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INTERNATIONAL COURT OF JUSTICE

**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**

(REQUEST FOR AN ADVISORY OPINION)

**WRITTEN STATEMENT OF THE GOVERNMENT
OF SENEGAL**

21 July 2023

[Translation by the Registry]

In requesting the International Court of Justice (ICJ), by resolution 77/247 adopted on 30 December 2022, to render an advisory opinion on “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”, the United Nations General Assembly invited the Court to respond to the following questions, in light of 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 Human Rights Council and the General Assembly, and the Court’s Advisory Opinion 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?”

This request is founded on the provisions of Article 96 of the United Nations Charter and Article 65 of the Statute of the Court. It is one of a long list of requests for advisory opinions sent by the General Assembly to the Court since its establishment; there is thus no possible doubt about the power of the General Assembly to seise the Court for an advisory opinion in this case.

By its resolution 171 (II) of 14 November 1947, entitled “Need for greater use by the United Nations and its organs of the International Court of Justice”, the United Nations General Assembly recommended that organs of the United Nations should refer to the ICJ for an advisory opinion “the difficult and important points of law within [its] jurisdiction . . . which have arisen in the course of their activities”.

In view of the many opinions rendered by the Court in over half a century, Senegal is convinced that the opinions of the ICJ, though advisory in nature, provide a better understanding of whether or not Member States comply with the rules governing international relations. It is therefore expected that all Member States, convinced of the merits of this request, should support it and contribute to its realization.

It is in this spirit that our country previously submitted a written statement in the context of the ICJ’s Advisory Opinion of 9 July 2004 on the *Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory*. That Opinion led to the adoption of resolution A/RES/ES-10/15 of 20 July 2004, during the tenth emergency special session of the United Nations General Assembly, calling for an end to the construction of the wall, which is in departure from the Armistice Line of 1949 and thus in grave breach of the relevant provisions of international law.

In light of the foregoing, and given its involvement in the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territory and its chairmanship of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, Senegal has the honour to submit the present statement.

First of all, our country would like to recall the centrality of the vision expressed on numerous occasions by the United Nations General Assembly and Security Council “of a region where two democratic States, Israel and Palestine, live side by side in peace within secure and recognized borders”.

Senegal thus again endorses the call of the Security Council for “both parties to act on the basis of international law, including international humanitarian law, and their previous agreements and obligations . . . [to demonstrate] through policies and actions a genuine commitment to the two-State solution, and create[e] the conditions necessary for promoting peace”.

Regarding the right of the Palestinian people to self-determination, the Court previously stated, in its Advisory Opinion of 9 July 2004, that the right of peoples to self-determination is a right *erga omnes*, and therefore binding on all Member States. The Court also noted on that occasion that Israel “is bound to comply with its obligation to respect the right of the Palestinian people to self-determination and its obligations under international humanitarian law and international human rights law”.

This principle, which is enshrined in the United Nations Charter, has, in the case of Palestine, been referred to constantly and repeatedly in the relevant resolutions of the General Assembly, including resolution 77/208 of 15 December 2022, in which the General Assembly “[r]eaffirms 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”.

In this regard, the importance of ceasing, without delay, all acts and measures that prevent and/or impair the exercise of the right to self-determination of the Palestinian people should be emphasized as one of the key conditions for the peaceful settlement of the situation in Palestine, in light of resolution 77/25 of 30 November 2022 and the United Nations Charter, which, notably, urges Member States “[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”.

Moreover, as recalled in resolution A/RES/77/126 of 12 December 2022, the Israeli occupation continues to undermine the viability of the two-State solution and challenges the prospects for a just, lasting and comprehensive peace settlement. In this regard, the Israeli occupation, which is no longer temporary, has *de facto* become a creeping annexation, as noted by several United Nations special rapporteurs on the human rights situation in the Occupied Palestinian Territory.

It is to be noted that the Court, in its aforementioned Opinion, 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”.

It is therefore important to recall the provisions of resolution S/RES/2334 of 23 December 2016, whereby the United Nations Security Council:

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

.....

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

Reiterates its demand that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard”.

The current situation, marked by violations against the Al-Aqsa Mosque during the month of Ramadan 2022, aggression against the Gaza Strip and persistent human rights violations, reinforces the Senegalese Government in its belief that seising the Court for an opinion would further clarify the requirement to respect international law in this region, the violation of which severely jeopardizes the prospects of peace there.

It should be noted that the acquisition of a territory by force is prohibited by the Charter of the United Nations (cf. Articles 1, 2, 6 and 24(2)). The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (resolution 2625 XXV of 24 October 1970) provided a clear interpretation in this respect: “No territorial acquisition resulting from the threat or use of force shall be recognized as legal”, regardless of the circumstances of such threat or use of force, whether “as a result of an act of aggression or in self-defence”.

Most of the legal grounds invoked, in seeking that Israel uphold its commitments, are based on the commission of serious violations of rules and principles that are well established in international law, relating to the means of territorial acquisition, the consequences of the exercise of territorial jurisdiction, respect for human rights such as freedom of movement, and respect for economic, social and cultural rights, or compliance with the rules of international humanitarian law, in particular those contained in the Fourth Geneva Convention of 1949 and its Protocol 1 of 1977.

The argument invoked by Israel of the right to preventive self-defence in order to justify the construction of the wall, a project that relies on the confiscation of private Palestinian land or its annexation through the incorporation of Jewish settlements in large portions of the West Bank or massive violations of human rights, is tantamount in practice to an illegal annexation inasmuch as it is prohibited by the Charter of the United Nations and the Fourth Geneva Convention on the Protection of Civilian Persons in Time of War in the same way as the annexation of East Jerusalem.

In this regard, the construction of the wall is an extension of the annexation of Palestinian territories and it has become imperative for any policy establishing settlements to cease.

Reiterating its call for an end to the illegal occupation and annexation of Palestinian territories, our country would like to remind the States parties to the International Convention on the Elimination of All Forms of Racial Discrimination of their obligations, in particular under Article 2 (1) (a), which states that “[e]ach State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation”.

Senegal also expresses its concern at the conclusions 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 (contained in the report A/HRC/22/63 of 7 February 2013); those of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (contained in the report A/77/549 of 25 October 2022) and those of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and other Arabs of the Occupied Territories (listed in the report A/77/501 of 3 October 2022).

While Israel’s right to protect itself and its citizens is recognized, in exercising that right Israel must nevertheless protect all civilian populations, avoid exacerbating the difficult humanitarian and economic situation of the Palestinian people and refrain from any policy, practice or punitive and discriminatory measure that is not consistent with international law.

This is the thrust of resolution S/RES/474 of 17 June 1980, in which the United Nations Security Council “calls . . . upon the Government of Israel to respect and to comply with the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, as well as with the relevant resolutions of the Security Council”.

That is also why Senegal emphasizes the need to respect the relevant resolutions of United Nations organs, including resolution A/HRC/RES/49/4 of the Human Rights Council dated 31 March 2022 and resolution A/RES/77/247 of 30 December 2022, in which the United Nations General Assembly:

- Affirms “that these human rights instruments must be respected in the Occupied Palestinian Territory, including East Jerusalem”, as do the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child;
- Reaffirms “the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967”;
- Expresses “grave concern about the continuing systematic violation of the human rights of the Palestinian people by Israel, the occupying Power, including that arising from the excessive use of force and military operations causing death and injury to Palestinian civilians, including children, women and non-violent, peaceful demonstrators, as well as journalists, medical personnel and humanitarian personnel; the arbitrary imprisonment and detention of Palestinians, some of whom have been imprisoned for decades; the use of collective punishment; the closure of areas; the confiscation of land; the establishment and expansion of settlements; the construction of a wall in the Occupied Palestinian Territory in departure from the Armistice Line of 1949; the destruction of property and infrastructure; the forced displacement of civilians, including attempts at forced transfers of Bedouin communities; . . . demanding the cessation of all such unlawful actions”.

In seeking a two-State solution, Senegal would recall the specific status of Jerusalem, as noted in resolution S/RES/452 of 22 July 1979, whereby the United Nations Security Council emphasizes that specific status and reconfirms “pertinent Security Council resolutions concerning Jerusalem, and in particular the need to protect and preserve the unique spiritual and religious dimension of the Holy Places in that city”.

The Council thus stated, in its resolution S/RES/478 of 20 August 1980, that the adoption of the basic law by the State of Israel, dated 30 July 1980, making the “undivided and reunited City of Jerusalem . . . the eternal capital of Israel”, “constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian and other Arab territories occupied since June 1967, including Jerusalem”. It thus sought an end to the legal and geographic alterations to the city.

Furthermore, the United Nations General Assembly reaffirmed, through resolution A/RES/36/120 (E) of 10 December 1981, “its resolution not to recognize that ‘Basic Law’ and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem” and called upon “all States, specialized agencies and other international organizations to comply with the present resolution and other relevant resolutions”, urging them “not to conduct any business which is not in conformity with the provisions of the present resolution and the other relevant resolutions”.

In this regard, Senegal would refer to resolution A/RES/76/12 of 1 December 2022, whereby the United Nations General Assembly:

- Deplores “any action taken by any body, governmental or non-governmental, in violation of the above-mentioned resolutions”;
- Reiterates “that all measures which have altered the geographic, demographic and historical character and status of the Holy City of Jerusalem are null and void and must be rescinded in compliance with the relevant resolutions of the Security Council”;
- “*Stresses* that a comprehensive, just and lasting solution to the question of the City of Jerusalem should take into account the legitimate concerns of both the Palestinian and Israeli sides, in accordance with international law, and should include internationally guaranteed provisions to ensure the freedom of religion and of conscience of its inhabitants, as well as permanent, free and unhindered access to the holy places by people of all religions and nationalities”;
- “*Reiterates* its determination that any actions taken by Israel, the occupying Power, to impose its laws, jurisdiction and administration on the Holy City of Jerusalem are illegal and therefore null and void and have no validity whatsoever, and calls upon Israel to immediately cease all such illegal and unilateral measures”.

Finally, Senegal considers that this exercise is part of the shared responsibility of all Member States of the United Nations, as third States. In this regard, our country would recall that the relevant organs of the United Nations have consistently and invariably called on all Member States to comply with their obligations under the Charter and the relevant resolutions of the Security Council. These obligations include, in particular:

- Not providing Israel with any assistance specifically for use in connection with settlements in the occupied Arab territories (Security Council resolutions S/RES/465 and 471 of 1 March and 5 June 1980);
- Distinguishing, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967 (Security Council resolution S/RES/2334, dated 23 December 2016).

For the aforementioned reasons, the Government of Senegal hopes that the International Court of Justice will render an opinion on 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”.
