may complement or inform the applicable rules of the law of occupation. In protracted occupations, changes necessitated by economic and social development require the participation of the protected population."⁴⁵

42. In this particular case, the prolonged nature of the occupation is tied to statements by Israeli officials and policies which demonstrate an intention of permanence that is inconsistent with the letter and spirit of the law of occupation and the rules of IHRL. Settlement is the ultimate expression of this aim.

C. Settlement and the measures aimed at altering the demographic composition of the Occupied Palestinian Territory as violations of IHL and IHRL

43. The establishment of settlements in the Occupied Palestinian Territory violates Article 49 (6) of the Fourth Geneva Convention of 1949, which forms part of customary law⁴⁶, and constitutes a war crime under Article 8, paragraph 2 (b) (viii) of the Statute of the International Criminal Court.

44. Similarly, alterations of the demographic composition of the occupied territory, in so far as they take the form of forced displacements, are prohibited by Article 49 (1) of the Fourth Geneva Convention of 1949. This prohibition is customary in nature⁴⁷ and its violation constitutes a war crime under Article 8, paragraph 2 (b) (viii), of the Statute of the International Criminal Court.

⁴⁴ S/RES/476 (1980), adopted on 30 June 1980, para. 1. See also Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, UN doc. A/HRC/25/67, 13 Jan. 2014, p. 4, para. 6, and p. 22, para. 78; United Nations General Assembly, Situation of human rights in the Palestinian territories occupied since 1967, Note by the Secretary General, Annex: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, UN doc. A/77/356, 21 Sept. 2022, p. 7, para. 22, and p. 21, para. 63.

⁴⁵ ILC, Draft principles on protection of the environment in relation to armed conflicts, with commentaries, adopted on second reading in 2022, Part Four, commentary, para. 6.

⁴⁶ J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules*, ICRC/Cambridge University Press, Cambridge, 2005, p. 462 (rule 130).

⁴⁷ *Ibid.*, p. 457 (rule 129 A).

45. As recently as 19 June 2023, the United Nations Secretary-General stated in a press release that he was

“deeply troubled by [the] decision by the Israeli Government to amend settlement planning procedures. The changes can be expected to expedite the advancement of Israeli settlement plans in the occupied West Bank, including East Jerusalem. He [was] also deeply alarmed by the anticipated advancement next week of over 4,000 settlement housing units by Israeli planning authorities.”⁴⁸

And he continued as follows:

“The Secretary-General reiterates that settlements are a flagrant violation of international law. They are a major obstacle to the realization of a viable two-State solution and a just, lasting and comprehensive peace. The expansion of these illegal settlements is a significant driver of tensions and violence and deepens humanitarian needs. It further entrenches Israel’s occupation of Palestinian territory, encroaches on Palestinian land and natural resources, hampers the free movement of the Palestinian population and undermines the legitimate rights of the Palestinian people to self-determination and sovereignty.”⁴⁹

46. This statement by the Secretary-General concerns what is but the latest in a long series of similar incidents. The systematic and ongoing practice of establishing and expanding settlements, as well as, more generally, of measures aimed at altering the demographic composition of the occupied Palestinian territories is not only a serious violation of the rules of IHL, it also violates, *inter alia*, the right to self-determination and other fundamental rights of the Palestinian people.

47. In addition, in its report of 14 September 2022, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel stated that

“the policies identified in the present report that have contributed to the forced displacement of the Palestinian population from certain areas, altered the demographic composition of the Occupied Palestinian Territory and resulted in Palestinian communities being almost completely encircled by Israeli settlements, may constitute the crime against humanity of deportation or forcible transfer of population under article 7 (1) (d) of the Rome Statute. Such policies, appear to form part of an intentional, widespread and systematic attack directed at the Palestinian population with the aim of forcibly transferring them from parts of the West Bank to alter the demographic make-up. These acts may also amount to the crime against humanity of persecution under article 7 (1) (h) of the Rome Statute.”⁵⁰

48. In the same report, the Commission noted that “[t]he settlement enterprise is the principal means” by which the Israeli occupation authorities create irreversible facts on the ground that enable them to expand their control over the territory and annex certain parts of it *de facto* and *de jure*⁵¹. On the basis of this assertion, and in light of the foregoing discussion of the illegality of the occupation and annexation as such, it can be concluded that the measures relating to the establishment and

⁴⁸ “Alarmed by New Decision on Settlements, Secretary-General Urges Israeli Government to Cease Such Activities in OPT”, press release, Secretary-General, SG/SM/21847, 19 June 2023, available at press.un.org/en/2023/sgsm21847.doc.htm.

⁴⁹ *Ibid.*

⁵⁰ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, Note by the Secretary-General, UN doc. A/77/328, 14 Sept. 2022, p. 29, para. 86.

⁵¹ *Ibid.*, p. 26, para. 75.

expansion of settlements, as a means of implementing an illegal occupation and annexation, are also illegal.

49. Settlement is a prime example of violations of *jus in bello* contributing to the violation of the United Nations Charter and general international law, in particular the principle of non-acquisition of territory by force.

D. Israel's adoption of discriminatory legislation and measures

50. The report of 14 September 2022 is one of several providing an overview of the discriminatory measures adopted by Israel⁵².

51. The legislative authority of occupying Powers is governed by Article 43 of the Hague Regulations of 1907 and Article 64 of the Fourth Geneva Convention of 1949. In exercising their authority, occupying Powers are bound by the rules of IHL and IHRL, including in particular the principle of non-discrimination. This principle is set out in Article 13 of the Fourth Geneva Convention of 1949⁵³ and has acquired the status of customary law:

“Adverse distinction in the application of international humanitarian law based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited.”⁵⁴

52. Similarly, discriminatory measures are contrary to the rules of IHRL, *inter alia*, Article 2, paragraph 1, of the International Covenant on Civil and Political Rights⁵⁵, Article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights⁵⁶, and the International Convention on the Elimination of All Forms of Racial Discrimination.

III. THE LEGAL CONSEQUENCES ARISING FROM ISRAEL'S ONGOING VIOLATION OF THE RIGHTS OF THE PALESTINIAN PEOPLE

53. As noted above, it is established that Israel is violating a number of rules of general international law, international humanitarian law and international human rights law that are considered to be peremptory and *erga omnes* norms. The primary consequence of these violations is that Israel must put an end to them forthwith, by ceasing, in particular, the occupation and settlement immediately and unconditionally, and by eliminating all measures that infringe the rights of the Palestinian population, including their right to self-determination and all discriminatory measures,

⁵² *Ibid.*

⁵³ Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 Aug. 1949, Art. 13: “The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war.”

⁵⁴ J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules*, ICRC/Cambridge University Press, Cambridge, 2005, p. 308 (rule 88).

⁵⁵ “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

⁵⁶ “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

and it must provide reparation for the injury suffered by the Palestinian people as a result of these violations.

54. However, Israel's persistent disregard for all the injunctions to respect its international obligations — from the Court, the Security Council, the General Assembly, the Human Rights Council, the Secretary-General, fact-finding missions and numerous United Nations reports — makes the posture adopted by the international community, and by States and the United Nations in particular, especially crucial in inducing Israel to comply with international law. It is thus essential that third States fully perform the obligations that are incumbent on them under international law in the event of the serious and systematic violation of a peremptory norm by another State. In order to determine which obligations are binding on States in this regard, we will discuss in turn the obligation to “ensure respect” for international humanitarian law (A), the obligation to ensure respect for the human rights of the Palestinian population (B), the obligation to remove impediments to the Palestinian people's right to self-determination (C), and the obligation not to recognize as lawful the illegal situation created as a result of the occupation and settlement of Palestinian territory, or to render aid or assistance in maintaining that situation (D).

A. The obligation to “ensure respect” for international humanitarian law

55. In its Advisory Opinion on the Wall, the ICJ referred to the obligation to “ensure respect” for international humanitarian law provided for in common Article 1 of the four Geneva Conventions of 1949, stating that

“[i]t follows from that provision that every State party to that Convention, whether or not it is a party to a specific conflict, is under an obligation to ensure that the requirements of the instruments in question are complied with”,

and that

“all the States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 are under an obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention”⁵⁷.

56. With regard to the obligation to ensure respect for international humanitarian law, the ICRC's updated commentary on common Article 1 of the four Geneva Conventions explains that

“The obligation to ensure respect . . . [is] related to ensuring respect for the Conventions by others that are Party to a conflict. Accordingly, States, whether neutral, allied or enemy, must do everything reasonably in their power to ensure respect for the Conventions by others that are Party to a conflict.

This duty to ensure respect by others comprises both a negative and a positive obligation. Under the negative obligation, High Contracting Parties may neither encourage, nor aid or assist in violations of the Conventions by Parties to a conflict.

⁵⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 199-200, paras. 158, 159.

Under the positive obligation, they must do everything reasonably in their power to prevent and bring such violations to an end.”⁵⁸

57. Regarding the negative obligations, the ICRC states:

“Pursuant to common Article 1, the High Contracting Parties have certain negative obligations, which means they must abstain from certain conduct. In particular, they may neither encourage, nor aid or assist in violations of the Conventions.”⁵⁹

58. As regards the positive obligations, third States:

“must take proactive steps to bring violations of the Conventions to an end and to bring an erring Party to a conflict back to an attitude of respect for the Conventions, in particular by using their influence on that Party.

.....

States remain in principle free to choose between different possible measures, as long as those adopted are considered adequate to ensure respect. The duty to ensure respect is to be carried out with due diligence. As noted above, its content depends on the specific circumstances, including the gravity of the breach, the means reasonably available to the State, and the degree of influence it exercises over those responsible for the breach.”⁶⁰

59. States are therefore required to take reasonable steps, while respecting international law, to encourage in effect the State concerned to respect international humanitarian law. *A fortiori*, States are required to abstain from acts that would be incompatible with the aim of encouraging respect for international humanitarian law, such as financing, promoting or facilitating the settlement policy or economic activities linked to serious violations of humanitarian law.

B. The obligation to remove impediments to the exercise by the Palestinian people of their right to self-determination

60. The obligation to ensure the implementation of the Palestinian people’s right to self-determination derives from the principle enshrined in the United Nations Charter, namely Article 1, paragraph 3, from resolution 2625 (XXV) of the United Nations General Assembly, which provides that “[e]very State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter”, and from common Article 1, paragraph 3, of the covenants adopted in New York in 1966: “The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of

⁵⁸ ICRC, Commentary on the First Geneva Convention, 2016, J.-M. Henckaerts, “Article 1: Respect for the Convention”, paras. 153-154.

⁵⁹ *Ibid.*, para. 158.

⁶⁰ *Ibid.*, paras. 164-165.

the United Nations”⁶¹. The right of peoples to self-determination also comprises the right to “freely dispose of their natural wealth and resources”⁶².

61. In its Advisory Opinion on the Wall, the ICJ characterized the right of the Palestinian people to self-determination as an *erga omnes* norm and considered that “[i]t is . . . for all States, while respecting the United Nations Charter and international law, to see to it that any impediment . . . to the exercise by the Palestinian people of its right to self-determination is brought to an end”⁶³.

62. This obligation to “see to it” that the violation of the Palestinian people’s right to self-determination and to dispose of their natural resources “is brought to an end” requires States to take reasonable steps to induce Israel to comply with international law. It also requires States to cease any conduct that might finance or facilitate political, military, economic or other activities that serve to impede the exercise of the Palestinian people’s right to self-determination and to permanent sovereignty over their natural resources.

C. The obligations arising from the United Nations’ guiding principles on human rights

63. The economic development of Israeli settlements in occupied Palestinian territory is a core component of the settlement policy pursued by the State of Israel⁶⁴. The economic activity of the settlements plays a central role in their maintenance and expansion. In the resolution adopted in April 2023, the Human Rights Council noted that “economic activities facilitate the expansion and entrenchment of settlements” and called upon all States

“[t]o implement the Guiding Principles on Business and Human Rights in relation to the Occupied Palestinian Territory, including East Jerusalem, and to take appropriate measures to help to ensure that businesses domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, refrain from committing, contributing to, enabling or benefiting from the human rights abuses of Palestinians, in accordance with the expected standard of conduct in the Guiding Principles and relevant international laws and standards, by taking appropriate steps in view of the immitigable nature of the adverse impact of their activities on human rights”⁶⁵.

64. The “Guiding Principles on Business and Human Rights”, adopted by the United Nations in 2011⁶⁶, provides that States “must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises”⁶⁷. This duty to protect “requires taking

⁶¹ The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

⁶² See the resolution adopted by the General Assembly on 17 Dec. 2021, “Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources”, A/RES/76/225.

⁶³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 200, para. 159.

⁶⁴ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/HRC/47/57, 29 July 2019, para. 54.

⁶⁵ Human Rights Council resolution 52/35, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, A/HRC/RES/52/35, 4 Apr. 2023.

⁶⁶ Guiding Principles on Business and Human Rights, United Nations, 2011, www.business-humanrights.org/en/big-issues/un-guiding-principles-on-business-human-rights/

⁶⁷ *Ibid.*, Principle 1.

appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication”⁶⁸. The Guiding Principles are considered to establish an appropriate legal framework for determining the obligations of both States and businesses with regard to economic activities undertaken in the Israeli settlements⁶⁹. The United Nations General Assembly thus described the Guiding Principles as “a global standard for upholding human rights in relation to business activities that are connected with Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem”, putting them on the same footing as “other relevant international laws and standards”⁷⁰.

D. The duties of non-recognition and non-assistance

65. The grave violations of international law linked to the occupation and settlement policy of Israel entail legal consequences for third States in the form of obligations “not to recognize” the illegal situation created as a result of those violations, not to “render aid or assistance” in maintaining that situation, and to “ensure compliance” with international law.

66. The obligations of “non-recognition” and “non-assistance” incumbent on States and international organizations have been recognized as customary and codified by the International Law Commission in Article 41 of the Articles on the Responsibility of States for Internationally Wrongful Acts⁷¹ and in Article 42 of the Draft Articles on the Responsibility of International Organizations⁷².

67. The obligations of “non-recognition” and “non-assistance” have been found to be applicable in the particular context of the Israeli occupation of Palestinian territories. In its Advisory Opinion of 9 July 2004, the Court ruled that the construction by Israel of a wall in occupied Palestinian territory was unlawful, and that this resulted in the following consequences for third States:

“Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation *not to recognize* the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation *not to render aid or assistance* in maintaining the situation created by such construction”⁷³.

⁶⁸ *Ibid.*

⁶⁹ Report of the United Nations High Commissioner for Human Rights, Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, A/HRC/37/39, 1 Feb. 2018.

⁷⁰ Resolution 77/126, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, adopted on 12 Dec. 2022 by a vote of 141 in favour, 7 against and 21 abstentions. See also resolution 76/82, adopted on 12 Dec. 2021 (146-7-20).

⁷¹ ILC, “Responsibility of the State for internationally wrongful acts”, annex to United Nations General Assembly resolution A/RES/56/83, 12 Dec. 2001.

⁷² ILC, Draft submitted to the General Assembly as a part of the Commission’s report covering the work of that session (A/66/10, para. 87). The report is reproduced in the *Yearbook of the International Law Commission*, 2011, Vol. II (2).

⁷³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, para. 159 (emphasis added). The Court also mentioned the obligation to ensure compliance with the Fourth Geneva Convention: “In addition, all the States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 are under an obligation, while respecting the United Nations Charter and international law, *to ensure compliance* by Israel with international humanitarian law as embodied in that Convention” (para. 159, emphasis added).

The duties of non-recognition and non-assistance are reflected in resolutions adopted by the Security Council and the General Assembly. The General Assembly once again called upon States,

“consistent with their obligations under the Charter and relevant Security Council resolutions, inter alia . . . [n]ot to render aid or assistance to illegal settlement activities, including not to provide Israel with any assistance to be used specifically in connection with settlements in the occupied territories, in line with Security Council resolution 465 (1980) of 1 March 1980”⁷⁴.

68. Similarly, in its resolution 52/35 cited above⁷⁵, the Human Rights Council called upon States

“[t]o distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967, including not to provide Israel with any assistance to be used specifically in connection with the settlements in these territories with regard to, inter alia, the issue of trade with settlements, consistent with their obligations under international law”.

69. In its Opinion on the presence of South Africa in Namibia, the Court underlined that the obligation of non-recognition covers the area of economic relations in particular:

“The restraints which are implicit in the non-recognition of South Africa’s presence in Namibia . . . impose upon member States the obligation to abstain from entering into economic and other forms of relationship or dealings with South Africa on behalf of or concerning Namibia which may entrench its authority over the Territory”⁷⁶.

70. The obligation of non-recognition and non-assistance thus presupposes that States do not develop any economic or financial relationship that may acknowledge the authority of Israel over Palestinian territory, including East Jerusalem, or give legal effect to the activities of the settlements. The obligation also involves abstaining from relations with Israel that may contribute to maintaining its occupation or its settlements in occupied Palestinian territory.

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71. In conclusion, the obligations incumbent on third States — whether it is the obligation to ensure compliance with international humanitarian law, to ensure respect for the right to self-determination, to ensure respect for human rights by business enterprises, or the duties of non-recognition and non-assistance — all require them to adopt the necessary measures so that they do not provide any form of aid, directly or indirectly, to the occupation and settlement policy pursued by Israel in Palestinian territory and so that they ensure that businesses under their jurisdiction abstain

⁷⁴ A/RES/77/25, Peaceful settlement of the question of Palestine, 30 Nov. 2022.

⁷⁵ Human Rights Council, resolution 52/35, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, A/HRC/RES/52/35, 4 Apr. 2023.

⁷⁶ *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, pp. 55-56, para. 124.

from providing any such aid. Furthermore, States must abstain from maintaining relations with Israel that may entail a form of recognition, direct or indirect, of the illegal situation created by the violations of international law committed by that State. Finally, States should adopt reasonable measures in conformity with international law to encourage Israel to comply with its international obligations.
